

January 2013

# BROADCAST AND CABLE TELEVISION

## Requirements for Identifying Sponsored Programming Should Be Clarified



G A O

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## Why GAO Did This Study

The FCC is responsible for ensuring that the public knows when and by whom it is being persuaded. Requirements direct broadcasters to disclose when a group or individual has paid to broadcast commercial or political programming. Political advertising must also comply with requirements overseen by the FEC. Recognition of sponsored programming has become increasingly difficult because of new technologies and increased access to sponsored programming such as video news releases. GAO (1) describes requirements for sponsorship identification and federal election disclaimers and stakeholders' views of the requirements and (2) assesses how and to what extent FCC and FEC address complaints. To conduct the work, GAO reviewed relevant laws, guidance, and enforcement procedures, and interviewed agency officials and stakeholders about enforcement processes and actions.

## What GAO Recommends

FCC should, among other things, update its sponsorship identification guidance and consider providing additional examples relevant to more modern issues and communicate the resolution of an investigation to the target of the investigation when a letter of inquiry has been sent, and develop goals for resolving all sponsorship identification cases within a specified time frame. GAO provided FCC and FEC with a draft of this report. FCC indicated it will consider the recommended actions and how to address the concerns discussed in the report. Both FCC and FEC provided technical comments.

View [GAO-13-237](#). For more information, contact Mark Goldstein at (202) 512-2834 or [goldsteinm@gao.gov](mailto:goldsteinm@gao.gov).

## BROADCAST AND CABLE TELEVISION

### Requirements for Identifying Sponsored Programming Should Be Clarified

## What GAO Found

Sponsorship identification statutes and regulations, overseen by the Federal Communications Commission (FCC), require broadcasters to identify commercial content—usually an advertisement, an embedded advertisement, or a video news release—that has been broadcast in exchange for payment or other consideration. A written or verbal sponsorship announcement must be made at least once during any sponsored commercial content except when the sponsor is obvious. For content considered political or that discusses a controversial issue, broadcasters must follow all requirements for commercial content and additional requirements, such as identifying officials associated with the entity paying for an advertisement. In addition, the Federal Election Commission (FEC) enforces federal election law that requires all political communications for a federal election, including television and radio advertisements, to include a disclaimer statement. FEC also oversees requirements to report campaign funding and expenditures, including funding for political advertising. FCC has guidance that helps broadcasters determine when a sponsorship announcement is needed, such as when a deejay receives a payment for airing specific content. While broadcasters consider this guidance useful, it addresses older technology that in some cases is no longer used. Furthermore, some broadcasters indicated that it would be helpful for FCC to clarify how the guidance applies in some situations, such as when a video news release or product is used during programming.

According to FCC, it opened 369 sponsorship identification cases representing just over 1 percent of the Investigations and Hearings Division's total cases opened from the beginning of 2000 through 2011. In 22 of these cases, FCC issued enforcement actions with varying types of violations and enforcement actions. While FCC follows standard procedures when addressing complaints, it does not inform the broadcaster named in the complaint of the outcome of the investigation in many cases. Most broadcasters we spoke with confirmed that FCC does not inform them of the status of investigations, and some indicated they currently do not know the status of several investigations. According to FCC, it does not communicate status with broadcasters named in complaints because, among other reasons, it has no legal obligation to do so. Broadcasters reported the lack of information about cases and FCC decisions creates uncertainty about the propriety of their past actions. As a result broadcasters might not have sufficient information to determine whether they should modify their practices. This can result in stations' editing content because of unwritten regulatory policy or what they assume the policy to be. Moreover, these investigations can be lengthy, taking from 10 months to over 5 years to complete when an enforcement action is involved. From 2000 through May 2012, FEC opened 301 cases based on complaints alleging violations of political advertisement disclaimer requirements. FEC assessed civil penalties in 29 cases, 7 of which were related to television or radio advertisement disclaimers. Unlike FCC, FEC provides status updates to those involved in investigations and issues reports explaining investigation findings. FEC also issues reports explaining case dismissals. These reports can clarify acceptable and unacceptable practices for the regulated community.

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## Abbreviations

CATV	community antenna television
CELA	Office of Complaints Examination and Legal Administration
CGB	Consumer and Governmental Affairs Bureau
FCC	Federal Communications Commission
FEC	Federal Elections Commission
VNR	video news release

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United States Government Accountability Office  
Washington, DC 20548

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January 31, 2013

The Honorable Nancy Pelosi  
Democratic Leader  
House of Representatives

The Honorable Henry Waxman  
Ranking Member  
Energy and Commerce Committee  
House of Representatives

As broadcasters facing budget constraints make greater use of commercially sponsored content, such as commercial products as part of entertainment programs, some members of Congress are concerned that broadcasters are not properly disclosing sponsorship information to the public. The Federal Communications Commission (FCC) holds television and radio broadcasters to a basic principle, embodied in the Communications Act of 1934,<sup>1</sup> as amended, that the public is entitled to know when and by whom it is being persuaded.<sup>2</sup> Sponsorship identification statutes and regulations, overseen by FCC, require licensed broadcasters operating television and radio stations, as well as cable operators that originate programming, to disclose on-the-air when a party gives money or a payment in-kind for the broadcast of programming content.<sup>3</sup> In many cases, such as a standard 30 second product commercial, the sponsor of the content is obvious. However, as consumers make greater use of digital video recorders and other technologies that allow viewers to bypass commercials, advertisers turn to different approaches. For example, a news program may accept money to broadcast a pre-recorded segment on an allergy medication, or

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<sup>1</sup>Act of June 19, 1934, ch. 652, 48 Stat. 1064, (Communications Act) (codified in title 47, United States Code).

<sup>2</sup>47 U.S.C. § 317. As we use the terms in this report, “broadcaster” means persons engaged in over-the-air transmissions as defined in 47 U.S.C.A. § 153(7); “cablecasting” refers to the widespread dissemination of content over a cable television or radio system but does not include the retransmission of broadcast content. 47 C.F.R. § 76.5(o). The origins of the sponsorship identification rules date from the beginning of licensing of radio transmissions in the Act of Feb. 23, 1927, ch. 169, § 19, 44 Stat. 1162, 1170, sometimes referred to as the Radio Act.

<sup>3</sup>An in-kind payment refers to goods or services provided in lieu of cash payment.

