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S. 967, PREPACKAGED NEWS STORIES

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

MAY 12, 2005

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ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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S. 967, PREPACKAGED NEWS STORIES

THURSDAY, MAY 12, 2005

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m. in room SR–253, Russell Senate Office Building, Hon. Ted Stevens, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

The CHAIRMAN. This is the hearing that I said we would hold on a bill sponsored by Senator Lautenberg to create a new section in the Communications Act of 1934 to require broadcasters, cable, and satellite providers and other persons to ensure that the origin of prepackaged news stories produced by our Government is disclosed to the public. The bill would cover prepackaged news stories intended to be aired within the United States. It would make it illegal for any person to remove the Federal agency disclosure required by a provision in the defense supplemental bill that passed the Senate earlier this week. That was the Byrd Amendment. It was adopted on the supplemental.

This hearing will focus on the need to amend the Communications Act to authorize the Federal Communications Commission to regulate the news industry's handling of what we now know as VNR's.

The first panel this morning is the Honorable Jonathan Adelstein, Commissioner of the Federal Communications Commission, and Mr. Austin Schlick, the Acting General Counsel of the Federal Communications Commission.

Senator Inouye, do you have an opening statement?

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. Thank you very much, Mr. Chairman. I do have an opening statement. I thank you for calling today's hearing. May I have my full statement made part of the record?

The CHAIRMAN. Without objection.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Mr. Chairman, I want to thank you for calling today's hearing to examine current practices concerning the use of Video News Releases, commonly referred to as "VNRs."

When used appropriately, VNRs, like written press releases, can provide television news directors with an important source of information and video footage that can then be reviewed and edited to create independent news stories.

Unfortunately, as recent press accounts have documented, the increasingly "prepackaged" and scripted nature of VNRs, sometimes including actors posing as news reporters, has tempted some news organizations to air VNRs in full without disclosing the true source of such information.

Based on these reports, I wrote to then-Chairman of the Federal Communications Commission (FCC), Michael Powell, in March of this year, asking the FCC to investigate this matter and to take whatever remedial action was necessary to prevent television and radio audiences from being misled.

Roughly one month later, the FCC, under the leadership of its newly appointed Chairman, Kevin Martin, responded by unanimously adopting a public notice that reminds broadcasters and cable operators of the disclosure obligations under the Communications Act and requests further investigation into the production, provision, and use of VNRs.

Today's hearing lets us examine in greater detail the problems that arise when VNRs created by government agencies are distributed without proper disclosure to the viewing public about their true source. This practice has been criticized by the Government Accountability Office (GAO) for some time. The GAO has taken issue with the current Administration's interpretation of when attribution is required.

This is not a partisan issue. Congress passed language as part of the Supplemental Appropriations bill this past Tuesday that will prevent Federal agencies from using funds appropriated this fiscal year to create such prepackaged news stories unless clear government attribution is provided. While this restriction is only temporary, other proposals have been advanced that would result in a more permanent solution.

Mr. Chairman, it was Thomas Jefferson who first noted that "information is the currency of democracy." But its true value to our society can only be realized if our ethical standards require, and our laws enforce, a level of transparency and openness that protect the American public from being misled. As a result, I look forward to today's hearing and to our continuing efforts to enrich civic discourse.

The CHAIRMAN. Senator Lautenberg, do you have an opening statement?

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. I do. First, I want to thank you, Mr. Chairman, for holding this hearing. I know that it was taken off a busy agenda, but you did make a promise, and those who know you know that you always keep the promise. We have to be able to trust one another to get things done here. As we see in these days, it is not always easy.

Well, I am hopeful that soon after this hearing we can move ahead on a markup of this legislation so we can move it to the full Senate.

The purpose of the bill that I have introduced with Senator John Kerry is simple and straightforward. It would stop the Government from producing covert propaganda. And by the way, I want to say that this is, to my knowledge, not the first time that it has been done. So this is not simply a finger pointing at the present Administration.

Over the past year, the American people have learned of numerous incidents in which the Administration produced fake news stories that concealed the Government's role. And we have also learned of journalists who were paid off to write favorable articles about Administration policies. The best known example of journalism for hire was the columnist and radio commentator, Armstrong Williams, who was paid to write and say favorable things about the No Child Left Behind law.

And cases of journalism for hire continue to be exposed. Just this week, we learned that the Department of Agriculture had paid a writer to produce favorable articles, which were then placed in publications. The people who read the article had no way of knowing that these news stories, so-called, were bought and paid for by the Government.

When President Bush learned about the Armstrong Williams case, he said it was wrong and he correctly said that the Administration policies should be able to stand on their own merits without need to bribe journalists. And we commend him for that.

When it comes to another form, however, of Government propaganda, the Administration has been unwilling to shut it down. That other form of propaganda is the production and distribution of fake video news reports that conceal the Government's role. One notorious example of such prepackaged news stories are the news stories paid for by the Department of Health and Human Services that promoted the new Medicare drug law. Not only did this supposed news report contain misleading and slanted information, but it was signed off as "this is Karen Ryan reporting from Washington," but Karen Ryan was not the reporter. She is a public relations consultant that was contracted to voice over that fake news report. And the fake news segment gave no indication that it was actually a Government production.

The Government Accountability Office has determined that this practice constitutes—and here I quote—"covert propaganda." And it is illegal. The GAO told the Bush Administration that it must identify itself in these news pieces. But incredibly, the Office of Management and Budget sent a memo to all Government agencies saying that it is all right to hide their sponsorship of these fake news stories.

And that is why John Kerry and I think this bill is necessary. Our bill tells the Administration that if they want to produce fake news stories, they have to tell the American people who made and paid for these stories. President Bush has said it is the burden of the broadcasters who use prepackaged news stories to figure out where the VNR came from. I disagree. Why put the burden on industry when the Government can solve the problem in a simple and efficient way? The only way to ensure that the American people know what they are watching is to include that information in the video itself.

Once again, I thank Chairman Stevens and Co-Chairman Inouye for staying true to their word, holding this hearing. Again, I hope that a markup will soon follow. Our staffs have had productive conversations on this issue, and I am hopeful that this hearing will lead us to a bipartisan bill so we can soon move to the full Senate for consideration. Thanks again, Mr. Chairman.

I look forward to the testimony of our witnesses today.

The CHAIRMAN. Thank you very much.

Our first witness this morning is Commissioner Adelstein from the FCC.

All witnesses' statements will appear in the record as though read. We appreciate your comments and brevity, if possible. There will be a vote this morning, I guess two votes starting at 11:40.

Commissioner Adelstein.

STATEMENT OF HON. JONATHAN S. ADELSTEIN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. ADELSTEIN. Thank you, Mr. Chairman, Mr. Co-Chairman, Senator Lautenberg. I appreciate your invitation to testify this morning on a matter of great concern to me and to the FCC. I think this hearing is especially timely because it can help us combat the surprising lack of awareness that the law and the FCC rules require disclosure of who is behind certain paid, political or controversial programming.

Congress has maintained the principle from the outset of broadcasting that consumers have a right to know who is trying to influence them. Sponsorship identification laws date back to the Radio Act of 1927, making these laws older than the FCC itself. Congress has maintained an unwavering requirement that broadcasters must announce who gave them valuable consideration to air anything. In the case of controversial issue programming or political programming, the FCC's interpretation of the law has always required that whenever a third party provides material to induce its broadcast, the identity of the source must also be disclosed to viewers. So the seriousness with which you are treating this matter is entirely consistent with the historical concern of this committee and of Congress as a whole.

Because of the need to highlight our rules, I was especially pleased that last month the FCC voted unanimously to remind the industry of their legal obligations. With the leadership of our new Chairman, Kevin Martin, we came together on a bipartisan basis to alert the industry that we take our responsibilities in this matter extremely seriously and plan to enforce the law vigorously. We also sought comments to learn more about how VNRs are used and whether we need to refine our rules even further.

A lot of analysts believe that the urgency of this issue arises in large measure because of the increasing commercialization of the media. Pressures on the bottom line are forcing reductions in resources for news operations. And this creates a void that PR firms are happy to fill with VNRs. They are cheaper to produce than ads, free to get on the air, and more effective because they are designed to mimic news stories. But this can seriously mislead viewers and has probably contributed to the well documented loss of public confidence in today's media.

Another symptom of commercialization is seen in the reports of a rising tide of undisclosed product placements in our media. I am concerned that there seems to be a lack of awareness here, too, of the need for disclosure under our rules. Everyone in the industry would be well served if they were to review our public notice on video news releases because those very same rules can apply to product placements.

The focus of today's hearing is on the use of VNRs by government agencies. As recently as 2002, the FCC reiterated that disclosure is particularly important when the government sponsors the broadcast matter. You have heard about conflicting interpretations between the Justice Department and GAO about whether unidentified government VNRs violate laws against covert propaganda. The Commission has no jurisdiction over these laws and has taken no position. But neither Justice nor GAO has noted that the failure

by broadcasters and cable companies to identify the source of VNRs could violate the FCC's sponsorship ID rules. As we said in our public notice, these companies do have an obligation to disclose the source of political or controversial VNRs.

If Congress seeks to ensure that the public is notified about the source of government-sponsored VNRs, legislation such as S. 967 is necessary to bolster our existing rules. This legislation would apply whether or not consideration was exchanged and whether or not controversial or political issues were involved. It would also prohibit the removal of the announcement. The bill does not specify the precise nature of the announcement, but instead leaves it to the FCC to work with broadcasters to determine how to achieve the right balance between the public's right to know and editorial discretion. The bill would not impose any new burden on broadcasters or cable companies. In fact, it would simplify compliance. It would ensure that those airing VNRs are aware of the government's role in producing them. Most importantly, it addresses the public's right to know the source of the broadcast so they can make up their own minds about the information being presented.

Again, Mr. Chairman, thank you for inviting me to testify, and I would be happy to answer any questions you might have.

[The prepared statement of Mr. Adelstein follows:]

PREPARED STATEMENT OF JONATHAN S. ADELSTEIN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman, Mr. Co-Chairman, and Members of the Committee, thank you for inviting me to testify before you today about pre-packaged news stories, also known as video news releases, or "VNRs." The issue of concern with pre-packaged news stories is that, absent proper disclosure, listeners and viewers may believe that these stories are produced by *bona fide* news organizations, rather than third-parties who may have a vested interest in the content of the story. As a member of the Commission charged with overseeing the influential and powerful medium of television, this issue is one of great concern to me, and I appreciate the opportunity to share my views.

This hearing is especially timely because, until recently, there appeared to be a surprising lack of awareness that the Communications Act and FCC rules already require disclosure by broadcasters and cable companies of who is behind certain paid material or political or controversial issue programming.

Because of the need to highlight our rules, I was especially pleased that we voted unanimously last month to remind broadcasters and cable operators of their obligations under the law. Under the leadership of our new Chairman, Kevin Martin, we came together on a bipartisan basis to warn that we take our responsibilities seriously and plan to enforce the law vigorously, and sought comment to learn more about how VNRs are used, and whether there is a need for the Commission to refine its rules further to protect the public.

Pre-packaged news stories are attractive to busy newsrooms that are trying to fill longer news windows with fewer journalistic resources, because they are off-the-shelf, ready-to-go news stories that require no expenditure by the news outlet. Although government-produced pre-packaged news stories have been the focus of attention recently, private corporations also use VNRs to provide information about their products. Recently, I've read reports about the growing practice of companies *paying* to guarantee that a media outlet will air their pre-packaged news stories. VNRs are thus one symptom of the growing commercialization of our media.

We are also seeing reports of a rising tide of product placement, and I'm concerned that there seems to be a lack of awareness of the need for disclosure under our rules in this area as well. This practice is likely to increase, given that embedding products within programming is partly a response to the fact that technology increasingly allows consumers to view television content how and when they choose. In order to comply with our rules, advertisers, broadcasters and cable operators

would be well-served to review our public notice on VNRs, since the same rules can apply to product placements.

In FCC parlance, the issue of "sponsorship identification" dates to the very beginning of broadcast regulation. Congress recognized from the outset that with the American model of developing broadcast service along private commercial lines, consumers have a right to know who is trying to persuade them. As far back as the Radio Act of 1927, and continuing with the Communications Act of 1934 and subsequent amendments, Congress has maintained an unvarying requirement that radio and television broadcasters must announce by whom any valuable consideration was paid for or furnished. This means that the concept of sponsorship identification is in fact older than the FCC itself.

The Commission adopted its first rules on sponsorship identification in 1944. Since that time, our rules have of course evolved some, but have never deviated from the core requirements. Our rules have always required that whenever programming is aired for consideration, the fact of sponsorship and the identity of the sponsor must be disclosed. Our rules have also always required that, in the case of controversial issue or political programming, whenever any material or service has been furnished to the station as an inducement to broadcast such programming, the fact that such material or service was furnished and the identity of the source be disclosed. In 1960, Congress generally excluded property or services provided to broadcasters free or at nominal charge from the scope of consideration that triggers the disclosure requirement—except for controversial issue or political programming. As the Commission has acknowledged in the past, disclosure is especially important with this type of programming. As a result, for over sixty years, our rules have required a disclosure to be made, in the case of controversial issue or political programming, whenever any material or service of any kind, regardless of cost, is furnished to broadcasters as an inducement to air that programming. As recently as 2002, the Commission also reiterated that disclosure is particularly important when the government is the sponsor of broadcast matter.

In 1960, Congress also revised section 317 to impose a due diligence requirement on broadcasters to obtain from their employees, and others they deal with directly in programming, the information they need to make the required sponsorship identification announcement. The Commission has implemented the express requirements of section 317, and has extended its sponsorship identification rules to cable operators for "origination programming," or programming subject to their exclusive control.

The seriousness with which this committee is treating this matter is entirely consistent with the historical concern of the Committee and Congress as a whole.

In recent months—as evidenced by today's hearing—much attention has been given to the appropriateness of Federal departments and agencies using pre-packaged news without clear disclosure of the government's role in creating the VNRs. Conflicts within the government about whether this activity is or is not consistent with laws against using appropriated funds for propaganda have arisen, with the Department of Justice and the Government Accountability Office reaching different legal conclusions on the matter. The Commission has no direct jurisdiction regarding the propaganda laws, and therefore has taken no position on it. I reiterate, however, that no matter what view one takes in that debate, the Commission itself has stated clearly in our recent Public Notice that broadcasters and cable companies *do* have an obligation to disclose the source of political or controversial issue programming when the source has furnished material to them as an inducement for broadcasting that programming.

Legislation such as S. 967, the Truth in Broadcasting Act of 2005, would be an effective complement to our existing sponsorship identification rules. The bill would explicitly and unambiguously require Federal agencies that produce pre-packaged news stories to announce, within the news stories themselves, that the government is the source of the stories. This requirement would apply whether or not consideration was exchanged, and whether or not controversial or political issues were involved. The bill would also explicitly and unambiguously prohibit the removal of the announcement. This announcement would satisfy the disclosure requirements under our rules, such that the bill would not impose any new burden on broadcasters and cable companies, and, in fact, would appear to simplify compliance. In sum, the bill would ensure that Federal agencies disclose their involvement in pre-packaged news stories, that broadcasters and others airing stories are aware of the government's involvement, and, most importantly, that listeners and viewers understand the nature and source of the information being presented.

Again, Mr. Chairman, thank you for inviting me to testify today. I am happy to answer any questions you may have.

The CHAIRMAN. Thank you very much.

Now we will hear from Mr. Schlick, who is the Acting General Counsel for the FCC, please.

STATEMENT OF AUSTIN C. SCHLICK, ACTING GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION

Mr. SCHLICK. Thank you, Chairman Stevens, Co-Chairman Inouye, and good morning, Senator Lautenberg. Thank you for this opportunity to address issues surrounding video news releases, or VNRs.

As Commissioner Adelstein noted in his testimony, the Commission has adopted rules under the Communications Act that further the public's right to know the source of broadcast programming. The Act and the Commission's implementing rules establish disclosure requirements that apply to sponsored programming regardless of its source. Our rules are not specific to Government-sponsored programming.

My testimony this morning will summarize the existing Communications Act provisions and FCC rules that apply to sponsored programming. I also will describe the Commission's recent public notice and request for comment on this topic.

Sections 317 and 507 of the Communications Act address sponsorship identification. Section 317(a) generally requires broadcast stations to make an announcement at the time they broadcast any material in exchange for "valuable consideration . . . directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting."

Section 317(a)(1), however, establishes a proviso that services or property furnished without charge or at a nominal charge for use in connection with a broadcast do not trigger this general obligation of mandatory disclosure unless they are furnished in exchange for promotional identification in the broadcast. This proviso covers, for example, music recordings or video provided without charge for use on the air such that there is no disclosure obligation if there is no special promotion by the station.

Consistent with the specific statutory authorization in section 317(a)(2), the FCC has provided by rule that sponsorship identification additionally is required and programming cannot be exempt under the proviso in subsection (a)(1) if the programming involves political material or discussion of controversial issues of public importance. In the case of political or controversial issue programming, the commission thus requires sponsorship identification even when the program material is provided to the station for free and without any special promotion by the broadcaster.

Section 507 of the act requires disclosure to the station when a station employee accepts consideration for the broadcasted matter over the station. Disclosure obligations also extend to those involved in producing, preparing, or supplying program matter that is intended for broadcast. A broadcast licensee that receives disclosure pursuant to section 507 must make a sponsorship identification announcement even if the licensee does not itself receive consideration.

Under section 317(c), a licensee also must exercise reasonable diligence to obtain sponsorship information from its employees and other persons with whom it deals directly.

Section 317 and the FCC's rules additionally address the content of sponsorship announcements. When an announcement is required, the licensee must fully and fairly disclose at the time of the broadcast the program matter was sponsored, paid for, or furnished and by whom or on whose behalf the consideration was supplied or promised.

Finally, the Commission's rules established for cable operators a set of sponsorship identification requirements that are based on the requirements for broadcasters under section 317.

With respect to enforcement, if the commission determines, after investigation, that an entity holding a commission authorization has violated the sponsorship identification rules, it may impose administrative sanctions. Those sanctions may include monetary forfeitures of up to $32,500 per violation and the initiation of a license revocation proceeding.

Section 507 itself establishes civil and criminal penalties for violation of its disclosure requirements, with a possibility of a fine up to $10,000 and as much as a year of imprisonment.

The FCC recently has received a large number of requests to investigate the use of VNRs by broadcast licensees and cable operations in light of the sponsorship identification rules. Several of those requests have come from Members of this Committee.

On April 13, 2005, the Commission unanimously adopted and released a public notice that reminded the industry and the general public of the sponsorship identification rules. The notice also requested public comment on issues specifically relating to VNRs and whether there are alternative or better means, in addition to the FCC's current rules, by which the Commission could ensure proper disclosure of sponsorship identification. The comment period closes on July 22, 2005. These comments will help the Commission enforce sponsorship identification requirements and better assist Congress in its deliberations on this issue.

I will be happy to answer your questions.

[The prepared statement of Mr. Schlick follows:]

PREPARED STATEMENT OF AUSTIN C. SCHLICK, ACTING GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION

Chairman Stevens, Co-Chairman Inouye, and members of the Committee, thank you for this opportunity to discuss issues surrounding video news releases (VNRs).

Consistent with the requirements of the Communications Act, the Commission has adopted rules that further the public's right to know the source of broadcast programming. The rules establish disclosure requirements that apply to sponsored programming regardless of its source, and are not specific to government-sponsored programming. I will summarize the existing Communications Act provisions and FCC rules that apply to sponsored programming. I also will describe the Commission's recent issuance of a public notice and request for comment on this topic.

Statutory Provisions and Rules Governing Sponsorship Identification

Sections 317 and 507 of the Communications Act address sponsorship identification. Section 317(a) generally requires broadcast stations to make an announcement at the time they broadcast any material in exchange for "valuable consideration . . . directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting." Section 317(a)(1) includes an exception to this general requirement, providing 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."

Section 507 requires disclosure to the station when there is an exchange of consideration or an agreement to accept consideration involving a station employee. Disclosure obligations also extend to those involved in producing, preparing, or supplying program matter that is intended for broadcast. If any such person receives or provides consideration for the inclusion of program matter, disclosure up the chain of distribution is required. A broadcast licensee that receives disclosure pursuant to Section 507 must make a sponsorship identification announcement even if the licensee did not itself receive consideration. In addition, under Section 317(c), a licensee must exercise reasonable diligence to obtain sponsorship information from its employees or from other persons with whom it deals directly.

Section 317 and the FCC's implementing rules—which are found at 47 C.F.R. § 73.1212—also address the content of sponsorship announcements when they are required. When the licensee airs the program, it must disclose that program matter was sponsored, paid for, or furnished, and by whom or on whose behalf the consideration was supplied or promised.

Under a specific statutory authorization in Section 317(a)(2), the FCC has established special disclosure rules for programming that involves political material or the discussion of a controversial issue of public importance. Political and controversial-issue programming is not covered by an exception to the disclosure requirements that Congress established in Section 317(a)(1).

Generally, as stated above, sponsorship identification is required where consideration is provided in exchange for the broadcast of any material. However, as also noted above, sponsorship identification is not necessary under Section 317 if property or services that otherwise might qualify as consideration are furnished "without charge or at a nominal charge for use on, or in connection with, [a] broadcast," and the provider of the property or services does not receive special on-air identification or promotion. This exception covers, for example, music recordings or video provided without charge for use on the air, if there is no special promotion by the station.

In the case of political or controversial issue programming, however, the Commission has required sponsorship identification even when the program material is provided to the station for free and without any special promotion by the broadcaster. The FCC's rules also establish special requirements for sponsorship announcements and record-keeping in connection with political or controversial-issue programming.

Finally, in Section 76.1615 of its rules, the Commission has established for cable operators a set of sponsorship identification requirements that are based on the requirements for broadcasters under Section 317.

Enforcement

With respect to issues of enforcement, if the Commission determines after investigation that an entity that holds a Commission authorization has violated the sponsorship identification rules, it may impose administrative sanctions. Those sanctions potentially may include monetary forfeitures of up to $32,500 per violation, and the initiation of license revocation proceedings. Section 507 itself establishes civil and criminal penalties for violation of its disclosure requirements, with the possibility of a fine of up to $10,000 and as much as a year of imprisonment.

The April 13, 2005 Public Notice

The FCC has received a large number of requests to investigate the use of VNRs by broadcast licensees and cable operators in light of the sponsorship identification rules. Several of those requests have come from members of this Committee.

On April 13, 2005, the Commission unanimously adopted and released a Public Notice that reminded broadcast licensees, cable operators, and others of their sponsorship identification obligations. The Public Notice also requested public comment on various issues relating to the use of VNRs, including: how VNRs actually are used in programming; the terms on which they are provided to broadcasters and cable operators; whether mechanisms are in place to ensure that broadcasters and cable operators are notified about payments in connection with the production and provision of VNRs and about the identity of entities that provide political and controversial issue material; and whether there are alternative or better means—in addition to the FCC's current rules—by which the Commission could ensure proper disclosure.

The Commission encourages interested parties to participate in its new proceeding on VNRs and to address these questions. Initial comments are due on June 22, 2005; reply comments are due on July 22, 2005. These comments will help the Commission enforce sponsorship identification requirements, and better assist Congress in its deliberations on this issue.

Thank you for this opportunity to discuss the Commission's sponsorship identification rules and the April 13, 2005 Public Notice. I will be happy to answer your questions.

The CHAIRMAN. Well, thank you very much.

Now, Commissioner Adelstein, as I understand it, on I think it was the 15th—what day was it? On the 13th of April, the FCC finished an inquiry into VNRs used by broadcasters, cable, and satellite providers, and it asked for comments on this matter from the industry, with the comment cycle to end on July 22. Now, in view of that request and the Byrd Amendment, which was passed by 99 votes on the floor of the Senate, which provides for a period between now and September 30th of this year that any agency must have a clear notification, what is the rush? Why should we pass other legislation now?

Mr. ADELSTEIN. Well, it depends on the objectives of Congress. If the concern is government disclosure, the Byrd Amendment, to some extent, would deal with that for this year. It does not, as you know, deal with it on a permanent basis because it only applies for one year. The Byrd Amendment also does not contain the level of disclosure requirement that is contained in the Lautenberg bill, S. 967, which requires that the basic disclosure run throughout the entire period of the VNR.

The CHAIRMAN. But is that not what your commission is looking into? You have asked for comments by the industry and they have until July 22 to respond. What is the rush? Why should we have an amendment adopted now or pass out a bill now that, if passed, would end your investigation and we would not know the comments of the industry unless we held a rather exhaustive hearing on this bill?

Mr. ADELSTEIN. Again, it depends on the objectives of Congress. We do not have authority currently to compel government agencies to do anything regarding VNRs. We only have an obligation to ensure that broadcasters, if the VNR turns out to be political or controversial, to——

The CHAIRMAN. But you had the authority to make the request of the industry to have comments on a policy position you unanimously adopted. Is that not right?

Mr. ADELSTEIN. That is correct, yes.

The CHAIRMAN. Now, you are really asking Congress to interrupt that comment period and to act now before the people involved have expressed to the commission what should be done on this issue.

Mr. ADELSTEIN. Well, I am not necessarily asking Congress. I am just informing Congress that if it is interested in disclosure by government agencies, we do not have authority over them, and I do not believe we are really requesting particular comment on them, because the law, as it is currently structured, really only applies, in this case, to broadcasters' obligations, and we do not have a clear ability to compel Government agencies to disclose.

If Government agencies determine that an item is controversial or political, if in the judgment of broadcasters it is not, there is a question as to whether or not it then can air publicly. Then there can be a subsequent determination based on complaints that it was political.

The CHAIRMAN. Have there been any comments so far?

Mr. ADELSTEIN. I have not seen any comments so far, but we do have a series of comments on an earlier item, a notice of inquiry, that we put out on the localism issue regarding payola, which is the same statute. We have a number of comments on that docket.

The CHAIRMAN. Well, let me ask Mr. Schlick. We all voted for the Byrd Amendment and it was adopted the day after we had the discussion here on the Lautenberg amendment that was offered to S. 714. That provision is very simple really. Unless otherwise authorized by existing law, none of the funds provided in this act or any other act—which means it would carry forward I think to the end of 2006, but that is another matter—may be used by a Federal agency to produce any prepackaged news story unless the story includes a clear notification within the text or audio of the prepared packaged news that the prepackaged news story was prepared or funded by that Federal agency.

Now, Mr. Schlick, does that not sort of cover the situation right now until we figure out what the scope of any rule or authorization by Congress to make a rule should be?

Mr. SCHLICK. Mr. Chairman, that legislation, as well as S. 967, addressed the specific question of the production of video news releases, and potentially other press releases, by Government. Our rules are targeted, and the central provisions I have described, section 317 and 507, are targeted, at the obligations of broadcasters who present the programming and the public's right to know at the time of the broadcast who it is who is speaking to persuade them. So they address different questions, and it is a policy question for Congress the extent to which it chooses to additionally regulate the production specifically by the Government. Our rules apply generally regardless of the source of the programming.

The CHAIRMAN. Well, but this says no agency can use any money that it gets from any act of Congress to produce any such story unless there is notification. What is wrong with that?

Mr. SCHLICK. Again, Mr. Chairman, these are policy questions before Congress at this point and the FCC's responsibility is the administration of the statutory requirements that already exist and apply generally to licensees in particular, as well as those who produce programming that is ultimately broadcast.

The CHAIRMAN. Do you agree with me that that says no agency is going to produce those during this year with Federal funds?

Mr. SCHLICK. That is my reading, Mr. Chairman.

Senator DORGAN. Mr. Chairman, may I ask a question about your inquiry? You indicated that you felt the Byrd Amendment would apply to the next fiscal year? It was offered to the supplemental, and my expectation——

The CHAIRMAN. It says 2005, but if another act comes along that contains funds before this law expires, I take it it would apply to those funds too. We think it expires on September 30th but it may carry forward.

Senator DORGAN. This year.

The CHAIRMAN. Yes.

Senator DORGAN. Well, that is my understanding because the supplemental deals with this fiscal year——

The CHAIRMAN. But it says, or any other act. So there is a question there how far it goes forward.

Senator Inouye.

Senator INOUYE. Mr. Adelstein, under the Communications Act, you indicated that there are a lot of private companies who are paying media outlets to guarantee that their prepackaged news stories are carried?

Mr. ADELSTEIN. That is correct.

Senator INOUYE. Now, who has the obligation to provide the disclosure that this is prepackaged? Is it the one distributing or the one broadcasting?

Mr. ADELSTEIN. In this case it would apply to both. Section 507 of the Communications Act requires that anybody involved in the distribution chain who pays for the placement of any material on broadcast airwaves has an obligation to report that to the broadcaster or to the person with whom they are dealing at the broadcast station. So 507 obligations apply both to the distributor of the VNR, as well as to the broadcast entity which, in response to the report that it gets from somebody who pays for that purpose or has knowledge of it, is required under law to disclose the source of that material.

Senator INOUYE. Would that obligation apply to the Lautenberg provision?

Mr. ADELSTEIN. It would not because the Lautenberg provision actually covers it from the outset. Because the disclosure would be within the VNR, it automatically takes care of the need by the government to disclose. Of course, in this case, the government generally does not provide any consideration in exchange for it, but the Lautenberg provision deals with all the broadcaster's obligations. If that legislation is adopted, then there is no need for any disclosure because it is already within the VNR itself.

Senator INOUYE. In the disclosure, who determines what is political in nature or controversial?

Mr. ADELSTEIN. Well, in the first instance, it is determined by the broadcasters themselves. We are, under the law and under court precedent, obligated to try to defer to the reasonable interpretations of a broadcaster. If we receive a complaint that a particular kind of VNR is political, then we investigate it and have to determine basically whether or not it was a reasonable use of discretion. We do not determine whether or not we think it is political—rather, we determine whether or not the broadcaster, in saying that it was not political, was exercising reasonable judgment.

Senator INOUYE. So then the final word is with the broadcaster?

Mr. ADELSTEIN. The final word is with us and then with the courts, but the broadcaster has the initial word. They have to make the initial determination.

Senator INOUYE. Have you ever had this experience?

Mr. ADELSTEIN. Not in my tenure there. I believe that there have been court cases that have affirmed our right to do so. Occasionally, the courts have actually overturned the FCC on individual court cases saying that we did not give sufficient deference to broadcasters in their determination as to what was reasonable. But generally speaking, the courts have upheld the constitutionality of this approach.

Senator INOUYE. Do you have many allegations of violations in your files?

Mr. ADELSTEIN. We do not have a lot. This year we have a much larger amount than we normally have. The Armstrong Williams situation and the whole VNR situation has led to, I think, 57,000 complaints. We received 18,000 complaints involving the Armstrong Williams matter, but generally speaking, there are much fewer than that every year.

Senator INOUYE. Well, Mr. Chairman, I will wait for another time. I am finished.

The CHAIRMAN. Pardon me. I was trying to find out what the Armstrong Williams matter was. I was showing my ignorance.

Mr. ADELSTEIN. There were allegations that Armstrong Williams violated section 507 and 317 by speaking——

The CHAIRMAN. Because he was paid?