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a sitcom or reality show may accept money to prominently feature a brand of soft drink. In these situations, the product may be stated or obvious, but the fact that the product sponsor paid to have it included in the show may not be obvious. Similarly, FCC requires broadcasters to identify the individual or group truly responsible for funding an advertisement with political or controversial content. Thus, FCC's sponsorship identification requirements apply to both commercial and political advertisements, but the requirements differ for each. In addition, all political advertising for federal elections must meet rules enforced by the Federal Election Commission (FEC). Similar to the changes broadcasters face with commercial advertising practices, recent changes in election campaign laws have had an impact on political advertising.

Although the FCC and FEC requirements serve different purposes—protecting the radio and television listening and viewing public, on the one hand, and protecting the election process on the other—both direct disclosure of television and radio advertising sponsorship. Given the increase in use of sponsored content and changing rules associated with political content, you asked us to review FCC enforcement of sponsorship identification, federal election disclaimer requirements and other information that must be reported to FEC, and current industry practices. This report (1) describes the sponsorship identification requirements and guidance for commercial and political content, the federal election disclaimer requirements, as well as stakeholders' views of these requirements and guidance, and (2) assesses how and to what extent FCC and FEC address sponsorship complaints through each agency's enforcement process.

To describe the sponsorship identification requirements and guidance and obtain stakeholders views on these requirements and guidance, we reviewed sponsorship identification and disclaimer statutes and regulations enforced by FCC and FEC and interviewed officials from both agencies responsible for administering their respective requirements. We also reviewed relevant literature as far back as the Radio Act of 1927 and interviewed agency officials to understand the history of the statutes and regulations, their purposes, and how they differ for various media platforms and for different types of advertising. We interviewed over a dozen stakeholders that are subject to sponsorship identification requirements, have monitored broadcasters' compliance with sponsorship identification requirements, or contributed research to the topic. These stakeholders included television and radio network officials, consumer representatives, academics, and trade associations to obtain their views of the effect of statutes and regulations and possible changes to them.

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To determine how and to what extent FCC and FEC address sponsorship identification complaints, we interviewed FCC and FEC officials responsible for receiving, processing, and investigating complaints and analyzed relevant FCC and FEC documents describing agency methods and processes for identifying violations of sponsorship identification statutes and regulations, receiving sponsorship identification complaints, communicating with the complainant and subject of the complaint, initiating and conducting investigations, and taking enforcement action. In addition, we analyzed relevant FCC and FEC databases to describe sponsorship identification and disclaimer complaints, investigations, and enforcement actions from 2000 through 2011. We also analyzed FCC and FEC strategic plans and data describing the agencies' respective goals for sponsorship identification and disclaimer statement complaint processing and enforcement and the agencies' progress toward meeting their goals.

We conducted this performance audit from March 2012 through January 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. See appendix I for a more detailed explanation of our scope and methodology.

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## Background

Federal law has required broadcasters to identify sponsors of radio program content since 1927.<sup>4</sup> Since that time, sponsorship identification requirements have been amended to expand and further define the requirements.

- In 1934, the Communications Act established FCC and gave it authority to administer sponsorship identification requirements for broadcasters, among other responsibilities, as well as creating additional sponsorship identification requirements.
- In 1944, FCC adopted rules implementing the sponsorship identification requirements created in 1934. These rules, which

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<sup>4</sup>The Act of Feb. 23, 1927, ch. 169, § 19, 44 Stat. 1162, 1170, sometimes referred to as the Radio Act.

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required a full and fair disclosure of the sponsor's identity, remain largely unchanged.<sup>5</sup>

- In 1960, the Communications Act was amended to redefine the situations in which broadcasters must identify program sponsors.<sup>6</sup> The need for this change arose due largely to the payola scandals of the late 1950s. The conference report accompanying the 1960 act included 27 case examples that were included to provide guidance on how the committee believed the sponsorship identification requirements should be applied.<sup>7</sup>
- In 1963, FCC adopted regulations implementing the 1960 amendments<sup>8</sup> and provided 36 sponsorship identification case examples as guidance.<sup>9</sup>
- In 1969, FCC adopted regulations applying sponsorship identification requirements modeled on the broadcast rules to cablecasting by community antenna television systems (CATV). Cablecasting was defined as "programming distributed on a CATV system which has been originated by the CATV operator or by another entity, exclusive of broadcast signals."<sup>10</sup>

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<sup>5</sup>*In the Matter of Promulgation of Rules and Regulations under Section 317 of the Communications Act*, 9 Fed. Reg. 14734 (1944).

<sup>6</sup>Pub.L. No. 86-752, § 8(a), 74 Stat. 889, 895(1960). The House Report illustrated the revised rule by providing 27 examples. H. Rept. 1800, reprinted at 1960 U.S.C.C.A.N. 3516, 3527-3532.

<sup>7</sup>H. Rept. 1800, 86th Cong.

<sup>8</sup>Amendment of Sections 3.119, 3.289, 3.654 and 3.789 of the Commission's Rules, 34 F.C.C. 829 (1963), amending 47 C.F.R., §§ 3.119, 3.289, 3.654 and 3.789, which were subsequently reclassified by 28 Fed. Reg. 13,572, 13,672 (Dec. 16, 1963).

<sup>9</sup>*In Re Application of Sponsorship Identification Rules*, 40 F.C.C. 141 (rel. May 6, 1963; pub. 1965. The 36 case examples included 27 that appear in the conference report and 9 new examples created by FCC.)

<sup>10</sup>*In the Matter of Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations*, 20 FCC 2d 201, 223 (1969).



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- In 1972, FCC updated its regulations to apply sponsorship identification requirements to programming under the exclusive control of cable television operators.<sup>11</sup>
  - In 1975, FCC clarified the meaning of its 1944 requirement for full and fair disclosure of the identity of the sponsor, modifying its regulations to make clear that broadcasters and cablecasters<sup>12</sup> are expected to look beyond the immediate source of payment where they have reason to know (or could have known through the exercise of reasonable diligence) that the purchaser of the advertisement is acting as an agent for another, and to identify the true sponsor.<sup>13</sup>
  - In 1991, FCC adopted rules requiring visual and audible sponsorship identification announcement for televised advertisements concerning political issues.<sup>14</sup>
  - In 1992, FCC amended the requirements for advertisements concerning candidates by removing the requirement for an audible announcement and adopting specific criteria for a visual announcement.<sup>15</sup> The visual sponsorship identification announcement consist of letters at least 4 percent of the vertical picture height and that the statement be shown for at least 4 seconds.

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<sup>11</sup>*In the Matter of Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations* (Cable Television Report and Order), 36 F.C.C.2d 141, 215, 239-241 (1972). These rules, codified at 47 C.F.R. § 76.1615 apply to programming generated by a cable operator engaged in what the rule refers to as "origination cablecasting." According to FCC official, FCC has never ruled on whether sponsorship identification rules apply to programming on cable networks. See *In Re Request of A&E Television Networks for Declaratory Ruling*, 15 FCC Rcd. 10796, 10800 n.2 (2000).

<sup>12</sup>We use the term cablecaster to be synonymous with cable operators that create original cablecasting. Throughout the report references to cablecasting should be understood as references to origination cablecasting, i.e., the cablecasting subject to section 76.1615. The term "origination cablecasting" refers specifically to cablecasting on a cable television system over one or more channels subject to the exclusive control of the cable operator. 47 C.F.R. § 76.5(p).

<sup>13</sup>*In the Matter of Amendment of the Commission's Sponsorship Identification Rules*, 52 FCC 2d 701, (1975), reiterating FCC's earlier intention and rejecting the interpretation of its rule in *United States v. WHAS, Inc.*, 385 F. 2d 784 (6<sup>th</sup> Cir. 1967), affirming *United States v. WHAS, Inc.*, 253 F. Supp. 603 (D.Ky.1966).

<sup>14</sup>7 FCC Rcd. 678 (1992).

<sup>15</sup> 7 FCC Rcd. 1616 (1992) (rule is codified at 47 C.F.R. §1212(a)(2)(ii)).

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There have been no changes to the sponsorship identification statutes or regulations since 1992, although there have been more recent FCC cases affecting their interpretation and application.<sup>16</sup>

These sponsorship identification requirements generally apply to different types of advertising. Table 1 shows the range of different types of content that often require a sponsorship announcement, including commercial advertising where the sponsor is not typically apparent and political or controversial issue advertising where an announcement must meet additional requirements.

**Table 1: Advertising Subject to Sponsorship Identification Requirements**

Type of advertising	Description
Commercial advertising	Any programming intended to promote any service, facility or product offered.
Embedded advertising	Showing or mentioning commercial products, through placement or integration into the dialogue or plot of a program in exchange for payment, products, or other inducement.
Video news releases	Video programming that can be included as part of news programming. Such programming may use actors to play reporters or include suggested scripts for broadcasters and cablecasters to use when introducing stories and are provided to them without cost by outside entities.
Political advertising	Any programming supporting or opposing any candidate for political office or discussing a political issue.
Advertising about a controversial topic	Any programming addressing a controversial matter of public importance or interest.

Source: GAO analysis.

Presently, the Communications Act, as implemented by FCC, requires broadcasters and cablecasters to disclose to their listeners or viewers if content has been aired in exchange for money, services, or other inducement. For commercial content, such as advertisements, embedded

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<sup>16</sup>See, e.g., *In the Matter of Sponsorship Identification Rules and Embedded Advertising*, 23 FCC Rcd. 10682 (2008).

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advertisements, and video news releases,<sup>17</sup> the announcement must be aired when the content is broadcast and can be either a visual or an audible announcement. Political and controversial content must also have either type of announcement when aired on television, but candidate advertisements have specific visual requirements. In addition, when anyone provides or promises to provide money, services, or other inducement to include programming in a broadcast, that fact must be disclosed to the broadcaster or cablecaster. Both the person providing or promising to provide the money, services, or other benefits and the recipient must make this disclosure so that the station can broadcast the sponsorship identification announcement.<sup>18</sup>

The general public and to a lesser extent other sources, such as media public interest groups, file complaints with FCC about violations. Because of the high number of broadcasters and cablecasters, FCC relies on the public as an important source of information about compliance with requirements.<sup>19</sup> The public is able to assist in monitoring broadcasters' compliance with requirements because, as we will describe later in our finding on requirements, broadcasters are required to maintain a publicly available inspection file. This publicly available file lists pertinent information, such as quarterly issues and programs list, which describes the programs that have provided the station's most significant treatment of community issues during the preceding 3 months.<sup>20</sup> The public can access the public inspection file to check and monitor broadcasters' compliance and service.

As part of its enforcement process, FCC investigates complaints about potential violations by broadcasters and cable operators of the statutes and rules it administers, including sponsorship identification complaints. Two bureaus within FCC—the Consumer and Governmental Affairs Bureau (CGB) and the Enforcement Bureau—are primarily responsible

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<sup>17</sup>Embedded advertisements, as well as, video news releases could contain political or controversial content. In this report, we discuss both only as they relate to commercial content because FCC and stakeholders, such as broadcasters and trade associations, primarily discuss both types of advertisements as related to commercial products.

<sup>18</sup>47 C.F.R. §§ 73.1212; 76.1615.

<sup>19</sup>FCC is not a monitoring agency but does conduct some on-site investigations and inspections in response to complaints and in support of its operations.

<sup>20</sup>47 C.F.R. § 73.3526(e)(12).

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for developing and implementing procedures for processing complaints, conducting investigations, and taking enforcement actions. As part of its role of responding to consumer complaints and inquiries, CGB initially processes the majority of the complaints FCC receives. To the extent that a complaint is defective, for example, for failing to identify a particular broadcast, including its date, time of day, and the station on which it was aired, CGB will dismiss the complaint as incomplete and advise the complainant accordingly, providing guidance as to what information should be included in a complaint. CGB forwards most complaints deemed complete to the Enforcement Bureau, but some complaints, including political sponsorship identification complaints go to the Media Bureau for further investigation.<sup>21</sup> When FCC discovers violations it can take various enforcement actions dependent on the seriousness of the violation, such as admonishment, monetary forfeiture, or not renewing a broadcaster's license.