Mr. ADELSTEIN. Because he was paid and it was not disclosed.

The CHAIRMAN. Senator Lautenberg.

Senator LAUTENBERG. Thanks, Mr. Chairman.

The one thing I would appreciate, Commissioner Adelstein, is if you would confirm the fact that the FCC rule that is now in place only affects industry. It does not affect government. Am I correct?

Mr. ADELSTEIN. Well, in terms of the disclosure requirement, our disclosure requirements go to the broadcaster.

Senator LAUTENBERG. And you were very clear. Just for the edification of my colleagues, I wanted to make certain that we are placing no additional burden on the broadcasters with our bill. All we say is to the government very simply, just say that it is a product of the U.S. Government. And the notion that maybe they do not want to do it suggests that it is designed to deceive. That is my interpretation.

I want to confirm something else, Mr. Adelstein, and that is that the Byrd Amendment does expire on 9/30/05, as is written. That is clearly the condition. Now, the Chairman raises an issue about whether or not it could have life after. I cannot think of any reason why we would want to proceed with something that leaves such questions. What is in the public interest for the government to hide its role in the production and distribution of these news stories?

Mr. ADELSTEIN. Well, the FCC actually on two occasions, as recently as 2002, has stated very clearly that the government is, in fact, held to almost a higher standard. I will read to you from the 1977 case that was reiterated in 2002 from the FCC as a unanimous body. "We believe that the public is particularly entitled to know when the Government is using tax dollars to persuade it." That has been the FCC policy.

Senator LAUTENBERG. But, again, the omission of that kind of identification or disclaimer is very clear that it is designed to publicize or propagandize the issue. Otherwise, there could be no reason for withholding a disclaimer. It does not serve the public interest at all not to be aware of the fact that this is a Government publication. Am I correct?

Mr. ADELSTEIN. Well, you can certainly make that argument. I think that it is very important that the public knows if the Government is behind something. In the case of political or controversial programming, of course, it is already required to be disclosed, but

the problem is that if we do not have this rule in place in advance, there is a judgment call as to whether or not something is political or controversial, and something could air and then complaints could arise. Subsequently, we could find that it should have been disclosed but it was not. But at that point it has already been basically run on the air, and the people have seen it. It is too late to take that harm back.

Senator LAUTENBERG. When commercial sources produce VNRs, which are used, they are always designed to enhance a product or enhance a position or enhance a skill. And there is no doubt about who produces it. They want it to be known as their production. Am I correct?

Mr. ADELSTEIN. Well, in many cases, actually, private commercial entities do not want it known that they are behind it because if they can avoid that, then it is seen as much more legitimate. It looks like a news story. They are designed to mimic news stories, and it comes with the credibility of a news story. So if they can hide the fact that it is actually a hidden advertisement, I think it makes it actually more effective from a PR perspective. That is why we need to be so vigilant, to make sure the public knows who is behind it.

Senator LAUTENBERG. Yes. But that is part of your supervision and responsibility, to make sure people know from whence these products come. Right?

Mr. ADELSTEIN. Right.

Senator LAUTENBERG. What burden do you see Government having as a result of the legislation that we have proposed here? Could you imagine it would have any additional cost to Government?

Mr. ADELSTEIN. It does not seem particularly costly to run a disclosure along those lines, and it would prevent some of the confusion that we currently are seeing.

Senator LAUTENBERG. I want to be sure that this disclaimer could be as simple as "made for or paid for by the U.S. Government," just in small print underneath large enough to see from a reasonable distance. So not having it would seem to me to have an overt mission, and that is to help confuse people about the fact that this is, again, a Government program to politicize or to publicize something.

As I said before, this is not new and we all know that. It has been used in the past by, I think it is fair to say, Democratic Administrations as well as Republican. But if one sees people passing a red light and lots of people doing it, you do not say eliminate red lights and that would take care of things. Not at all. That usually makes you more energetic to enforce these things.

Mr. Chairman, I hope it is clearly understood that we are not looking to place additional burdens on the FCC or on the broadcasters or on industry generally. It is just a question of fairness for the citizens.

Thanks, Mr. Chairman.

The CHAIRMAN. This Senator remembers so often that the last Administration put out VNRs about my State and how it was so pristine and how it should not be disturbed. They were hawking the extreme environmental position to oppose us on the Arctic National Wildlife Refuge, to oppose us on drilling, to oppose us on so

many things. I would love to have that disclosed. You better believe. There is no question in my mind I would like everyone to know where that propaganda comes from.

So the question is not that. The question is your bill and what it does, and that is what we are trying to figure out.

Senator Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Mr. Chairman, thank you very much.

First, let me thank the representatives from the FCC.

My attention to these issues, I would say, Mr. Chairman, came from the Armstrong Williams situation. I was startled to learn that one of our agencies in the Federal Government had paid a syndicated columnist $240,000 in order to promote the Administration's No Child Left Behind agenda. That contract was not disclosed to the public. We learned it only because *USA Today* filed a Freedom of Information Act request and got a document that told us this agency, the Department of Education, had engaged with a syndicated columnist and paid him nearly a quarter of a million dollars. As a result, that columnist wrote good things about No Child Left Behind, had television programs that trumpeted No Child Left Behind. It was kind of journalism for hire and I think is kind of the underbelly of the way journalism would act in these areas.

I think journalism is a wonderful occupation. Most journalists take very seriously their responsibilities, but this was clearly beyond the pale and I think startled everybody. It was part of a $1 million deal, as I understand. This payment to Armstrong Williams for $240,000 was part of a $1 million deal with the Ketchum public relations firm that was contracted to produce video news releases as well.

Let me say that my colleague from New Jersey was accurate when he said this is not just about this Administration. It has happened before, but all of us ought to be concerned—and I think we all are—about making sure people understand where information comes from.

The CHAIRMAN. Senator, this does not amend the payola legislation.

Senator DORGAN. No, I understand that.

The CHAIRMAN. That is already being investigated and it is already against the law.

Senator DORGAN. I understand that. My point is the origin of this controversy was developed with Armstrong Williams being disclosed on the front pages of our newspapers, a syndicated columnist who was paid $240,000 to promote something that he then used in his columns and on his television show. From that, then we got into this discussion about the video news releases and other issues. That is the reason I think that prompted the Byrd Amendment and it has also prompted a bill here in the Senate, on which we have a hearing today.

I do want to ask a question about concentration in the media. My sense is that much of the use of video news releases by newsrooms who normally would not use that is now coming because of addi-

tional concentration in the media where the bigger enterprises are, at least, beginning to take apart newsrooms and newsrooms are more likely to say, yes, give me some VNRs. I can just fill my space with video news releases. I would like to ask Mr. Adelstein whether that is your judgment as well, and is there evidence to support that?

Mr. ADELSTEIN. Well, there does appear to be. A lot of analysts believe that there is increasing pressure on these newsrooms. They are finding less and less resources, and in fact, sometimes they have to fill longer news windows. Increasingly, according to many reports, they are filling them with things like VNRs that are created by somebody else. These come at no cost to the broadcast entity. The issue is that these companies are under increasing pressure to meet quarterly earnings reports. They are chasing the bottom line and it is extremely competitive. If they can shave a little of money off here or there, we are seeing them do that. You are seeing the boundary and the line between news and information increasingly blurred, more sensationalism, and less serious news and coverage of what is happening in local communities.

Senator DORGAN. If I may say, the Project for Excellence in Journalism did an analysis, which included 1998 to 2002, which would have included both Administrations, and they were trying to evaluate with local news directors what kind of use of video news releases was being done and what kind of information was disclosed about that. They found a quarter to a third of news directors showed video news releases and disclosed the source occasionally, rarely, or never. So that is pretty substantial.

There is a great op-ed piece about this by Marion Just, a professor of political science at Wellesley College, and the Director of the Project for Excellence in Journalism. I will just read one paragraph. I happen to share this view.

"Local broadcasters are being asked to do more with less." These are quotes. "And they have been forced to rely more on prepackaged news to take up the slack. So we do not have to search very far to discover why the Administration has succeeded so well in getting its news releases on the air. The public companies that own TV stations are so intent on increasing their stock price and pleasing their shareholders that they are squeezing the news out of the news business."

That means there is a much more receptive environment for the use of VNRs and I think makes it even more important that there be full disclosure. That is why I have supported the Lautenberg-Kerry proposal and think that the Congress does need to act.

Mr. Chairman, thank you.

The CHAIRMAN. Senator Kerry.

STATEMENT OF HON. JOHN F. KERRY,
U.S. SENATOR FROM MASSACHUSETTS

Senator KERRY. Mr. Chairman, thanks a lot for holding the hearing. I apologize for being late, but we have the Bolton nomination before the Committee and I am going to have to go back to that at some point.

I just want to make a couple comments and see if we cannot find some common ground here.

There is no question that Federal agencies are increasingly producing and distributing literally hundreds of so-called video news releases. This is agency-wide and hundreds of them are going out now. Most often these segments are broadcast with no disclosure at all that they were written or produced by the Federal Government.

I heard you saying just as we came in—and I think it is generally accepted here that the Federal Government should not be in the business of manipulating public opinion with fake news reports, with news reports that appear to be official news reports and they are not, paid for by public dollars, created by public relations experts, broadcast without proper disclosure, all of which the American taxpayer is funding without even knowing that this is not a legitimate news report they are seeing.

And they are pretty slick. We all know they are geared and done in a way that makes it look like it is a reporter interviewing somebody. It has a purpose, and the purpose, I regret, is not just to inform. It is also to leave people with the impression that this is sort of a news station or a legitimate part of the currency of our news.

All of us cherish that. We cherish the independence of the flow of information in America. We have laws about propaganda.

So it is not a partisan issue. I want to emphasize that. I was not aware but we learned and were equally shocked to know that this was going on in the Clinton Administration. I was not aware of that. I think that shows the problem. It sort of underscores that it is inappropriate for anybody to be doing it.

So we also know that the Senate unanimously supported the Byrd Amendment to the supplemental appropriations bill. In short, Democrats and Republicans have come together recognizing the problem and wanting to be part of the solution. But the Byrd Amendment is only a temporary fix. It is a 1-year deal. It expires on September 30th of this year. And the Commerce Committee needs to, obviously, look at the oversight role of the FCC, the industry that is involved, and the conflicting legal interpretations that we have from GAO and the Administration. It is our responsibility to try to come up with a piece of legislation that deals with it.

Now, that is why Senator Lautenberg and I have joined together to put this bill together. It simply requires that any prepackaged news story that is produced by a Federal agency identify the U.S. Government as the source of the story. I know the majority, your staff, Mr. Chairman, has worked closely with ours to try to come up and see if we cannot craft language that is acceptable.

It is pretty simple. It is pretty straightforward. The operative section is really section 342, line 8, and it says very simply: "Disclaimer Required. Any prepackaged news story produced by or on behalf of a Federal agency that is broadcast or distributed by a network organization, broadcast licensee or permittee, or multichannel video programming distributor in the United States shall contain an announcement supplied by the Federal agency"—that is very important—"within the prepackaged news story that conspicuously identifies the U.S. Government as the source for the prepackaged news story."

We are not requiring the broadcaster to do this. We are requiring the Federal agency to do this. The agency, which we have every right in the world to make a requirement as to appropriate disclosure, is required to put the disclosure on it. So there is no interference with the broadcaster's rights, *et cetera.* It is simply acknowledging the truth of what the broadcaster is being given to broadcast at the expense of the American taxpayer, at the behest of a Federal agency. It is that simple.

And there is a page of some definitions. We can work on them if there are problems in the definitions.

But every American is entitled to know the source of prepackaged information that is broadcast and characterized as news. Otherwise, the viewing public is being misled and we are engaging in official propaganda. Every taxpayer has a right to know if their tax dollars have been used to produce the so-called news that they are watching.

Now, I asked the FCC to investigate this, and last month the FCC launched a public comment period to look at the VNRs, and that is a positive step. But FCC Commissioner Adelstein said at the time that the appropriateness of Government-produced news segments and disputes among the branches of the Federal Government is ultimately an issue for Congress to decide. We have got to decide this.

The problem is we have conflicting views within the Federal Government.

The GAO found that the Federal agencies should not produce prepackaged news reports that "conceal or do not clearly identify for the television viewing audience that the agency was the source of those materials because they violate existing laws dealing with propaganda."

The Justice Department in what I believe—and I think any common sense interpretation by any member of this committee would have to agree—is really a sort of tortured legal analysis which likens a prepackaged news story to nothing more than a print press release. Well, that is just ridiculous on its face. The source of a press release is absolutely clear in the title and heading of a press release. More important, as far as I know, in a press release no one pretends to be somebody else. It comes from a specific person. No actor pretends to be a reporter. No actor pretends to be a citizen. In short, a press release does and should state a point of view, but a press release does not intentionally hide its source or the identity of the speakers. So a press release is not fake news. A news clip, prepackaged and produced without disclaimer, is.

The White House has, frankly, attempted to split hairs with this complicated legal interpretation that says to the agencies go ahead and continue to deceive the public and you can continue to deceive broadcasters and you can continue to produce false news stories. Well, that is just not right, and I think every one of us knows it is not right.

I am open to any suggestions as to how we find the appropriate language, but it is critical to have some form of disclosure that leaves no doubt in the mind of the American public what is happening.

Now, I know I have used my time. I will go in the next round with any questions I have.

The CHAIRMAN. If the Senator has to leave, I will be pleased to let you ask questions now, if you wish.

Senator KERRY. Well, I thank the Chairman.

The CHAIRMAN. I only want to make one statement, Senator Kerry. I do not know that there has been any allegations of any false news stories here. That allegation is new to me.

Senator KERRY. Well, fake news in the sense, Mr. Chairman—I understand what you are saying. It may well be that what they are putting out is true. I understand that. That is not what I am saying. But if it is not a reporter appearing to be a reporter, it is by definition fake, even if the news is true.

Often it is very one-sided. I have seen some of the clips and the news is often very one-sided. It has no counterpoint of view, and sometimes the facts are, in fact, incorrect, and we can document that. So I think the key here is really getting at the disclosure, which raises the standard of truth-telling at the same time as you do that.

But I thank you for letting me ask a couple questions.

Acting Counsel Schlick, would the disclosures of the Truth in Broadcasting Act, as currently set out, meet the terms outlined in your April 13, 2005 public notice? Would what we have set out meet those terms that you set out?

Mr. SCHLICK. Your legislation, Senator, addresses a somewhat different question. It might be helpful for me to contrast our current rules, which were the subject of that public notice, from S. 967.

As applied to video news releases—our current rules track very closely quite detailed provisions in section 317 and 507 of the Communications Act. So applying those provisions in section 317, the rules generally do not require disclosure of sponsorship identification, unless there is some consideration exchanged in addition to just the provision of the programming or the video news release, or unless the broadcaster gives some special identification in exchange for the programming.

Senator KERRY. Can I stop you there for a minute?

Mr. SCHLICK. Yes.

Senator KERRY. Your public notice says that broadcasters "generally must clearly disclose to members of their audience the nature, source, and sponsorship of the material that they are viewing." Correct?

Mr. SCHLICK. That is correct.

Senator KERRY. Now you are telling me that that is limited exclusively to where there is an exchange of money.

Mr. SCHLICK. Under section 317, there is a proviso which Congress added in 1960. Specifically, the controversy at that time was the payola and——

Senator KERRY. I agree. But the interest is not. The interest we are trying to get at is not defined by the exchange of money. It is defined in the act of putting out the news. Correct? The disclosure is for a purpose.

Mr. SCHLICK. As I understand, Senator, that is right.

Senator KERRY. Why would the disclosure be limited to an exchange of money?