According to FEC, political committees buying political advertising supporting or opposing candidates for federal office must also meet requirements set by Federal Campaign Finance law. Advertisements paid for and authorized by a candidate, political committee, or their agents, must clearly state who has authorized and paid for the advertisement. Advertisements authorized by a candidate but paid for by someone else must identify who paid for and authorized the advertisement. Unauthorized advertisements must also identify the person who paid for the advertisement and must state that the communication is not authorized.<sup>22</sup> FEC oversees the financing of elections for federal office<sup>23</sup> and ensures organizations and individuals authorizing political advertisements place the required statements, known as disclaimers, on

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<sup>21</sup>According to FCC officials, if a petition to deny a broadcast station's renewal application raised questions regarding sponsorship identification rule violations (a rare occurrence), the Media Bureau would be responsible for the investigation, which would be similar to the process followed by the Enforcement Bureau.

<sup>22</sup>2 U.S.C. § 441d.

<sup>23</sup>In 1975, Congress created FEC to administer and enforce the Federal Election Campaign Act of 1971, as amended. FEC is governed by six commissioners who are appointed by the President and confirmed by the Senate. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972), (codified as amended at 2 U.S.C. ch. 14). The Federal Election Campaign Act was amended by the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002). All references to the Federal Election Campaign Act are to the 1971 act as amended.

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the advertisements.<sup>24</sup> The disclaimer requirements apply to any kind of communications media carrying public political advertising and are not limited to broadcast or cablecast advertisements.<sup>25</sup>

Similar to FCC, FEC initiates most enforcement activity pursuant to complaints received from the general public, including individuals and organizations associated with federal political campaigns. Complaints are filed with the Office of Complaints Examination and Legal Administration (CELA), which reviews the complaint to determine if the complaint states facts, identifies the parties involved, and provides or identifies supporting documentation. If the complaints are deemed sufficient, CELA informs the complainants that they will be notified once the case has been resolved. If FEC discovers violations, enforcement can include negotiated corrective action, including civil penalties, or other Commission initiated legal action seeking judicially imposed civil penalties or other relief.

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## Sponsorship Identification Requirements Are Manageable, but FCC Guidance Could Be Clarified

As previously stated, sponsorship identification statutes and regulations require broadcasters and cablecasters to identify commercial content—usually an advertisement, an embedded advertisement, or a video news release (VNR) that has been broadcast in exchange for money or payment in-kind. According to most broadcasters we spoke with, commercial content is fairly straightforward to identify, and they are accustomed to dealing with such content and report that compliance is manageable. For content considered political or discussing a controversial public issue, requirements, enforced by FCC and FEC, are more extensive and require more detailed on-air announcements and tracking of all related communications and agreements in a public file for FCC.<sup>26</sup>

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<sup>24</sup>2 U.S.C. § 441d. Identification of funding and authorizing sources is required for advertisements run over any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising media. This includes Internet advertising, provided the posting of the advertisement is paid for by a disbursement of funds.

<sup>25</sup>11 C.F.R. § 100.26.

<sup>26</sup>Public files must be maintained by both broadcasters and cablecasters and contains information other than just materials related to political and controversial content. 47 C.F.R. §§ 73.3526 (commercial), 73.3527 (noncommercial), and 76.79 (cable public file requirements, generally).

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## FCC's Sponsorship Identification Requirements for Commercial Content

According to FCC, commercial advertisements do not always require a sponsorship announcement. FCC does not require an announcement when an obvious connection exists between the content and sponsor, such as with a standard commercial advertisement. For all commercial advertisements where the true sponsor is not apparent, even for infomercials that may be 30 minutes or longer, FCC requires a written or verbal announcement to occur only once during the program.<sup>27</sup> This announcement must fully and fairly disclose the true identity of those who are paying for the advertisement.<sup>28</sup> In addition, whenever an individual, such as a deejay, receives money or payment in-kind for airing specific content or favorably discussing a specific product a sponsorship announcement must be made. Therefore, station employees must disclose such transactions to the station.<sup>29</sup> Thus, if a record company or its agent pays a deejay to play records or talk favorably about an artist or record on the air, and he does so, the result is considered sponsored content. FCC guidance directs that the deejay must reveal the payment to the broadcaster and a sponsorship announcement must be made when the content goes on-the-air.<sup>30</sup> According to broadcasters, industry trade groups, and others we spoke with, compliance with these standards and requirements is not a problem because the requirements are part of their standard review process.

Embedded advertisements—typically, when a commercial product is provided without charge to use in entertainment programming—may not require a sponsorship announcement if they are reasonably related to the show. Since many consumers now record shows or change the channel during commercials, broadcasters have increased their use of embedded advertising. However, a sponsorship announcement is not required every time a product appears in a program. For example, FCC's guidance describes scenarios in which a manufacturer provides a car to a television show for a detective to chase and capture the villain, and states that the use of the car alone would not require a sponsorship announcement. In

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<sup>27</sup>47 C.F.R. § 73.1212(f) and see *Application of Sponsorship Identification Rules to Political Broadcasts, Teaser Announcements, Governmental Entities and Other Organizations*, Public Notice, 66 FCC. 2d 302 (1977).

<sup>28</sup>47 C.F.R. §§ 73.1212(e) (for broadcast material), 76.1701(e) (for cablecast material).

<sup>29</sup>47 U.S.C. §508(a)-(c).

<sup>30</sup>40 F.C.C. 141, 145, example 4.

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this scenario the use of the car could be considered “reasonably related” to its use in the show. However, in the same scenario, if a character also made a promotional statement about the specific brand—such as its being fast—FCC requires a written or verbal sponsorship announcement sometime during the program.<sup>31</sup> According to FCC’s guidance, in this second scenario, the specific mention of the brand may go beyond what would be “reasonably related” to its use in the show. The reasonably related standard requires some assessment of the content. Broadcasters told us they have processes in place to review content on their networks to determine if a program needs a sponsorship announcement for an embedded advertisement.

VNRs are another type of commercial content which may require a sponsorship announcement. VNRs are pre-packaged news stories that may include only film footage or may also include suggested scripts. However, broadcasters do not always use a VNR in its entirety but may use portions of the video. For example, if a news story about car manufacturing could benefit by showing video from inside a manufacturing plant, a broadcaster may use footage from a VNR because it cannot easily access the interior of a plant during its operations.