Mr. SCHLICK. I am describing existing law, Senator, and under existing law, if the programming is not political or controversial—and that is——

Senator KERRY. But that is not what I am asking you. What I am asking you is whether what we have set out would meet the terms of your requirement on disclosure, leaving out the money. Just does it meet the terms of the nature, source, sponsorship of material?

Mr. SCHLICK. If sponsorship identification is required under our rules, then certainly the labeling required by S. 967 should satisfy that requirement. Right now our statute that we implement does not require sponsorship identification in a number of instances that would be covered by S. 967.

Senator KERRY. I understand that, which is precisely the sort of hole that we are looking at plugging here right now. But what I am trying to get at is, is the terminology that we have set forth adequate to require disclosure of the nature, source, and sponsorship of the material they are viewing? It would meet the standard of disclosure that you have set out, would it not?

Mr. SCHLICK. I think it would, Senator.

Senator KERRY. Commissioner Adelstein, FCC rules specify "a greater obligation of disclosure in connection with political material and program matter dealing with controversial issues." Correct?

Mr. ADELSTEIN. That is right.

Senator KERRY. What guidelines determine whether the subject matter of a VNR or ANR is political or controversial?

Mr. ADELSTEIN. Well, it would really be guided by case law. There is a series of decisions that we made mostly under the fairness doctrine, which has since been done away with by the FCC, but there is very serious case law.

I mentioned earlier that there is a requirement that we defer to the broadcaster's initial determination as to whether or not it is political or controversial. And if there are complaints raised that they made an incorrect assessment in the first instance, we go back and look into that and determine whether or not we think it was a reasonable assessment by the broadcaster that it was political or not. The problem is that if we make that determination later, the information has already been broadcast over the air. The public has already seen it, and the harm is already done.

Senator KERRY. So, in other words, it is complicated and unclear. It depends on the case law and it is sort of up in the air.

Mr. ADELSTEIN. That is right.

Senator KERRY. So my question to you is, would full disclosure of the Government as the source for all audio and video material, as proposed in the Truth in Broadcasting Act, not guard against taxpayer-funded publicity or propaganda without requiring any kind of complicated oversight regulatory system? It is pretty straightforward.

Mr. ADELSTEIN. It would greatly simplify it because I think it is difficult for a broadcaster to determine if some of these things are controversial. They do not want to spend the time digging through the case law.

Senator KERRY. Well, it all depends on the legal interpretation.

Mr. ADELSTEIN. Right.

Senator KERRY. So you get into a lack of clarity that winds up leading to misinterpretation.

Mr. ADELSTEIN. You already see a distinction between GAO and OMB as to what the interpretation is.

Senator KERRY. It seems to me that this is really one of the simplest things that we get to deal with around here. We have a lot of complicated issues to deal with, but this is pretty straightforward. Either the Government is funding stuff legitimately and letting people know it or it should not be because it is deceptive and subject to, obviously, political interpretation. If you have disclosure, which is the right of the American people to know the source of news, where it is coming from, if it is news, they can discount it. It does not say you cannot do it. It just says you have got to know where it is coming from. Is that not a pretty fair and simple standard?

Mr. ADELSTEIN. That is the principle that has been embodied in legislation that has been approved by this committee and by Congress since 1927. In an unwavering series of laws, the Congress has always required disclosure of material like this so that the public knows who is trying to influence it. So this would be consistent with that history.

Senator KERRY. Has self-regulation of broadcasters ever proven adequate?

Mr. ADELSTEIN. That is a broad question. In this case, there does appear to be a loosening of the way that people are behaving. That is why it was so important we came together on a bipartisan basis to alert broadcasters and everybody in industry of their legal obligations because I think there was a lack of awareness about it.

Senator KERRY. This is a question for both of you, my last question for now. Mr. Chairman, I would love to be able to submit a few questions in writing, if it is possible.

The CHAIRMAN. Yes, sir. We have four other witnesses.

Senator KERRY. I know that. So the last question is could the FCC, Library of Congress, or the National Archives, any one of them, take on the creation and maintenance of a publicly accessible central archive of all Government-funded VNRs?

Mr. ADELSTEIN. It seems that would be a simple thing for Congress to set up.

Senator KERRY. Mr. Schlick?

Mr. SCHLICK. I imagine it would be possible, yes, Senator.

Senator KERRY. Do you think it is useful? I mean, if the Government is funding all of these things, is it not important to have some sort of central repository? People can have accountability for them.

Mr. ADELSTEIN. You could make them available online. That would make it very easy for people to access and know where they come from. That would be another form of disclosure that could complement the kind of disclosure required by S. 967.

Senator KERRY. Do you want to comment or not, Mr. Schlick?

Mr. SCHLICK. No. I would agree with Commissioner Adelstein.

Senator KERRY. Great. Thank you very much. Thank you, gentlemen. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

In the interest of time, thank you very much, gentlemen. I have asked Senator DeMint if he wanted to ask questions now, but because of the time constraint, I ask that the next four witnesses come to the table. We will listen to all four of you and then have questions, to the extent we can, before the votes start.

The next four witnesses are Ms. Susan Poling, the Managing Associate General Counsel of the GAO; Ms. Barbara Cochran, President, Radio-Television News Directors Association; Mr. Douglas Simon, President and CEO of Simon Productions Incorporated; Ms. Judith Turner Phair, President and Chief Executive Officer of the Public Relations Society of America. We appreciate all of you coming. I do hope you understand our problem here.

Ms. Poling, let us begin with you, if you will. You are from the GAO. Is that right?

STATEMENT OF SUSAN A. POLING, MANAGING ASSOCIATE GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, GOVERNMENT ACCOUNTABILITY OFFICE

Ms. POLING. I am. Good morning, Chairman Stevens, Senator—well, I do not see Senator Inouye right now—and members of the Committee. My name is Susan Poling and I am responsible for the appropriations law decisions and opinions at the GAO. I am honored to be here today to discuss our recent legal opinions regarding the use of prepackaged news stories by Federal agencies. Mr. Chairman, I am going to make this brief statement orally. In addition to the written testimony, I would like to have the two opinions and the circular be made part of the record.

The CHAIRMAN. They will all be made a part of the record. We cannot make the video part of it, but the statements of all four of you are part of the record.

Ms. POLING. That is fine.

As the members of this committee may know, GAO has been interpreting appropriations law and issuing opinions since Congress created it in 1921. Since 1951, when the prohibition on the use of appropriated funds for publicity or propaganda was first enacted, GAO has issued over 25 opinions interpreting the prohibition. In the past year, GAO addressed, for the first time, the issue of whether prepackaged news stories violate the prohibition on the use of appropriated funds for publicity or propaganda.

We found that the two agencies we examined violated the prohibition by producing prepackaged news stories that did not identify to the target audience, that is, the television-viewing public, that the agency was the source of the material.

So what are prepackaged news stories? They are complete audio-visual presentations that are designed to be indistinguishable from news segments broadcast to the public by independent television news organizations. Actors or voice-over specialists portray reporters. For example, a Government contractor concludes a segment saying, "from Washington, I'm Karen Ryan reporting." She is not a reporter. She is a paid Government contractor.

There is also usually a script that the TV news anchors can use to introduce the story during a broadcast, and video news releases also contain slates and B-roll. Our opinion goes to the prepackaged

news stories because we did not find problems with the slates and B-roll that we reviewed.

Prepackaged news stories permit the creators to maintain some control over their message. They are also cheaper than actually purchasing broadcast advertising.

GAO addressed the use of prepackaged news stories in a decision regarding VNRs of the Department of Health and Human Services. The prepackaged news stories were part of an HHS campaign to inform Medicare recipients about the new prescription drug legislation. We also looked at similar prepackaged news stories produced by the Office of National Drug Control Policy as part of its national youth anti-drug media campaign.

Now, GAO has long recognized that agencies have a right and perhaps even a duty to inform the public about their policies, programs, and activities. In both cases that we reviewed, GAO did not legally object to the contents of the news stories themselves, and we affirmed that the agencies have a right to inform the public of their programs and activities.

However, we found that the story packages were targeted to the TV viewers and clearly designed to be aired exactly as the agency had prepared them, but they contained no identification to alert the TV viewers to the fact that the agency was actually the source of the purported news story. In both cases, no disclosure was made to the TV-viewing audience. As a result, the audience did not know that they were watching news programs about the Government that were, in fact, prepared by the Government. We concluded that production and distribution of prepackaged news stories that concealed the agency's role in producing the story was covert propaganda and, therefore, violated the prohibition on the use of appropriated funds for publicity or propaganda.

In preparing these two decisions, our literature search and informal research showed that the use of VNRs and prepackaged news stories was commonplace in the Government. The Comptroller General decided to issue a circular letter to heads of all cabinet departments and Federal agencies to remind them of their duty to disclose the source of the materials that they disseminate to the public.

To sum up, first, the critical element of covert propaganda under the appropriations prohibition is concealment of the agency's role in sponsoring the materials.

Two, agencies have a right to disseminate information about their policies and activities, but not covertly.

And three, agencies may use prepackaged news stories to disseminate information if there is clear disclosure to the television-viewing audience that the material was prepared by the agency.

I would like to close with a quote from the Comptroller General. He said, "Deceptive video news releases strike a blow to the good Government principles of transparency and accountability that are essential for a healthy democracy. The Government's credibility is enhanced by openness and the public is enriched by full and open debate. These actions also enhance public trust in the Government."

Mr. Chairman, that concludes my formal remarks and I would be glad to answer any questions.

[The prepared statement of Ms. Poling follows:]

PREPARED STATEMENT OF SUSAN A. POLING, MANAGING ASSOCIATE GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, GOVERNMENT ACCOUNTABILITY OFFICE

Chairman Stevens and members of the Committee:

Thank you for the opportunity to be here today to discuss the legal opinions recently issued by the Government Accountability Office (GAO) regarding the use of prepackaged news stories by Federal agencies. In the past year, GAO has issued two legal opinions on the production of video news releases (VNRs) that included prepackaged news stories by both the Department of Health and Human Services (HHS) and the Office of National Drug Control Policy (ONDCP). In both of these instances, we concluded that the agencies violated the Federal government-wide prohibition on the use of appropriated funds for purposes of publicity or propaganda not authorized by Congress. In addition, in February, the Comptroller General sent a circular letter to the heads of all Federal agencies to alert them to our recent opinions and to remind them of the prohibition on publicity or propaganda.

Background

Since the 1990s, VNRs have become a popular public relations tool for private corporations, nonprofit organizations, and government entities to disseminate information, in part because they provide a cheaper alternative than more traditional broadcast advertising and are welcomed by some local news stations in smaller markets with significant budget restraints.

VNRs Contain Slates, B-Rolls, and Prepackaged News Stories

While the use of VNRs is widespread and widely known by those in the media industry, the quality and content of materials considered to constitute a VNR can vary greatly. Generally, a VNR package may contain several items, including a series of video clips, known as B-roll footage; title cards containing relevant information, known as slates; a prepackaged news story, sometimes referred to as a story package; and other promotional materials.[1] These materials are produced in the same manner as television news organizations produce materials for their own news segments. By eliminating a news station's production efforts and costs of producing an original news story, VNR creators can find stations willing to broadcast a favorable news segment on a desired topic.

The B-roll footage and slates are intended to assist news stations in producing their own news stories, while the story package is a pre-assembled, ready-to-air news story that is often accompanied by a suggested lead-in script for the anchor. Even if a broadcaster does not use a story package or scripted materials in full, the production of a professionally complete news story provides a framework for the message conveyed in the final broadcast, which allows the producer, in this case, the Federal agency, to assert some control over the message conveyed to the target audience—the viewer of the broadcast.

The popularity of VNRs may be attributed to the ease with which the materials may be distributed. While some packages are distributed directly from the source to television stations, satellite and electronic news services, such as those provided by CNN Newsource, facilitate distribution to a number of news markets in a short period of time. Broadcast stations subscribe to these services, which provide journalist reports and stories and advertising, in addition to VNR materials. While the news services label VNRs differently than independent journalist news reports, there apparently is no industry standard as to the labeling of VNRs. In fact, some news organizations that broadcast the HHS VNR indicated that they misread the label or they mistook the story package as an independent journalist news story on CNN Newsource.

HHS VNRs Included Narration by Contractors Posing as Reporters

GAO examined three VNR packages that HHS made available to local news organizations. The VNRs consisted of three videotapes with corresponding, printed scripts; two of the videotapes were in English, and one was in Spanish. The B-roll footage on each of the English videotapes was exactly the same and contained footage of President Bush, in the presence of Members of Congress and others, signing the Medicare prescription drug legislation into law, and a series of clips of seniors engaged in various leisure and health-related activities, including consulting with a pharmacist and being screened for blood pressure. The English videotapes also in-

[1] For example, the Office of National Drug Control Policy (ONDCP) video news releases that we examined contained television advertisements and public service announcements.

cluded clips of former HHS Secretary Tommy Thompson and Leslie Norwalk, Deputy Administrator of the Centers for Medicare & Medicaid Services (CMS), making statements regarding changes to Medicare. The Spanish videotape includes clips of statements by Dr. Cristina Beato of CMS, instead of Thompson and Norwalk.

The two English VNRs contained different story packages, each narrated by Karen Ryan, an HHS subcontractor, who was not affiliated with a news organization. The first story package focused on CMS's advertising campaign regarding the prescription drug legislation. The suggested anchor lead-in stated that "the Federal Government is launching a new, nationwide campaign to educate 41 million people with Medicare about improvements to Medicare." The lead-in ended with "Karen Ryan explains." The video portion of the story package began with an excerpt of the television advertisement with audio stating, "it's the same Medicare you've always counted on plus more benefits." Karen Ryan then explained, "That's the main message Medicare's advertising campaign drives home about the law." As more clips from the advertisement appeared, Karen Ryan continued her narration, indicating that the campaign helps beneficiaries answer their questions about the new law, the Administration is emphasizing that seniors can keep their Medicare the same, and the campaign is part of a larger effort to educate people with Medicare about the new law. The story package ended with Karen Ryan stating: "In Washington, I'm Karen Ryan reporting."

The second English story package focused on various provisions of the new prescription drug benefit and did not mention the advertising campaign. The anchor lead-in stated: "In December, President Bush signed into law the first ever prescription drug benefit for people with Medicare." The anchor lead-in then noted, "There have been a lot of questions about" the new law and its changes to Medicare and "Karen Ryan helps sort through the details." The video portion of the news report started with footage of President Bush signing the legislation, and Karen Ryan's narration indicated that when it was "signed into law last month, millions of people who are covered by Medicare began asking how it will help them." Next, the segment included footage of Tommy Thompson, in which he states that "it will be the same Medicare system but with new benefits." Karen Ryan continued her narration, stating "most of the attention has focused on the new prescription drug benefit . . . all people with Medicare will be able to get coverage that will lower their prescription drug spending . . . Medicare will offer some immediate help through a discount card." She also told viewers that new preventive benefits will be available, low-income individuals may qualify for a $600 credit on available drug discount cards, and "Medicare officials emphasize that no one will be forced to sign up for any of the new benefits." Karen Ryan's narration then led into clips of Thompson and Norwalk explaining other beneficial provisions of the new law. The second story package also ended with, "In Washington, I'm Karen Ryan reporting."

The Spanish-language materials contained the same three items as the English language VNRs—a B-roll, slates, and a story package. After the B-roll segments, the story package segment appeared. This segment was considerably longer than its two English counterparts, focused on prescription drug benefits, and was narrated by Alberto Garcia, who is also an HHS subcontractor, not a reporter. The anchor lead-in was similar to the second English story package, except the anchor indicates that Alberto Garcia "helps sort through the details." The video segment began with the footage of President Bush signing the prescription drug bill into law, as Alberto Garcia narrated that after signing the law, millions of people who are covered by Medicare began asking how the new law will help them. The remainder of the story package contained footage of Dr. Beato and of seniors engaged in various activities. During the video clips of seniors, Alberto Garcia narrated that the prescription drug benefit will be available in 2006 and that drug discount cards will be available in June 2004 and that "[p]eople with Medicare may be able to choose from several different drug discount cards, offering up to 25 percent savings on certain medications." Alberto Garcia concluded his report, stating: "In Washington, I'm Alberto Garcia reporting."

ONDCP Prepackaged News Stories Were Narrated by Contractors Unaffiliated with News Organizations

For the ONDCP legal opinion, GAO examined eight VNRs, seven of which included prepackaged news stories, in addition to B-roll footage and slates. Each of ONDCP's news stories included narration by an unseen person, identified as Mike Morris, Karen Ryan, or Jerry Corsini. The narrator explained that he or she was "reporting" on various ONDCP activities and on various issues related to the use of marijuana by teenagers. Each story was accompanied by proposed "lead-in" and "closing" remarks to be spoken by station news anchors. Many of the suggested anchor remarks included a phrase like, "Mike Morris has the story," or "Mike Morris

has more." ONDCP informed us that the narrators were hired to read the scripts for the prepackaged new stories, as prepared for and approved by ONDCP. Like the HHS VNR narrators, none of these narrators were affiliated with any news organization at the time the stories were produced or distributed.

The various ONDCP story packages touched on the addictive nature of marijuana, the risks of marijuana use to teenagers, an open letter to parents that was sponsored by ONDCP regarding marijuana, the increased use of marijuana by teenagers during the summer, the dangers of driving a vehicle while under the influence of marijuana, and the respiratory health risks of smoking marijuana. Most of the story packages featured statements by ONDCP Director John Walters and/or various drug experts. The suggested anchor closing remarks directed viewers to an anti-drug website and a toll-free telephone number.

GAO's Legal Opinions

In May 2004, GAO first addressed the use of prepackaged news stories in an opinion[2] issued to HHS regarding VNRs it had prepared as part of a campaign to inform Medicare recipients about the new prescription drug legislation.[3] In a subsequent opinion issued in January 2005, we addressed the VNRs produced by ONDCP as part of its National Youth Anti-Drug Media Campaign.[4]

Agency's Right to Disseminate Information Does Not Include Covert Propaganda

In both of these legal opinions, we concluded that production and distribution of prepackaged news stories that concealed the agency's role in producing the story violate the publicity and propaganda prohibition. While GAO has long recognized that agencies have a right to inform the public about their activities and to defend the Administration's point of view on policy matters,[5] there are several statutory limitations on an agency's information dissemination, one of which is the publicity or propaganda prohibition. This prohibition, the first version of which was enacted in 1951, is usually contained in annual appropriations acts. It states that, "No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress."[6]

In applying this prohibition, GAO affords agencies a great deal of discretion in their informational activities. However, GAO has, through 50 years of decisions, identified a number of specific activities that are barred by the publicity and propaganda prohibition. One of the main targets of this prohibition is agency-produced material that is covert as to source.

Our opinions have emphasized that the critical element of covert propaganda is concealment of the government's role in producing the materials.[7] GAO has concluded that agencies have violated the law when they undertook activities such as distributing suggested editorials to newspapers or hiring pundits to write commentaries without acknowledging the government's sponsorship.[8] In these cases, even though the newspapers that printed the opinion pieces may have been aware of their source, the newspaper readers did not know of the agency's role in producing the materials.

Unattributed Prepackaged News Stories Violate Publicity and Propaganda Prohibition

Similarly, in the case of the story packages produced by HHS and ONDCP, the target audience—the viewing public—was unaware that the material was produced by the government. The story packages were clearly designed to be aired exactly as the agency produced them and were intended to resemble traditional news stories. They were narrated by government contract personnel who portrayed reporters and included suggested anchor lead-in scripts, announcing it as a news story by the purported reporter, which facilitated the unaltered use of the story package.

Most importantly, the story packages contained no statement or other reference to alert television viewers to the fact that the agency was the source of the pur-

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[2] In addition to auditing and evaluating programs and activities of the Federal Government and investigating matters related to the use of public money, GAO is also responsible for settling all accounts of the Federal Government. 31 U.S.C. §§ 712, 717, 3526. Pursuant to this accounts settlement authority, the Comptroller General issues legal decisions and opinions to Federal agencies and Members of Congress regarding the proper use of Federal funds.

[3] B–302710, May 19, 2004 (retained in Committee files).

[4] B–303495, Jan. 4, 2005 (retained in Committee files).

[5] *See, e.g.*, B–304715, Apr. 27, 2005; B–302504, Mar. 10, 2004; B–184648, Dec. 3, 1975.

[6] *See, e.g.*, Consolidated Appropriations Act, 2005, Pub. L. No. 108–447, div. H, title VI, § 624, 118 Stat. 2809, 3278 (Dec. 8, 2004).

[7] B–229257, June 10, 1988.

[8] *See, e.g.*, B–223098, Oct. 10, 1986; B–229069, Sept. 30, 1987.

ported news story. These characteristics may lead viewers to believe, wrongly, that the piece was an actual news story produced by the local television station and narrated by a real reporter. Therefore, we concluded that the prepackaged news stories constituted covert propaganda and that HHS and ONDCP both violated the prohibition on the use of appropriated funds for publicity or propaganda.[9] Furthermore, because the agencies had no appropriation available for covert propaganda, HHS and ONDCP also violated the Antideficiency Act, which prohibits obligations in excess of available budget authority.[10]

In both of these opinions, we also noted:"In a modest but meaningful way, the publicity or propaganda restriction helps to mark the boundary between an agency making information available to the public and agencies creating news unbeknownst to the receiving audience." In fact, the appropriations prohibition is not the only marker that Congress has enacted to delineate the boundaries between the government and the free American press.[11] Statutory limits on the domestic dissemination of news reports produced by the Federal Government reflect concern that allowing the government to produce domestic news broadcasts would infringe upon the freedom of the press and constitute, or at least give the appearance of, an attempt to control public opinion.[12]

HHS and ONDCP both commissioned and distributed prepackaged news stories and introductory scripts about their activities that were designed to be indistinguishable from news stories produced by private news broadcasters. In neither case did the agency include any statement or other indication in its news stories that disclosed to the television viewing audience (the target of the purported news stories) that the agency wrote and produced those news stories. In other words, television-viewing audiences did not know that stories they watched on television news programs *about the government* were, in fact, prepared *by the government.* We therefore concluded that those prepackaged news stories violated the publicity or propaganda prohibition.

Circular Letter Advised All Agencies of Duty to Disclose Source of Materials

In addition to the HHS and ONDCP opinions, the Comptroller General issued a circular letter to the heads of all cabinet departments and Federal agencies in February of this year to alert agencies to our opinions on prepackaged news stories and to remind them of their duty to disclose the source of materials that they disseminate to the public.[13] GAO decided that a government-wide circular would be appropriate given the increasing use of VNRs by the Federal Government. In fact, our research showed that VNRs have been produced by a wide range of Federal departments and agencies, from the Department of State to the Census Bureau to the Transportation Security Administration.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions regarding our opinions that you or the Committee may have.

The CHAIRMAN. Do you want to show your video now or later?

Senator LAUTENBERG. I had hoped, Mr. Chairman, we could show it now as part of this testimony.

The CHAIRMAN. It is about 3 minutes. Right?

Ms. POLING. What you are going to see here is the complete video news release, but we can probably shorten it.

The CHAIRMAN. Let us not shorten it. Let us show it all. Let us just see it. OK?

Ms. POLING. OK. First it contains slates. I was just going to explain the parts of it. There are no words with this section.

This is the video news release. What we are pointing out is that there are parts of video news releases. This is slates. This is just

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[9] Although both HHS and ONDCP pointed to specific statutory provisions that authorized them to disseminate information to the public, GAO concluded that such provisions did not authorize them to produce unattributed news stories. In both opinions, GAO also concluded that the B-roll footage and the slates did not violate the publicity and propaganda prohibition because they were designed to be viewed and utilized solely by the news organizations, and the agencies had properly disclosed their role in the production of the materials to the stations.

[10] 31 U.S.C. § 1341(a).

[11] See, *e.g.,* 22 U.S.C. §§ 1461, 1461–1a (restricting the domestic dissemination of news reports originally created by the Government for broadcast abroad).

[12] B–118654–O.M., Apr. 17, 1979.

[13] B–304272, Feb. 17, 2005 (retained in Committee files).

text feed that can be used by the programmers when they put together a news program.

Then you will see some B-roll, which is various kinds, but what you are going to see first, I think, are public officials making statements. We do not have any problems with this.

Then you are going to see a public service announcement which does identify exactly that this is a product of the Department of HHS.

This is the ad.

[Video shown.]

Ms. POLING. That was the ad.

This is the prepackaged news story. The rest is B-roll.

Senator LAUTENBERG. Can we hear it or not?

Ms. POLING. The text is irrelevant. It is really the visual.

The B-roll consists of pieces that the television news studio can use to put together its own story.

That is the end.

The CHAIRMAN. What is the disclaimer?

Ms. POLING. I did not hear you.

The CHAIRMAN. Thank you very much.

Ms. Cochran.

STATEMENT OF BARBARA COCHRAN, PRESIDENT, RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION

Ms. COCHRAN. Thank you, Mr. Chairman, members of the Committee. I am Barbara Cochran, the President of the Radio-Television News Directors Association. Thank you for inviting me to appear today on behalf of the electronic journalists, educators, students, and executives who comprise RTNDA, the world's largest professional organization devoted exclusively to electronic journalism.

As you know, our members are on the front lines in managing the news operations of radio, television, cable, and other news distribution organizations. We are committed to providing accurate and credible news stories. That commitment includes appropriate identification of materials used in our stories. Credibility is our stock in trade. If our viewers and listeners cannot trust our stories, they will tune us out, literally.

The appropriate use of third party video and video news releases is not a new subject for our members. We have sought to address questions of when and how to use these materials for more than 15 years. Our consistent policy adopted in 1989 has been that clear and complete disclosure of outside materials must occur, and this policy is incorporated in our code of ethics.

With the recent and public reports concerning governmentally produced and funded videos, we revisited and expanded upon the guidelines. A copy of these guidelines is attached to my written testimony. News directors have reviewed the guidelines with their staffs and they have reviewed their procedures to ensure material is properly identified.

Some of these recent reports may leave the mistaken impression that unidentified VNRs are widely used. Based on my conversations with news directors, little outside material is used in the dozens of stories and many hours of news programming that stations

produce each and everyday. When third party material is used, it is most often excerpted or used as background footage, the kind of B-roll that we just saw, and it is attributed. Rarely are entire releases used and even more rarely is the source not identified.

Even so, some mistakes were made. In part, these miscues can be traced to technological changes that have made the distribution of audio and video materials more complicated and led to difficulties in ascertaining the points of origin. In many of the reported cases of unlabeled material, the station or the news director has told me that all future material will be identified.

Whatever the causes or reasons, I can report that steps are being taken to reemphasize and endorse full disclosure. News organizations and producers have changed and are changing the distribution procedures to make sure that material is clearly labeled when it is sent out.

In the newsroom, news directors and journalists also have taken steps to ensure adherence to the RTNDA guidelines. And in addition, we will work with the FCC as it seeks comments on appropriate ways to improve source identification and disclosure.

RTNDA members are committed to the appropriate identification of third party materials, and we believe that the current guidelines and the reinvigorated practices of our members will adequately and properly support this commitment and ensure that the public is fully informed. Accordingly, we do not believe that Government action is needed, at least not at this time.

Determining the content of a newscast, including when and how to identify sources, is at the very heart of our responsibilities as electronic journalists, and these decisions must remain far removed from Government involvement or supervision. The Government must be cautious in considering any action through legislation or regulation that could interfere with journalist judgment or otherwise influence or dictate news decisions or content. Any such action must be a last resort, not an initial reaction. RTNDA urges you, therefore, not to respond to the mistakes of a few by imposing rules that could affect the selection and presentation of newsworthy material. We have every incentive today to protect the integrity of our news broadcasts by fully informing our viewers. The policy guidance and procedures are in place to address the recent missteps and to fulfill our responsibilities. Government intervention, while well intended, is unnecessary and could be harmful.

Thank you.

[The prepared statement of Ms. Cochran follows:]

PREPARED STATEMENT OF BARBARA COCHRAN, PRESIDENT, RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION

Mr. Chairman and members of the Committee, I am Barbara Cochran, President of the Radio-Television News Directors Association (RTNDA). Thank you for inviting me to appear before you today to discuss S. 967, the Truth in Broadcasting bill introduced by Senator Lautenberg and cosponsored by other Senators, including members of this committee, Senators Kerry, Boxer and Dorgan.

RTNDA is the world's largest professional organization devoted exclusively to electronic journalism. RTNDA represents local and network news executives, educators, students and others in the radio, television and cable news business in over thirty countries. I have worked as a journalist in Washington for nearly 30 years and have held management positions in print, radio and television. I was managing editor of the *Washington Star,* Vice President for news at National Public Radio, ex-

ecutive producer of "Meet the Press" at NBC News, and vice president and Washington bureau chief at CBS News. I became president of RTNDA in 1997.

As you well know, the members of RTNDA are on the front lines in managing the news operations of radio, television and other electronic news distribution organizations. News directors are responsible for determining what stories will be covered as well as when and how these stories will be presented. News organizations often receive news topic suggestions and materials from third parties. These inputs are not a significant source of news for most operations, and they do not replace the important and substantial news-gathering activities of our members' organizations. In the case of audio clips and video footage, these inputs can, however, provide useful material that the news organization could not have obtained on its own. For example, a hospital may provide footage of its operating room or NASA may provide a graphic depiction of a space mission. When third party audio or video is submitted to a news operation, the news director or a news staff member who has been assigned that responsibility must determine the newsworthiness of the material, and he or she must judge whether and how to use this material.

On behalf of my membership, I want to express our appreciation to the Chairman for scheduling this hearing to provide an opportunity to discuss the appropriate role of the government in the treatment of VNRs. We also appreciate the initiative taken by Senator Lautenberg and the other sponsors of S. 967 to ensure that VNRs distributed to broadcasters and other programming distributors contain information concerning their source. As Commissioner Adelstein recently said, "it is up to Congress if it chooses to further strengthen the responsibility of government agencies to disclose more fully that material is government-produced."

As news directors, we appreciate the policy rationale for the disclosure requirement imposed on government agencies that prepare and release "prepackaged news stories," as contemplated by S. 967 and contained in Senator Byrd's amendment to the recently passed supplemental appropriations legislation.

The issue of how to use material from video and audio news releases is one RTNDA has grappled with for more than 15 years. As electronic journalists, RTNDA members are committed to providing the public with accurate and credible news stories. In 1989, RTNDA's Board of Directors, whose members are news executives from across the country, adopted a policy that calls for clear and complete disclosure of the origin of any outside material that is used in a news story or news program. This policy was incorporated into the RTNDA Code of Ethics and Professional Conduct when it was revised in 2000. The statement is unambiguous. The Code says that professional electronic journalists should "clearly disclose the origin of information and label all materials provided by outsiders."

Last year, when it was first disclosed that a few stations had used a video news release produced by a Federal agency without disclosing the origin, possibly because the origin was not clear, the RTNDA Ethics Committee decided to expand its guidance on the use of outside audio and video material. Over the past 12 months, the Committee developed guidelines for newsrooms as they consider whether to incorporate this material into their own stories or programs. The guidelines were released at our annual convention in April. I have attached a copy of the guidelines to my statement and ask that it be included in the hearing record. (ATTACHMENT) The main principle is unchanged: material from outside sources must be clearly identified to the audience.