According to FCC, it requires broadcasters to air a sponsorship announcement when using VNRs, even when they are provided free of charge, under the same circumstances as it would require a sponsorship identification for other programming. When a film or a story was provided by a third party and it conveys value to the station, it must have either a verbal or written sponsorship announcement, if it is furnished in consideration for identification of a product or brand name beyond what is reasonable related to the broadcast.<sup>32</sup> This is an update to the guidance FCC issued in its 2005 Public Notice concerning the use of VNRs. In that Public Notice, FCC reminded broadcasters of their obligation to comply with sponsorship identification requirements when using VNRs and that there must be an announcement to the audience about the source and

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<sup>31</sup>40 F.C.C. 141, example 17, (1963).

<sup>32</sup>47 C.F.R. § 73.1212(a)(2). FCC guidance for political or controversial materials directs that any free content must still have a sponsorship announcement. 47 C.F.R. § 73.1212(d) (for broadcast material), § 76.1615(c) (for cablecast material). For recent case law in this area, see e.g., *In the Matter of Fox Television Stations, Inc.*, 26 FCC 3964 (2011).

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sponsorship of the VNR.<sup>33</sup> Nevertheless, some broadcasters disagree with FCC's position and believe it should treat VNRs similar to press releases and not require a sponsorship announcement if a broadcaster did not pay for the material and uses only a portion of its content. For example, in the previous illustration, a broadcaster may use VNR footage, because it does not have access to the interior of a car manufacturing plant. In such instances, FCC requires broadcasters to make an announcement that could appear on the screen during the footage stating, "Footage furnished by ABC Motor Company" or as a verbal or written announcement at the end of the program. Broadcasters we spoke with had differing opinions on whether to use VNRs. While one broadcaster believes it should be up to the news program to determine if an announcement is needed, others we spoke with were divided about whether to use VNRs with a sponsorship announcement or to never use VNRs at all. Some broadcasters and others reported the use of VNRs has been increasing, in part, because of tighter news budgets and the need to fill airtime. In recent years, instances of VNR use without proper credit have been reported and investigated by FCC; we will discuss these instances later in our report.

Most broadcasters we spoke with indicated the sponsorship identification requirements are generally manageable as part of their review processes. As previously indicated, broadcasters told us they have processes in place to review the different types of advertisements and other programming aired. These reviews check to ensure the advertisement or programming meets FCC requirements, including the sponsorship identification requirements. Since it is part of the standard content review process and the sponsorship identification requirements have not changed for many years, broadcasters told us the requirements were not difficult to meet.

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<sup>33</sup>Federal Communications Commission, *Public Notice: Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, 20 FCC Rcd. 8593 (2005).



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**FCC Sponsorship  
Identification  
Requirements for Political  
and Controversial Content**

Political content and content discussing a controversial issue of public importance are subject to all requirements that commercial content must follow but have additional on-air and public file sponsorship identification requirements. Advertisements that contain political content or involve public discussion of a controversial issue must include a sponsorship announcement at the beginning or end of the program. If the program is longer than 5 minutes, the announcement must be made at both the beginning and end of the program. For broadcast television and political content discussing a candidate, a visual announcement must be made that is at least equal to 4 percent of the screen height must exist and lasts 4 seconds. For broadcast radio, there must be an audible announcement.<sup>34</sup>

In addition to the requirement for on-air disclosure of the identity of those who are paying for the advertisement, broadcasters and cablecasters are also required, where payment is not being made by an individual, to maintain a list of the Chief Executive Officers, or members of the Executive Committee or Board of Directors of the corporation or other entity who paid for the advertisement.<sup>35</sup> These lists are kept as part of the public inspection files broadcasters and cable operators are required to maintain, which includes a file for political advertising information known as the “political file.” The political file also documents information pertaining to candidate-purchased advertisements. This includes communications and agreements to air political advertisements and programming, including information on times agreed to and rates paid by advertisers. Most of the public inspection file is information that is available only at the station or operator’s place of business, although since August 2012, FCC has required that some television stations post their political file at an FCC-hosted website and that all television stations

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<sup>34</sup>47 U.S.C. § 315; 47 C.F.R. §§ 73.1212 (for broadcast material), 76.1615 (for cablecast material).

<sup>35</sup>47 C.F.R. §§ 73.1212(e) (for broadcast material), 76.1701(e) (for cablecast material).

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post a majority of their public file on this website by February 2013, making the file more easily accessible to the general public.<sup>36</sup>

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## FEC Disclaimer Requirements

According to FEC, paid political communications supporting or opposing candidates for election to federal office, which include radio and television advertisements, are required to contain what are called “disclaimer statements.”<sup>37</sup> FEC enforces these election advertising disclaimer statutes and regulations. Television and radio political advertisements authorized and paid for by a federal candidate or his or her campaign committee or another organization must include a disclaimer spoken by the candidate identifying him or herself and stating that he or she approved the advertisement, as well as a statement identifying the organization that paid for the advertisement. Television advertisements must either show the candidate making the disclaimer statement or show a clearly identifiable image of the candidate during the statement. They must also include a clearly readable written statement similar to the verbal statement that appears at the end of the advertisement for at least 4 seconds. Certain advertisements not approved by a candidate or his or her committee must identify who paid for the advertisement, state that it was not authorized by any candidate or candidate’s committee, and list the permanent street address, telephone number, or World Wide Web address of the person who paid for the communication.

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<sup>36</sup>In May 2012, the National Association of Broadcasters filed a petition with a Federal District Court seeking relief from the FCC requirement for broadcasters to file political advertising information on-line in their public files. *National Association of Broadcasters v. FCC*, filed May 21, 2012 (DC Dir. No. 12-1225). An National Association of Broadcasters request for a stay delaying the implementation of the requirements was denied. *National Association of Broadcasters v. Federal Communications Commission* (D.C. Cir. No. 12-1225, July 27, 2012). On September 18, 2012, the court granted NAB’s request to defer the briefing schedule for its petition for review, and on January 18, 2013 NAB filed a further motion to hold its case in abeyance. (D.C. Cir. No.12-1225). As of issuance of this report, the case was not resolved. The public file and political file data are available on an FCC hosted website (last accessed January 23, 2013) <https://stations.fcc.gov/>.

<sup>37</sup>2 U.S.C. § 441d. Identification of sources funding and authorizing advertising is required for advertisements run over any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising.