The guidelines are intended to help with the editorial decision-making about whether the material should be used in the first place.

Recent events have highlighted the importance these guidelines. In March, the *New York Times* reported that the Federal Government was sending an unprecedented number of video news releases to local stations and they found evidence that some stations were using the releases without altering them or identifying them. Unfortunately, as the story was spread through other news media, the impression grew that the use of unidentified audio and video from government agencies was a rampant practice. That is not the case. Based on conversations with news directors over the past two months, I believe stations use very little outside material among the dozens of stories and hours of news programming they produce each day. Of the material they receive, far more comes from corporate sources than government agencies. Furthermore, the material is far more likely to be used as background footage or excerpted in stories that the news rooms produce themselves. Very rarely are releases used in their entirety. Technological changes have made the distribution of audio and video material more complicated and sometimes made it more difficult to ascertain the point of origin. Providers have taken steps to make sure that, even in newer, digital formats, this material is clearly labeled.

Nonetheless, the reports that originated with the *New York Times* challenged the credibility of local news. As a consequence, news directors have met with their

staffs, reiterated their policies and made sure everyone in the newsroom understands that if such material is used it must be identified. We believe RTNDA's guidelines will be helpful in facilitating those newsroom discussions.

Because electronic journalists operate as trustees of the public, underlying our VNR guidelines is the basic tenet that the public must be properly informed. News operations are primarily concerned with the collection and accurate reporting of relevant news stories to their listeners and viewers. In the vast majority of cases and operations, news is collected directly by the news staff. Even when third party video or audio is received, it generally will not be used by a local news organization if similar material can be obtained directly by the station or through a network feed. Our guidelines reflect and reinforce this practice. When a judgment is made that third party video is relevant to a news story and cannot be obtained through a news source, our guidelines call for the clear disclosure of the origin of the material—and this disclosure applies to all sources of third party materials, including private parties, corporations and all levels of government. The guidelines cover a broad range of situations and VNR materials. They seek to protect the editorial integrity of the audio and video aired, to avoid commercialization of news stories, and to otherwise guard against third party influence of news content.

We believe that these guidelines help to ensure that the public receives the highest quality and most accurate information and is fully informed as to the source of third party material. Our members have renewed their efforts to honor their commitments to these guidelines and to their responsibilities as electronic journalists. Significant market forces compel them to do so—credibility with their listeners and viewers is their stock in trade.

As the bill reflects, sections 317 and 507 of the Communications Act of 1934 confer disclosure authority and responsibilities on the Federal Communications Commission with regard to sponsorship identification by broadcasters, cable operators, producers and others subject to its rules. The FCC recently issued a "reminder" to these entities of their obligations to comply with the FCC's rules. The FCC's release stated that its "rules are grounded in the principle that listeners and viewers are entitled to know who seeks to persuade them." RTNDA supports this public right to know and our guidelines are designed to achieve this goal of clearly disclosing "the nature, source and sponsorship" of news material viewed by the public. The FCC also is seeking comment on appropriate ways to improve the disclosures and the situations covered thereby. RTNDA looks forward to the opportunity to submit comments and to work with the FCC and others to ensure the public receives clear and accurate disclosure—and most importantly—that the public has clear and unfettered access to relevant information.

The determination of what to include in any particular newscast constitutes the very core journalistic function of a broadcaster, and is a matter far removed from government supervision. The Government must be cautious, therefore, in taking any action that would interfere with the editorial judgments of electronic journalists or otherwise dictate news decisions or content. RTNDA urges you, therefore, not to respond to the mistakes of a few by imposing rules that could very well restrict the ability of professional journalists to select and present newsworthy material to the public. Electronic journalists have every incentive to protect the editorial integrity of the audio and video they air without government intervention.

In closing, I believe we share common goals—a free press and an informed public. I look forward to working with you to develop the best ways to achieve and protect these goals.

ATTACHMENT

RTNDA Guidelines for Use of Non-editorial Video and Audio (April 2005)

Television and radio stations should strive to protect the editorial integrity of the video and audio they air. This integrity, at times, might come into question when stations air video and audio provided to newsrooms by companies, organizations or governmental agencies with political or financial interests in publicizing the material. News staffs should find answers to the following questions when making decisions to broadcast video or audio produced and/or supplied by non-editorial sources.

RTNDA's Code of Ethics and Professional Conduct states that professional electronic journalists should "clearly disclose the origin of information and label all material provided by outsiders." The following guidelines are offered to meet this goal.

- News managers and producers should determine if the station is able to shoot this video or capture this audio itself, or get it through regular editorial channels, such as its network feed service. If this video/audio is available in no other way but through corporate release (as in the case of proprietary assembly line

video), then managers should decide what value using the video/audio brings to the newscast, and if that value outweighs the possible appearance of "product placement" or commercial interests.

- News managers and producers should clearly disclose the origin of information and label all material provided by corporate or other non-editorial sources. For example, graphics could denote "Mercy Hospital video" and the reporter or anchor script could also acknowledge it by stating, "This operating room video was provided by Mercy Hospital."
- News managers and producers should determine if interviews provided with video/audio releases follow the same standards regarding conflicts of interest as used in the newsroom. For instance, some releases might contain interviews where subjects and interviewers are employed by the same organization. Consider whether tough questions were asked and if the subject was properly questioned.
- Before re-voicing and airing stories released with all their elements and intended for that purpose, managers and producers should ask questions regarding whether the editorial process behind the story is in concert with those used in the newsroom. Some questions to ask include whether more than one side is included, if there is a financial agenda to releasing the story, and if the viewers and/or listeners would believe this is work done locally by your team.
- Producers should question the source of network feed video that appears to have come from sources other than the network's news operation. Network feed producers should supply information revealing the source of such material.
- News managers and producers should consider how video/audio released from groups without a profit or political agenda, such as nonprofit, charitable and educational institutions, will be used in newscasts, if at all. Can this material add valuable insight to local stories? Has it been issued to be aired locally and credited to the issuing organizations. Will viewers find it to be useful information?

Developed by the RTNDA Ethics Committee

The CHAIRMAN. Mr. Simon.

STATEMENT OF DOUGLAS SIMON, PRESIDENT/CEO, D S SIMON PRODUCTIONS, INC.

Mr. SIMON. Thank you, Mr. Chairman, Senator DeMint, Senator Lautenberg. It is an honor for me to be here.

I would like to disclose that my company has produced public relations video for both the current Bush Administration and the Clinton Administration. Just like Government dissemination of print press releases, Government video news releases and B-roll packages are a necessary tool to keep the public informed, whichever political party is in power. But this legitimate tool must not be abused and disclosure is critical.

The first video news releases, or VNRs, were created in the late 1940s, and the first Federal agency produced VNR that I remember personally watching was during the Nixon Administration. When Neil Armstrong walked on the moon, no network had a camera crew at the Sea of Tranquility. NASA provided the footage and no one complained.

I have been invited by this committee to examine this bill based upon existing law and existing practices in the news industry. Regardless of VNR vendor practice, the overwhelming majority of producers and reporters at TV stations know the origin of VNR video before deciding to air it, and there is a simple reason for this. Reporters will not air the video if they do not know the source. They insist on disclosure.

Now, while the broadcast decisionmakers know the source, their station managers may not. The analogy I make is that the pub-

lisher of a newspaper probably does not know what is on page 5 of the Metro Section. That is why, when asked about a controversial Government piece airing on their station, the news directors honestly say, you know, I do not know. I had no idea. Well, they know now and I think that is a very positive development.

There have been loopholes that have allowed some Government video to reach journalists via network newsfeed services with the broadcasters possibly confused about its origin. These loopholes are being closed. Newsfeeds are now passing that information along to their affiliates.

Now, as a VNR producer and distributor, you might expect that I am against any regulation that affects our industry practice. I am not. While many in the PR industry may disagree, I believe when Government is involved, and even in the private sector, not only do the journalistic gatekeepers need to know the original funding source of VNR material, the public has a right to know as well. That being said, increased Government control over news broadcasts is not a hallmark of democracy.

The Truth in Broadcasting bill will decrease, not increase, the information available to the public. It will limit, not expand, the transparency of Government activities. The bill calls for the FCC to create the design, presentation, and language of a disclaimer that news stations would be required to air throughout the entire segment. Rather than deciding whether the story or a portion of it should air, based on news standards, stations will be factoring in whether they are comfortable changing the look of their broadcast. Depending on the politics of the Administration in power and in their viewing area, broadcasters may feel pressure if they run or do not run Government video.

This bill could result in the Government altering the format of the video it produces to avoid disclosure requirements. Worse, Government may turn to unregulated third parties or pop-up think tanks to become the source of video and escape restrictions.

If legislation is needed, rather than regulate and possibly threaten broadcasters, I would encourage that you draft the Transparency in Government Use of PR Video Act. Obviously, I am not a legislator with that title. This act would require all Government video distributed to news stations, whether VNR, B-roll, or otherwise, be posted on a Government website where the public could access it, not just the small percentage of viewers who may end up seeing it on their local news. The FCC Commissioner at today's hearing already is on record saying it would not impose financial burdens on Government.

Other things to consider. E-mail and fax pitches on behalf of the video news releases should disclose that the U.S. Government produced the package.

The videotape could include a graphic identifying the Government as the source of the video at the front of the tape, as is current industry standard, the VNR without graphics, and a second version of the video on the tape with the disclaimer burned in over the entire video. This will avoid confusion and give broadcasters the option of how its disclaimer should look without the threat of Government sanction.

This suggested approach will dramatically increase transparency in Government, allow the dissemination of more accurate information to millions more people, and preserve our freedom of the press.

Voice-overs in VNRs have been an industry convention for more than 40 years. The focus on fake reporters, in terms of the public good, misses the core issue. The public has the same right to know what our Government does when a voice-over is recorded on a VNR as when it is not.

And VNRs are not fake news because they are not news. A video news release is a communications tool by an interested party to get its message on television. When that interested party is the Government, the public has the right to know, and this is true whether it is factual information or what some would call propaganda.

I believe these goals can be achieved without limiting the rights of broadcasters. Thank you very much.

[The prepared statement of Mr. Simon follows:]

PREPARED STATEMENT OF DOUGLAS SIMON, PRESIDENT/CEO, D S SIMON PRODUCTIONS, INC.

Thank you. I'd like to start by disclosing that my company, D S Simon Productions, has produced video news releases or VNRs for Federal agencies during both the Clinton and current Bush Administrations.

It is said that the first VNRs were created in the late 1940s. The first Federal Agency produced VNR that I remember personally watching was during the Nixon Administration. When Neil Armstrong walked on the moon no network had a camera crew at the Sea of Tranquility. NASA provided the footage. No one complained.

I have been invited by this committee to examine this bill based upon existing law and existing practices in the news industry.

Regardless of VNR vendor practice, the overwhelming majority of producers and reporters at TV stations know the origin of VNR video before deciding to air it. There's a simple reason for this. Stations won't air the video if they don't know the source. They insist on disclosure.

While the broadcast decision makers know the source, their station managers may not. The analogy I make is that the publisher of a newspaper may not know what is being written on page five of the metro section. That is why when asked about a controversial government video airing on their news programs, News Directors honestly answered they didn't know. They know now and I view this as a positive development.

There have been loopholes that have allowed some government video to reach journalists via network newsfeed services with the broadcasters possibly confused about its origin. These loopholes are being closed. Changes in broadcast practices now require this funding information to be passed on to the affiliates.

As a VNR producer and distributor, you might expect that I am against any regulation that effects our industry practice. I'm not. While many in the PR Video Industry disagree, I believe, when government is involved, and even in the private sector, not only do the journalistic gatekeepers need to know the original funding source of VNR material but the public has the right to know. That being said, increased government control over news broadcasts is not a hallmark of democracy.

I am concerned the "Truth In Broadcasting" bill will decrease, not increase the information available to the public. It will limit, not expand the transparency of government activities. The bill calls for the FCC to create the design, presentation and language of a disclaimer that news stations would be required to air throughout the entire segment. Rather than deciding whether the story, or a portion of it, should air based on news standards, stations will be factoring in whether they are comfortable changing the look of their broadcast. Depending on the politics of the Administration in power, and in their viewing area, broadcasters may feel pressure if they run or don't run government video.

This bill could result in the Government altering the format of the video it produces to avoid disclosure requirements. Worse, government may turn to unregulated third parties or pop-up think tanks to become the source of the video and escape restrictions. The most serious risk is increasing government control over broadcast news limiting freedom of speech—especially when coupled with the recent FCC Notice of April 13th which held stations could be subject to fine when failing to disclose

the source of "matter furnished to them" which could be applied to any information broadcasters receive.

If legislation is needed, rather than regulate and threaten broadcasters I would encourage that you draft the "Transparency in Government use of PR Video Act." This act would require:

All government video disseminated to news stations whether they include prepackaged news stories or not be posted on a government website where the public could access it.

All e-mail and fax pitches on behalf of placing the video would be required to disclose that the package is produced by the U.S. Government.

The video tape would include a graphic identifying the government as the source of the video at the front of the tape, the VNR without graphics and a second version of the video on the tape with the disclaimer burned in over the entire video. This will avoid confusion and give broadcasters the option of how its disclaimer should look without the threat of government sanction.

This bill will dramatically increase transparency in government, allow the dissemination of more accurate information to millions more people and preserve our freedom of the press.

Voice-overs in VNRs have been an industry convention for more than 40 years. The focus on "fake reporters" in terms of the public good misses the core issue. The public has the same right to know what our government does, when a voice-over is recorded on a VNR and when it is not.

Much also has been made of "fake news" which conveys a powerful but false image when applied to VNRs. The truth is that what we provide for government clients is not news, fake or otherwise. It is paid advocacy. I hope we can agree that third-party video of all kinds is advocacy whether you believe it is factual information or propaganda. I call on you to seriously consider these recommendations and focus your attention on government behavior as opposed to setting limits on broadcasters. Thank you.

Supplemental Information

Who I am Speaking on Behalf of

It is an honor for me to be here today. While I have long been active in promoting ethical practices within public relations and currently serve as Vice President of the Public Relations Society of America's New York Chapter, I am here in my capacity as President & CEO of D S Simon Productions, a company that I founded 19 years ago on July 4, 1986.

VNR Industry Practices

The industry custom for how VNRs are produced has been established since the late 1960s. It includes an edited package with a voice-over that a station could air in part or in whole or simply use as a reference when they create a story using third-party video. We see approximately five percent of the VNRs we distribute airing in their entirety and an even smaller number using the actual voice-over we recorded. The goal of a VNR project is to receive the widest possible airings of the key messages contained within. Given the small percentage of airings where an entire video is used, a well-crafted VNR offers stations maximum flexibility in using the story as they see fit. In some cases, a station will use the video to support a story angle that is either unrelated to or even in opposition to the intended messaging in the Video News Release. This is an accepted risk in our industry and combined with the station option not to use the video, is one of the best safeguards at avoiding overly commercial or overly biased information being disseminated.

The VNR tape typically includes additional sound bites and footage as well as background information, as a graphic and contact information for a journalist to fact check. Depending on the story and budget, some projects will not include a scripted package but will simply include footage, sound bites and background information. This is commonly called a "B-Roll" package.

Once the video is produced, it is delivered to news outlets via satellite, direct mail or some of the newer digital distribution systems. The third aspect of the process is notifying the media that the story is available. This is done by, e-mail, fax, phone pitches and wire services. The fourth part of the process is monitoring of usage. This is done primarily through an electronic encoding signal (much like closed captioning) that is invisible to the viewer at home but allows Nielsen Media Research to report back to us which stations have aired VNR video and when. Secondary monitoring services are also used.