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## Reporting Political Advertising Financing

In addition to monitoring compliance with these disclaimer requirements, FEC serves as a repository for campaign finance data for candidates for political office.<sup>38</sup> Just as stations licensed by FCC are required to preserve records to establish that they are meeting their responsibility, among others, to treat political candidates running for the same public office equally, FEC oversees requirements to report campaign funding and expenditures. Individuals, political committees, and other organizations supporting or opposing candidates for federal office are required to report campaign funding and expenditures for certain activities, which can include payments made for purchasing political advertising and information on the funds they receive for advertisements.<sup>39</sup> This reporting is done to assure that money is being collected and spent in accordance with federal election campaign law.<sup>40</sup> The reporting requirements vary according to the purpose of the advertisement, who paid for the advertisement, and whether it is the product of a coordinated effort between political committees and others.<sup>41</sup> The political committees are always subject to the reporting requirements and must submit itemized reports to FEC showing all of their expenditures, including advertising. Political committees must also submit itemized reports to FEC showing contributions received, including contribution amounts, dates, and contributor names and addresses. FEC has also required organizations and individuals to report expenditures for political advertisements and donations of \$1,000 or more made for certain political advertisements, called “electioneering communications,” which

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<sup>38</sup>The January 21, 2010, Supreme Court ruling in *Citizens United v. FEC*, 558 U.S. 310, overturned a portion of the Bipartisan Campaign Reform Act, holding that the government may impose disclaimer and disclosure requirements but may not suppress corporate political speech by restricting corporations’ and labor organizations’ funding certain political advertisements.

<sup>39</sup>Federal Election Commission, *FEC and Federal Campaign Finance Law Brochure*, (Washington, D.C.: February 2011) and Federal Election Commission, *Coordinated Communications and Independent Expenditures Brochure*, (Washington, D.C.: February 2011).

<sup>40</sup>11 C.F.R. §§ 104.3, 104.20.

<sup>41</sup>A coordinated effort between organizations means two organizations getting together to fund political advertising, such as political action committees.

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are related to elections for federal office and broadcasts within specified time frames before the elections.<sup>42</sup>

As described in FEC's guidance, FEC administers specific reporting requirements for those making electioneering communications, which can include political advertisements on television or radio. Specifically, electioneering communications refers to any broadcast, cable, or satellite communication that refers to a candidate for federal office and is distributed within specific time frames before a federal general election or federal primary election.<sup>43</sup> Political advertisements that do not meet these specifications are not subject to these reporting requirements. Once payments for electioneering communications, including television or radio advertisements, exceeds \$10,000 in any calendar year, those responsible for them must report payments and the sources of funds used to FEC within 24 hours of each broadcast.<sup>44</sup> Each report must, among other things, identify:

- the person or organization that made the payments, including their principal place of business;
- any person sharing or exercising direction or control over the activities of the person who made the payments;

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<sup>42</sup>11 C.F.R. § 104.20. FEC requires corporations or labor organizations that make electioneering communications to disclose the name and address of each person who made a donation aggregating \$1,000 or more to a corporation or labor organization, but only those made for the purpose of furthering electioneering communications. 11 C.F.R. § 104.20(c)(9). This regulation was challenged in *Van Hollen v. FEC*, 851 F.Supp.2d 69 (D.D.C. 2012). The plaintiff alleged that the regulation is inconsistent with a provision of the Bipartisan Campaign Reform Act (BCRA), § 201, codified at 2 U.S.C. § 434(f). *Van Hollen v. FEC*, Civil Action No. 11-0766 (ABJ) (D.D.C. 2011) ("complaint"). The plaintiff contended that the BCRA provides that all electioneering communications must be disclosed and that there are no terms limiting that requirement to those who expressly stated that their contribution was to be used to fund electioneering contributions. *Van Hollen*, 851 F.Supp.2d, at 80. On plaintiff's motion for summary judgment, the District Court found that "Congress spoke plainly [and] did not delegate authority to the FEC to narrow the disclosure requirements through agency rulemaking." *Van Hollen*, 851 F.Supp.2d, at 89. The United States Court of Appeals for the D.C. Circuit disagreed, reversed the lower court's summary judgment and remanded the case to that court. See *Center for Individual Freedom v. Van Hollen*, 694 F.3d 109 (DC Cir. 2012). As of January 11, 2013, the litigation was ongoing. For more information, see [www.fec.gov/law/litigation/van\\_hollen.shtml](http://www.fec.gov/law/litigation/van_hollen.shtml) (last visited January 11, 2013).

<sup>43</sup>These rules apply for certain radio and television advertisements within 60 days of a general election and within 30 days of a primary election. 11 C.F.R. § 104.20(b); 100.29.

<sup>44</sup>2 U.S.C. § 434(f)(1); 11 C.F.R. § 104.20(b).

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- the amount of each payment in excess of \$200, the payment dates, and the payee;
  - all candidates referred to in the advertisements and the elections in which they are candidates; and
  - the name and address of each person who donated \$1,000 or more since the first day of the preceding calendar year to those responsible for the advertisement.<sup>45</sup>

According to FEC, “coordinated communications” are contributions for communications that are coordinated with a candidate or party committee. These contributions are subject to amount limitations, source prohibitions, and reporting requirements under the Federal Election Campaign Act.<sup>46</sup> Expenditures for communications that are not coordinated, also known as independent expenditures, have requirements to report itemized payments for the advertisements that are triggered if they expressly advocate the election or defeat of a clearly identified candidate. While independent expenditures are not subject to spending limitations, they are subject to the reporting requirements. Those responsible for the payments must report:

- their names, mailing addresses, occupations, and employers;
- the name and mailing address of the person to whom payments were made;
- the amount, date, and purpose of each payment;
- a statement indicating whether each payment was in support of, or in opposition to, a candidate, together with the candidate’s name and office sought;
- the identification of each person who made a contribution in excess of \$200 for the purpose of making a coordinated advertisement; and
- a verified certification as to whether such expenditure was made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate’s authorized committee, or its agents, or a political party committee or its agents.<sup>47</sup>

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<sup>45</sup>2 U.S.C. § 434(f)(2); 11 C.F.R. § 104.20(c).

<sup>46</sup>Corporations, labor unions, individuals and businesses with federal government contracts, foreign citizens, and qualified non-profit corporations are prohibited from coordinating these advertisements.

<sup>47</sup>11 C.F.R. §§ 104.3(b)(3)(vii) and 109.10(e).

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## FCC Guidance for Commercial, Political, and Controversial Content

FCC provides guidance on meeting sponsorship identification requirements, which broadcasters we spoke with generally report to be helpful. Broadcasters we spoke with told us they apply the sponsorship identification requirements many times a day during reviews of programs and when preparing news programs. This process involves network employees viewing all content, and if a program appears to focus too much on a product, then the broadcaster will ask the producer of the content for a sponsorship announcement. Broadcasters we spoke with indicated they tend to be cautious in reviewing and identifying sponsored content in order to avoid enforcement actions.

The guidance issued in FCC's 1963 report and order has remained substantially unchanged,<sup>48</sup> and while many broadcasters indicate the guidance is still useful, it addresses issues with older technology that may no longer be relevant and does not discuss how the rules apply to newer technologies. Specifically, one case example discusses a broadcaster's use of a kinescope recording of a congressional hearing provided by a third party.<sup>49</sup> The guidance states that "expensive kinescope prints dealing with controversial issues are being paid for by someone," and therefore the broadcaster should determine who and make a sponsorship announcement. While this case example provides guidance for the use of content discussing a controversial issue, which clearly falls under the sponsorship identification requirements, the cost of creating such content is less of an issue today. We have previously reported on the benefits of revisiting provisions of regulatory programs to determine if changes might be needed to better achieve the program's goals.<sup>50</sup> Current technologies, such as digital video equipment and the Internet, allow similar content to be created and distributed and it is often publicly available at no cost and the rules are not clear how the rules apply in these situations. FCC officials told us the agency has not updated the guidance because there has been no need to update it. Rather, FCC officials said they have relied on case law and public notices, among other devices, to provide guidance to broadcasters and cablecasters.

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<sup>48</sup>In 1975, FCC revised one case example to reflect changes to FCC's rules. *Applicability of Sponsored Identification Rules*, 53 F.C.C.2d 368 (1975).

<sup>49</sup>A kinescope is a recording of a television program made by filming the picture from a video monitor.

<sup>50</sup>GAO, *Regulatory Reform: Prior Reviews of Federal Regulatory Process Initiatives Reveal Opportunities for Improvements*, [GAO-05-939T](#) (Washington, D.C.: July 27, 2005).

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However, some broadcasters indicated that FCC could clarify how the guidance applies in specific situations, such as when a VNR or product is used but the broadcaster was not paid. In its Public Notice issued in 2005, FCC reminded broadcasters and cablecasters of their sponsorship identification obligations and indicated that VNRs generally need a sponsorship announcement.<sup>51</sup> According to FCC's enforcement reports, its enforcement actions against broadcasters' and cablecasters' use of VNRs have involved cases where the footage and script of a VNR focused too much on a specific brand or product, beyond what was reasonably related to the story. FCC told us these cases indicate that VNRs should be following the same rules regarding sponsorship identification as other programming. However, some stakeholders argue VNRs are similar to press releases because they are often provided for with no money or payment in-kind including no understanding or agreement that they will be broadcast on-the-air. According to FCC guidance, a press release does not need a sponsorship announcement.<sup>52</sup> Some broadcasters indicated they remain unsure of when there needs to be a sponsorship announcement as part of a VNR. As a result, FCC's interpretation and the broadcasters' interpretation of how the requirements apply to VNRs remain vastly different, in-part because no payment is made to the broadcaster to air the VNR. The Public Notice in 2005 sought comment on a number of issues related to the use of VNRs and also indicated FCC intends to issue a report or initiate a formal proceeding based on the comments received.<sup>53</sup> As of the issuance of this report, however, FCC has taken no further action in response to the comments received.

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<sup>51</sup> *Public Notice (20 FCC Rcd. 8593).*

<sup>52</sup> 40 FCC 141.

<sup>53</sup> *Public Notice (20 F.C.C. Rcd. 8593).*

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## FCC and FEC Follow Standard Procedures When Addressing All Complaints, but FCC Does Not Update Broadcasters Named in the Complaint

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### FCC Investigation and Enforcement Process

FCC's investigation and enforcement process generally begins with a complaint to the agency that will be reviewed by the CGB and may be forwarded to the Enforcement Bureau if the complaint is complete. As previously indicated, FCC receives complaints primarily through the CGB. Since 2003, FCC has received over 200,000 complaints of all types annually through CGB, some of which it dismisses as incomplete. Others, including sponsorship identification complaints deemed to be complete are forwarded to the Enforcement Bureau for possible investigation and enforcement. Complaints involving non-political sponsorship identification issues are forwarded to the Enforcement Bureau; but complaints raising political sponsorship identification issues go to the Media Bureau.

When the Enforcement Bureau receives a complaint, the bureau conducts several reviews prior to being classified as a sponsorship identification complaint and prior to contacting the broadcaster named in the complaint, as shown in figure 1. First, if a complaint is related to an alleged sponsorship identification violation, the complaint goes to the Investigations and Hearings Division where a manager conducts a review of the complaint. If the manager determines the subject of the complaint to be sponsorship identification related or related to another topic handled by the Investigations and Hearings Division, then the complaint is assigned to an attorney. The attorney enters it into the database at which time it is considered a case and can be classified as related to sponsorship identification. A case may be linked to numerous complaints, or a case may be opened even though FCC received no complaints.<sup>54</sup> For