I can state emphatically that almost 100 percent of the broadcast decision makers we deal with know the original funding source of the video we provide them. We

include notification about the original funding source in our e-mail and fax pitches in addition to labeling on the video itself.

Broadcast Industry Practice

The Radio-Television News Directors Association (RTNDA) has issued new guidelines. CNN Newsource, CBS Newspath and Fox NewsEdge also sell time to VNR distributors on their newsfeed services. CBS has always labeled this video as a corporate feed and identifies the funding sponsor to its affiliates. CNN now has VNR video and its own video on a separate interface so a station cannot pull a VNR thinking it was CNN content. This change was made after the infamous "Karen Ryan video" for the Department of Health and Human Services. The Fox NewsEdge affiliate feed now includes a "Courtesy of" banner on all third-party video sent out to its affiliates.

In a survey of 132 broadcast producers and reporters D S Simon Productions completed in April of this year before the FCC Notice was issued, they told us that if they receive even a pitch that does not reveal the sponsor almost 80 percent never use the story that follows.

The Proportion of Unlabeled Government Video to Broadcast News Content

How much government produced VNR content is the public actually seeing that is controversial or unlabeled? From conversations I've had with representatives of monitoring services no more than 10 percent of news is VNR footage. Of that, less than two percent comes from the U.S. Government. If half of that is controversial, unlabeled government material we are talking about 1/20th of one percent of news content being a concern. There is strong evidence the source of this video is increasingly communicated to viewers based on changes in broadcast practices.

The Threat to Broadcasters if This Bill is Adopted

The most serious risk is increasing government control over broadcast is news limiting freedom of speech—especially when coupled with the recent FCC Notice of April 13, which held stations could be subject to fine when failing to disclose the source of "matter furnished to them" which could apply to any information broadcasters receive. Depending on how it is interpreted, stations could be subject to fines if they aired a report based upon an unnamed source or whistleblower.

My Suggestions for a "Transparency in Government Public Relations Video Act" to Improve the "Truth In Broadcasting" bill

This act would require all government video disseminated to news stations whether they include pre-packaged news stories or not be posted on a government website where the public could access it. It could be made available in libraries so people who do not have Internet access would be able to view it at no charge. This posting would include the script or transcript of sound bites as well as slate information.

All e-mail and fax pitches on behalf of placing the video would be required to mention that the package is produced by the U.S. Government.

The video tape would include a graphic identifying the government as the source of the video at the front of the tape, the VNR without graphics and a second version of the video on the tape with the disclaimer burned in over the entire video to avoid confusion and to give broadcasters the option of how its disclaimer should look without the threat of government sanction. Phone and e-mail contact information of a spokesperson from the Federal agency providing the video would also be included.

If you are concerned about partisanship, you could allow the Senate majority and minority the option to appoint one spokesperson to contribute one sound bite to the video for balance.

The monitoring data detailing which stations broadcast portions of the video could also be made public.

Broadcasters would be encouraged to comply with the guidelines established by the RTNDA for use of third-party video but not required to do so.

This bill would dramatically increase transparency in government, allow the dissemination of more accurate information to millions more people and preserve our freedom of the press.

The CHAIRMAN. Ms. Phair.

STATEMENT OF JUDITH T. PHAIR, PRESIDENT/CEO, PUBLIC RELATIONS SOCIETY OF AMERICA (PRSA)

Ms. PHAIR. Thank you, Mr. Chairman. Mr. Chairman, Senator Lautenberg, Senator DeMint, my name is Judy Phair and I am

President and CEO of the Public Relations Society of America. It is a great privilege and honor to appear before you today, and I thank you for inviting me.

I want to testify before you on a subject of paramount importance to all of us: ensuring the free flow of information from Government to citizens that is an essential and core part of our democracy.

I represent 20,000 men and women working in the public relations profession in every State of the Union, men and women who are committed to using their professional skills to help enhance communications and dialog between organizations, businesses, government, not-for-profit entities, and the communities, constituencies and the public they serve. We also have 8,000 student members on 260 college and university campuses across the Nation.

Our mission is to advance the profession of public relations, a profession that has as its foundation exactly what Senator Kerry was describing earlier this morning, that important free flow of information throughout society. We are committed to the responsible and ethical practice of public relations, and each of our members signs a code of ethics that focuses on honesty and full disclosure, and we have attached that code of ethics with my written testimony. That code helps govern our daily work, which involves the use of many tools and tactics to deliver information and frame the dialog between organizations and their publics. That is extremely important in the context of S. 967, which addresses one important tool in the public relations process, and that is the video news release, or VNR.

Society recognizes that as part of strategic communications planning, video news releases can, in fact, be valuable tools promoting that free flow of information. Just as paper news releases, which we discussed also in earlier testimony, are used in print journalism and follow the style of print journalism, VNRs utilize a format that is suited to electronic media. Both print and video news releases deliver information to the public via the news media in formats that are suitable to those media.

But we also believe that VNRs should be produced and disseminated with the highest levels of transparency, candor, and honesty. In order to foster open communication leading to informed decision-making, we must do more than simply funnel information through the media to the public. We must reveal the sponsors for causes and interests represented and disclose all financial interests related to the VNR. We believe that the great majority of public relations professionals and the firms they work for hold this view and do practice full disclosure of sources and sponsors to the broadcast media. Therefore, we see no issue regarding the codification of a practice that Government communications professionals and their contracted agents should already be doing. And that codification is indeed what your bill does.

We support the intent of the legislation, which would require full disclosure of the sources for Government VNRs. However, our concern is that some of the provisions go beyond mandating the full disclosure of Government involvement and the clear identification of sources of information contained in these releases. The portions of the bill that are of greatest concern to PRSA regard how this disclosure would be made. We believe that those provisions may have

the unintended consequence of actually impeding the flow of important information to the public.

We believe that public relations professionals involved in producing video news releases should provide broadcasters with all the information they need in order to decide the best way to use the information contained in the releases.

Broadcasters should have the ultimate responsibility for providing disclosure to the public. That disclosure could come in many forms, depending on the content and context of the VNR and the broadcaster's news production format, as long as the result is to let the public know the sources of information. By prescribing the specifics of disclosure to be used in the production of Government-sponsored VNRs, S. 967 could make the process so onerous or the end results so inappropriate for broadcast use that stations might not use VNRs at all, thus limiting the free flow of information.

PRSA believes the Government should not hold broadcasters to a different standard in presenting news to their viewers than those standards that print media impose on themselves.

We have long advocated the ethical, honest production of video news releases and full disclosure of their sponsorship. It is an issue that is of vital importance to this industry, and we are working constantly to keep that disclosure bar set high for our members and by example for others in this profession. VNRs have been used successfully, with full disclosure sources of information, for conveying information to the public about several important programs. For example, VNRs were effective components of public service campaigns on such issues as labeling over-the-counter drug supplements, seat belt usage, online tax return filing, and cancer detection and prevention.

Public relations exists as a profession today because it has established a level of trust with the media and the public. In our role of providing information to the public, often through media outlets, that is essential. And we do believe that imposing rigid requirements and specifications on the information we provide to the public will not best serve that public interest.

I would certainly be happy to take questions, and thank you very much, Mr. Chairman and members of the Committee.

[The prepared statement of Ms. Phair follows:]

PREPARED STATEMENT OF JUDITH T. PHAIR, PRESIDENT/CEO, PUBLIC RELATIONS SOCIETY OF AMERICA (PRSA)

Mr. Chairman and members of the Committee:

On behalf of the Public Relations Society of America I thank you for the opportunity to submit this testimony concerning S. 967.

PRSA represents 20,000 public relations professionals in business, government, education, nonprofit and other sectors. Our membership is divided into ten regional Districts with 114 local Chapters in the United States and the District of Columbia. We're governed by a board of directors that is elected by members. Our 8,000 plus-member Public Relations Student Society of America has 260 Chapters on campuses at colleges and universities throughout the United States.

The mission of PRSA is to advance the profession of public relations and public relations professionals through education, innovation and adherence to a strong code of ethical behavior. The PRSA Member Code of Ethics is signed by each member as a prerequisite to join. It guides them in their daily activities in the practice of public relations.

That's extremely important in the context of S. 967, which addresses one important tool in the public relations process—the Video News Release, or VNR.

Like members of this committee, our members are well aware of the issues surrounding the production of VNRs by government entities or with Federal funds. And our position on VNRs is probably similar to those of each member of this committee.

Our Society recognizes that, in strategic communications planning, video news releases can be valuable tools promoting the free flow of information. Just as "print" news releases follow the style of print journalism, VNRs utilize a format that is most adaptable to electronic media. Both print and video news releases present information in a way that is preferred by these respective media and that meets public information needs and interests.

But we also believe that VNRs should be produced and disseminated with the highest levels of transparency, candor and honesty. To provide open communication that fosters informed decision, we must do more than simply funnel information through the media to the public. We must reveal the sponsors for causes and interests represented and disclose all financial interests related to the VNR. We believe that most of our members and the 120,000 men and women practicing public relations in the United States today hold that view.

Therefore, we see no issue regarding the codification of a practice that government communications professionals and their contracted agents should already be doing.

Our concern with S. 967 is that some of its provisions go beyond what appears to be the intent of the legislation—that is, to require full disclosure of government sponsorship of VNRs and clear identification sources of information contained in those releases. The portions of the bill of greatest concern to PRSA reference how this disclosure would be made. We believe those provisions may have the unintended consequence of actually impeding the free flow of important information to the public.

We believe that public relations professionals involved in producing video news releases should provide broadcasters with all the information they need in order to decide the best way to use the information contained in the releases.

Disclosure to the public is ultimately the responsibility of broadcasters. It could come in many forms, depending on the content and context of the VNR and the broadcasters' news production formats, and as long as the result is to keep the public totally informed about the sources of information. By proscribing the specifics of disclosure to be used in the production of government-sponsored VNRs, the S. 967 could cause some broadcasters not to use the information at all.

PRSA believes the government should not hold broadcasters to a different standard in presenting news to their viewers than those that print media impose upon themselves.

PRSA has long advocated the ethical, honest production of video news releases and full disclosure of their sponsorship. It's an issue of vital importance to our industry and we're working constantly to keep the disclosure bar set high for our members and, by example, for others in our profession. VNRs have been used successfully—with full disclosure of sources of information—for conveying information to the public about a number of important public programs. For example, VNRs have been effective components of public service campaigns on such topics as labeling of over-the-counter drug supplements, seat belt usage, online tax return filing and cancer detection and prevention.

Public relations exists as a profession today because it has established a level of trust with the media and the public. In our role of providing information to the public—often through media outlets—that trust is essential.

We can be "trusted" only if we work diligently to earn trust. We believe that imposing rigid requirements and specifications on the information we provide to the public will not best serve the building of this trust.

Thank you.

STATEMENT OF THE PUBLIC RELATIONS SOCIETY OF AMERICA (PRSA) ON VIDEO NEWS RELEASES (VNRS)

Extensive discussion was focused in recent weeks on a Video News Release (VNR) produced by the Department of Health and Human Services (DHHS) pertaining to the recently enacted Medicare drug bill. Content of the video release touched off partisan debate and discussion but also raised ethical questions about the use of VNRs. Because VNRs are a basic public relations tool used by corporations, organizations and other entities to provide news content to television stations and thus communicate with the public, PRSA believes that it is important for there to be a better understanding of the role and usage of VNRs.

Three principles are at work here:

- A VNR is the television equivalent of a press release and, as such, should always be truthful and represent the highest in ethical standards.
- Producers and distributors of VNRs and the organizations they represent should clearly and plainly identify themselves.
- Television stations airing VNRs should identify sources of the material.

Background: The VNR is the video equivalent of a press release, a written document sent to the media. The VNR is designed specifically for TV stations and consists of many elements including a complete story with visuals and narration/voiceovers, a suggested written script, added video that can be used by the station and suggested ways the story can be localized. Public relations professionals have produced VNRs in this manner for more than 25 years, and media outlets have used them on a regular basis.

Issue in Question: One of the issues raised about the DHHS VNR was the inclusion of a sign-off identification at the completion of the story that uses the words "reporting." This has caused some confusion among people who question whether someone who is not actually a reporter should be identified in a manner that could suggest that he or she is a journalist. While this is often done when VNRs are produced, we agree that this can be considered confusing and/or misleading.

PRSA Position:

1. Organizations that produce VNRs should clearly identify the VNR as such and fully disclose who produced and paid for it at the time the VNR is provided to TV stations.
2. PRSA recommends that organizations that prepare VNRs should not use the word "reporting" if the narrator is not a reporter.
3. Use of VNRs or footage provided by sources other than the station or network should be identified as to source by the media outlet when it is aired.

PRSA supports use of VNRs as useful public relations tools. They will continue to be effective when adhering to the highest standards of practice as described above.

About PRSA

The Public Relations Society of America (*www.prsa.org*), based in New York City, is the world's largest organization for public relations professionals helping to advance the profession and the professional. Its nearly 20,000 members, organized into 116 Chapters nationwide, 18 Professional Interest Sections along with Affinity Groups, represent business and industry, counseling firms, independent practitioners, military, government, associations, hospitals, schools, professional services firms and nonprofit organizations.

PRSA Position on VNRS Overall

Free Flow of Information—Protecting and advancing the free flow of accurate and truthful information is essential to serving the public interest and contributing to informed decision-making in a democratic society. VNRs are among the many tools used to ensure that information flows freely.

Full Disclosure—Open communication fosters informed decision-making in a democratic society. We must be honest and accurate in all communications, reveal the sponsors for causes and interests represented and disclose all financial interests.

PRSA Position on U.S. Senate Bill S. 967

- PRSA supports the spirit of legislation that ensures the free flow of accurate and truthful information and requires full disclosure of sponsors and financial interests. However, disclosure by broadcasters could come in many forms, depending on the content and context of the VNR and how it fits into the individual entities' news production formats. Then all VNRs would serve the purpose of keeping the public totally informed about the sources of information.
- PRSA believes the government should not hold broadcasters to a different standard than print media in presenting news to their viewers.
- PRSA is concerned that such regulation could spill over into the private sector and inappropriately impose tighter regulation on the media, which could raise serious First Amendment constitutional questions.

- Again, while PRSA supports the spirit of Senate S. 967, PRSA believes that more robust self-regulation of VNRs by broadcasters is the optimum way to manage the issue of full disclosure.

Members of Senate Commerce Committee

http://commerce.senate.gov/about/membership.html

PRSA Official Position on VNRs

http://www.prsa.org/__News/leaders/vnrs0404.asp

PRSA Code of Ethics

http://www.prsa.org/__About/ethics/index.asp?ident=eth1

PUBLIC RELATIONS SOCIETY OF AMERICA—MEMBER CODE OF ETHICS 2000

- Professional Values
- Principles of Conduct
- Commitment and Compliance

This Code applies to PRSA members. The Code is designed to be a useful guide for PRSA members as they carry out their ethical responsibilities. This document is designed to anticipate and accommodate, by precedent, ethical challenges that may arise. The scenarios outlined in the Code provision are actual examples of misconduct. More will be added as experience with the Code occurs.

The Public Relations Society of America (PRSA) is committed to ethical practices. The level of public trust PRSA members seek, as we serve the public good and advocate for our clients, means we have taken on a special obligation to operate ethically.

The value of member reputation depends upon the ethical conduct of everyone affiliated with the Public Relations Society of America. Each of us sets an example for each other—as well as other professionals—by our pursuit of excellence with powerful standards of performance, professionalism, and ethical conduct.

Emphasis on enforcement has been eliminated. But, the PRSA Board of Directors retains the right to bar from membership or expel from the Society any individual who has been or is sanctioned by a government agency or convicted in a court of law of an action that is in violation of this Code.

Ethical practice is the most important obligation of a PRSA member.

PRSA MEMBER STATEMENT OF PROFESSIONAL VALUES

This statement presents the core values of PRSA members and, more broadly, of the public relations profession. These values provide the foundation for the Member Code of Ethics and set the industry standard for the professional practice of public relations. These values are the fundamental beliefs that guide our behaviors and decision-making process. We believe our professional values are vital to the integrity of the profession as a whole.

Advocacy

- We serve the public interest by acting as responsible advocates for those we represent.
- We provide a voice in the marketplace of ideas, facts, and viewpoints to aid informed public debate.

Honesty

- We adhere to the highest standards of accuracy and truth in advancing the interests of those we represent and in communicating with the public.

Expertise

- We acquire and responsibly use specialized knowledge and experience.
- We advance the profession through continued professional development, research, and education.
- We build mutual understanding, credibility, and relationships among a wide array of institutions and audiences.

Independence

- We provide objective counsel to those we represent.
- We are accountable for our actions.

Loyalty

- We are faithful to those we represent, while honoring our obligation to serve the public interest.

Fairness

- We deal fairly with clients, employers, competitors, peers, vendors, the media, and the general public.
- We respect all opinions and support the right of free expression.

PRSA CODE PROVISIONS

Free Flow of Information

Core Principle

Protecting and advancing the free flow of accurate and truthful information is essential to serving the public interest and contributing to informed decision making in a democratic society.

Intent

- To maintain the integrity of relationships with the media, government officials, and the public.
- To aid informed decision making.

Guidelines

A member shall:

- Preserve the integrity of the process of communication.
- Be honest and accurate in all communications.
- Act promptly to correct erroneous communications for which the practitioner is responsible.
- Preserve the free flow of unprejudiced information when giving or receiving gifts by ensuring that gifts are nominal, legal, and infrequent.

Examples of Improper Conduct Under this Provision

- A member representing a ski manufacturer gives a pair of expensive racing skis to a sports magazine columnist, to influence the columnist to write favorable articles about the product.
- A member entertains a government official beyond legal limits and/or in violation of government reporting requirements.

Competition

Core Principle

Promoting healthy and fair competition among professionals preserves an ethical climate while fostering a robust business environment.

Intent

- To promote respect and fair competition among public relations professionals.
- To serve the public interest by providing the widest choice of practitioner options.

Guidelines

A member shall:

- Follow ethical hiring practices designed to respect free and open competition without deliberately undermining a competitor.
- Preserve intellectual property rights in the marketplace.

Examples of Improper Conduct Under This Provision

- A member employed by a "client organization" shares helpful information with a counseling firm that is competing with others for the organization's business.
- A member spreads malicious and unfounded rumors about a competitor in order to alienate the competitor's clients and employees in a ploy to recruit people and business.

Disclosure of Information

Core Principle

Open communication fosters informed decision making in a democratic society.

Intent

- To build trust with the public by revealing all information needed for responsible decision making.

Guidelines

A member shall:

- Be honest and accurate in all communications.
- Act promptly to correct erroneous communications for which the member is responsible.
- Investigate the truthfulness and accuracy of information released on behalf of those represented.
- Reveal the sponsors for causes and interests represented.
- Disclose financial interest (such as stock ownership) in a client's organization.
- Avoid deceptive practices.

Examples of Improper Conduct Under this Provision

- Front groups: A member implements "grass roots" campaigns or letter-writing campaigns to legislators on behalf of undisclosed interest groups.
- Lying by omission: A practitioner for a corporation knowingly fails to release financial information, giving a misleading impression of the corporation's performance.
- A member discovers inaccurate information disseminated via a website or media kit and does not correct the information.
- A member deceives the public by employing people to pose as volunteers to speak at public hearings and participate in "grass roots" campaigns.

Safeguarding Confidences

Core Principle

Client trust requires appropriate protection of confidential and private information.

Intent

- To protect the privacy rights of clients, organizations, and individuals by safeguarding confidential information.

Guidelines

A member shall:

- Safeguard the confidences and privacy rights of present, former, and prospective clients and employees.
- Protect privileged, confidential, or insider information gained from a client or organization.
- Immediately advise an appropriate authority if a member discovers that confidential information is being divulged by an employee of a client company or organization.

Examples of Improper Conduct Under This Provision

- A member changes jobs, takes confidential information, and uses that information in the new position to the detriment of the former employer.
- A member intentionally leaks proprietary information to the detriment of some other party.

Conflicts of Interest

Core Principle

Avoiding real, potential, or perceived conflicts of interest builds the trust of clients, employers, and the publics.

Intent

- To earn trust and mutual respect with clients or employers.
- To build trust with the public by avoiding or ending situations that put one's personal or professional interests in conflict with society's interests.

Guidelines

A member shall:

- Act in the best interests of the client or employer, even subordinating the member's personal interests.
- Avoid actions and circumstances that may appear to compromise good business judgment or create a conflict between personal and professional interests.
- Disclose promptly any existing or potential conflict of interest to affected clients or organizations.
- Encourage clients and customers to determine if a conflict exists after notifying all affected parties.

Examples of Improper Conduct Under This Provision

- The member fails to disclose that he or she has a strong financial interest in a client's chief competitor.
- The member represents a "competitor company" or a "conflicting interest" without informing a prospective client.

Enhancing the Profession

Core Principle

Public relations professionals work constantly to strengthen the public's trust in the profession.

Intent

- To build respect and credibility with the public for the profession of public relations.
- To improve, adapt, and expand professional practices.

Guidelines

A member shall:

- Acknowledge that there is an obligation to protect and enhance the profession.
- Keep informed and educated about practices in the profession to ensure ethical conduct.
- Actively pursue personal professional development.
- Decline representation of clients or organizations that urge or require actions contrary to this Code.
- Accurately define what public relations activities can accomplish.
- Counsel subordinates in proper ethical decision making.
- Require that subordinates adhere to the ethical requirements of the Code.
- Report ethical violations, whether committed by PRSA members or not, to the appropriate authority.

Examples of Improper Conduct Under This Provision

- A PRSA member declares publicly that a product the client sells is safe, without disclosing evidence to the contrary.
- A member initially assigns some questionable client work to a non-member practitioner to avoid the ethical obligation of PRSA membership.

Resources

Rules and Guidelines

The following PRSA documents, available online at *www.prsa.org* provide detailed rules and guidelines to help guide your professional behavior. If, after reviewing them, you still have a question or issue, contact PRSA headquarters as noted below.

- PRSA Bylaws
- PRSA Administrative Rules
- Member Code of Ethics

PRSA MEMBER CODE OF ETHICS PLEDGE

I pledge:

To conduct myself professionally, with truth, accuracy, fairness, and responsibility to the public; to improve my individual competence and advance the knowledge and proficiency of the profession through continuing research and education; and to adhere to the articles of the Member *Code of Ethics 2000* for the practice of public relations as adopted by the governing Assembly of the Public Relations Society of America.

I understand and accept that there is a consequence for misconduct, up to and including membership revocation.

And, I understand that those who have been or are sanctioned by a government agency or convicted in a court of law of an action that is in violation of this Code may be barred from membership or expelled from the Society.

_____
Signature

_____
Date

The CHAIRMAN. Thank you very much, all of you.

My first question to all of you is how long have VNRs been used in the industry. Ms. Poling, did you look back in other Administrations?

Ms. POLING. No. Our study was very narrow. We were asked to look at certain video news releases and we did so. So there were just two. However, we did see some from the Clinton Administration, but we were not doing a study that focused on that.

The CHAIRMAN. The rest of you in the industry, how long have these been used by the industry?

Mr. SIMON. Sure, Mr. Chairman. As I noted in my testimony, I have been told the first VNRs were in the late 1940s and they became popular in the 1950s, 1960s. I had one source who said they thought President Kennedy had used video like this in his campaign in the 1960s, but I could not confirm that independently. But it has been a common public relations tool basically since television news started to play such a prominent role.

The CHAIRMAN. I assume you are all familiar with the provision that is in the defense supplemental appropriations bill that was passed, signed by the President. The Byrd Amendment requires Federal agencies to clearly label prepackaged news stories that they produce. The difference between that and this bill, this bill would require in video that there be a cutline that appears constantly throughout the use. All the footage would have this on it, contrary to the political ad where there has to be a cutline at the end saying this was paid for by the candidate. What about that?

First, can you live with the Byrd Amendment? We all voted for it. Can you live with it?

Ms. COCHRAN. Senator, yes. We have no objection to the Byrd Amendment.

Ms. PHAIR. Mr. Chairman, neither do we.

Mr. SIMON. I have no objection to the Byrd Amendment, and I think it makes sense when applied to this issue.

The CHAIRMAN. Now, in terms of this constant exposure on prepackaged news stories, what is going to be the impact of that on anything, just something like we just saw now?

Ms. COCHRAN. Senator, I will begin. I think you heard from the colleagues here that imposing this kind of one-size-fits-all solution

to a video is problematic. In some instances, a uniform description may not even be the most accurate information that you could give the public. I think the public benefits from learning exactly what Federal agency has originated the material. One example that I use is NASA animation of a space shot, and it is used very widely in television stories because it helps the viewer understand and it is the most authoritative source coming from NASA.

The CHAIRMAN. Pardon me just a moment. We have got a limitation on time.

The term "prepackaged news story" means a complete, ready-to-use audio or visual news segment designed to be indistinguishable from a news segment produced by an independent organization. How can you distinguish it? I do not understand. Could you live with that? The test would be if it was designed to be indistinguishable from something that you produce.

Ms. COCHRAN. I think it is problematic because that is not how these packages are used. Often segments are used. Everyone is not as considerate as the example that we saw, as to send B-roll and excerpts that can be used by themselves. So often the prepackaged material is broken down and used. Bits and pieces of it can be used. If it has that labeling on it, then it becomes very problematic.

The CHAIRMAN. Ms. Poling, in the definition section, it says, "The term 'agency' has the same meaning given such term in section 551 of title 5, United States Code, and includes the Executive Office of the President." That "and" is not normal.

Ms. POLING. Repeat the question. The "and" is what?

The CHAIRMAN. The clause that starts with "and includes the Executive Office of the President" is not normally within the definition of an agency. Is it?

Ms. POLING. GAO has no comments on the bill, but just from a legal perspective, you are correct. It is not normally included in the definition of an agency.

The CHAIRMAN. So this is the entire purpose of the bill, to include this and make sure that it applies to the Office of the President.

Senator Lautenberg.

Senator LAUTENBERG. Thanks, Mr. Chairman.

The intention of the bill is to make all Government agencies responsible.

The CHAIRMAN. It does not apply to Congress. You have extended it to the President of the United States, but not to Congress.

Senator LAUTENBERG. Well, in the case where we see the abuse of this information, we do not have in the Congress opportunities to issue VNRs independently. No broadcaster is going to take something that comes from my office or your office and put it on the air and say that the situation in Alaska regarding drilling——

The CHAIRMAN. Mine do.

[Laughter.]

The CHAIRMAN. We issue them every week.

Senator LAUTENBERG. You were so lucky to have the endorsement of how beautiful Alaska is, and I can see that you were happy with that. So I am content to exempt Alaska from some of these things.

[Laughter.]

Senator LAUTENBERG. But in all seriousness, I am really surprised to hear some of our friends at the table suggest that this could be an interference in the free flow of information. What is better for the public than to know exactly who is saying what? You can produce it. There is virtually no interference. We deliberately did not place any burden on the broadcasters.

As a matter of fact, despite the technology, Ms. Poling, what do you think of Mr. Simon's comment about technology being able to sort things out in a different way so that it is more discernible when they get a piece of VNR to produce?

Ms. POLING. I am not sure I have a view on this.

What we would say at GAO is that it is important that these prepackaged news stories—and I believe his goes beyond prepackaged news stories—identify the source of the Federal agency. We think that is essential.

Senator LAUTENBERG. We say in our legislation that it ought to be run as long as that VNR runs. If it runs for 10 seconds, it should be on there for 10 seconds. If it runs for 30 seconds, it should be on there for 30 seconds.

Mr. Chairman, there is no doubt about the attempt to deceive when we hear Karen Ryan say—she does not say I am doing this for the U.S. Government. She said I am Karen Ryan. The idea is to imitate. And if we have to see that clip again, it would be fine with me. But it is designed to imitate a reporter. Otherwise, why present it that way?

Ms. Poling, some of that we know was legitimate news. The President signing a bill. I do not have any problem with that. That is picked up by the news cameras themselves. But when it is a story to sell something and you show the pharmacy and so forth, that can, even stretching the imagination a little bit, say, well, OK, it is part of a news clip as long as it is developed by the station itself, the broadcaster.

I would appreciate hearing from GAO on this. Is there any harm that comes from identifying that this is a piece of a Government production? Do you see any burden on the broadcast industry as a result of that?

Ms. POLING. Well, our study did not deal with the broadcast industry at all. But the basic principle underlying our opinions is that the agencies must disclose themselves to the targeted audience which is the television-viewing audience. We think it is very important that there be disclosure so that the audience can assess the information, which I also heard from other members of the panel up here, and also that the taxpayers have a right to know when the Government is speaking to them.

Senator LAUTENBERG. Ms. Cochran, several news directors ran the Karen Ryan piece without realizing that it was Government-sponsored VNR. Would it not be simpler for your news directors, your group, if the Government simply included a clear disclaimer in the story itself?

Ms. COCHRAN. We are all in favor of that kind of disclosure. I think what we are concerned about is the specific prescription as it appears in the bill because we think it limits the editorial decisions, if you like, just the look of how that disclaimer or that disclo-

sure will appear on the air. We think that how that looks on the air should be in the hands of the people producing the news.

Senator LAUTENBERG. Well, to me it would seem more appropriate if we had a uniform standard and said, OK, this is it. I would be happy, Mr. Chairman, to work with people from the industry, keeping in mind that our mission in this bill is very clear. It says that transparency is the objective and that if it is produced by the Government, let us not fool anybody.

Again, we acknowledge that it happened—I did not realize Mr. Simon was old enough to remember what might have happened in the Nixon days. Of course, you and I remember it clearly.

The CHAIRMAN. It is nice to work with kids like you.

[Laughter.]

Senator LAUTENBERG. You are looking at 40 percent of the veteran population of World War II sitting here.

[Laughter.]

Senator LAUTENBERG. If we could arrive at the most convenient way of displaying it, but one that is visible and one that tells the story, Mr. Chairman, I would be happy to do it and work with you. You have been eminently fair because I know that you do not fully agree here, but you are at least willing to have the problem aired. So I am grateful to you. I would submit if we have a chance to work this over in the next few weeks, I think that if the Byrd Amendment was so acceptable, then the least we ought to do is try to make it permanent, improve it if we can, but not to let it terminate and then have to worry about what happens after September 30.

The CHAIRMAN. It has been our announced intention to try to make the Byrd Amendment permanent because it is acceptable, and I think it meets the objectives of the original issue. And I will be willing to join you at any time in making that permanent.

But in any event, if that is not acceptable, it would be my feeling that this committee ought to wait for the outcome of the comment period that the FCC has established, and we will take the bill up at the end of July after we receive that, before the August recess, if it is necessary. If we do not adopt the Byrd Amendment permanently, we will take it up sometime in July after the comment period is over.

But let me thank you all for your testimony. I appreciate your courtesy very much. There is a vote on.

[Whereupon, at 11:47 a.m., the Committee was adjourned.]

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