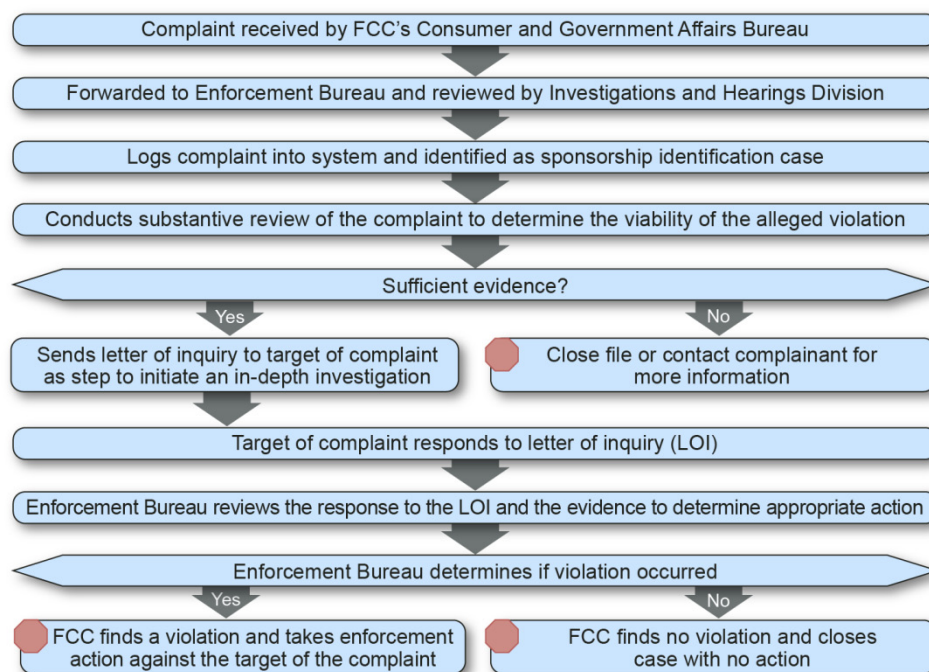
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<sup>54</sup>An FCC case may be opened because of its own research or a congressional inquiry.



example, in 2007, FCC received over 18,000 complaints and opened 3 sponsorship identification cases in response to a single incident wherein a nationally syndicated radio and television host discussed the “No Child Left Behind” program and did not disclose that the discussion was sponsored.

**Figure 1: FCC Investigation and Enforcement Process for Sponsorship Identification Complaints**



Source: GAO description of FCC process.

As shown in table 2, according to FCC, it opened 369 sponsorship identification cases from the beginning of 2000 through 2011, representing just over 1 percent of the total cases the Investigation and Hearings Division opened during that time period.<sup>55</sup> According to FCC officials, after opening a case, the attorney conducts a more substantive review to determine if the allegations in the complaint, if true, would

<sup>55</sup>These are cases that were directly received by the Enforcement Bureau, reviewed by the Investigative and Hearings Division, and entered into the database. This may miss some complaints if they came through another division of FCC and were never entered into the database.

constitute a possible violation of any statutes or regulations. If warranted, the attorney may contact the complainant for more information. If it is determined that no violation occurred or can be supported, the case may be closed following the substantive review, by making a note in the case file. If this substantive review determines a violation may have occurred, then FCC will send a letter of inquiry to the broadcaster named in the complaint initiating an in-depth investigation. As shown in table 2, 101 cases were closed following a substantive review and prior to a letter of inquiry being sent.

**Table 2: FCC Sponsorship Identification Cases within the Investigations and Hearings Division, 2000 through 2011.**

<b>Conclusion of sponsorship identification cases</b>	<b>Number of cases<sup>a</sup></b>
Cases with a letter of inquiry sent	242
Closed cases with no letter of inquiry sent	101
<b>Total sponsorship identification cases</b>	<b>369</b>

Source: FCC Data.

<sup>a</sup>According to FCC, the number of cases closed without a letter of inquiry (101) and the number of cases for a letter of inquiry has been issued (242) does not add up to the total number of cases identified as sponsorship identification cases (369) because some cases may be consolidated for the purposes of a letter of inquiry and other cases may not yet be closed in the database, although no letter of inquiry has been issued.

If a case proceeds to a letter of inquiry being sent, the letter serves as a notification to the broadcaster named in the complaint that it is under investigation. The letter of inquiry requests specific information concerning the complaint, such as a video of the broadcast. As shown in table 2, from 2000 to 2011, FCC sent 242 letters of inquiry for sponsorship identification cases. Next, FCC reviews the information provided by the broadcaster named in the complaint in response to the letter of inquiry. If FCC determines that a violation of the sponsorship identification requirements did not occur or cannot be proven, it can close the case. As with the process of closing a case prior to sending a letter of inquiry, FCC closes the case by making a note in the case file but typically does not inform the broadcaster named in the complaint. From

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2000 through 2011, FCC reported it closed 195 cases with no enforcement action following a letter of inquiry.<sup>56</sup>

In other cases, following the letter of inquiry, FCC may determine that a violation occurred and seek an enforcement action. Since 2000, FCC has issued enforcement actions in 22 sponsorship identification cases with varying types of violations and enforcement actions. For example, in 2011 FCC issued a notice of apparent liability to KMSP-TV in Minnesota, for airing a VNR without identifying the sponsor of the release. KMSP-TV was fined \$4,000. In 2007, FCC issued a notice of apparent liability to Sonshine Family television for airing five different episodes of programs on ten separate occasions, during which an individual discussed the federal “No Child Left Behind” program. Sonshine was fined \$40,000 because the station failed to identify the sponsor of the content. Since 2000, FCC has also agreed to 10 consent decrees with different broadcasters that include the broadcaster’s adopting a plan for compliance and making a voluntary contribution to the United States Treasury. The voluntary payments to the Treasury have varied in amounts, from as little as \$12,000 for a pay-for-play incident to as much as \$4 million a separate but similar incident.

While most complaints do not end with an enforcement action, FCC generally does not communicate with the broadcaster named in the complaint when it closes sponsorship identification investigations. As previously indicated, the letter of inquiry notifies the broadcaster named in the complaint that an investigation is under way but following that communication FCC does not provide any information on the investigation unless the case results in an enforcement action. GAO has previously reported that FCC enforcement actions can help correct identified compliance problems and deter future noncompliance.<sup>57</sup> Similarly, informing a broadcaster under investigation that a matter has been closed could help inform broadcasters about compliant activities. Furthermore, while not specifically related to sponsorship identification issues, in an effort to promote open government and public participation,

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<sup>56</sup>According to FCC, the number of cases closed with a letter of inquiry sent and closed with no enforcement action (195) and the number of cases with a letter of inquiry sent and closed with an enforcement action (22) does not add up to the total number of cases with a letter of inquiry sent (242) because cases may be merged when being resolved.

<sup>57</sup>[GAO-08-125](#) (p.20).

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the administration has developed a plan to increase openness in the government.<sup>58</sup> The plan includes an initiative to enhance enforcement of regulations through further disclosure of compliance information. This builds on previous guidance to use increased disclosure to provide relevant information to help make decisions. It further directs agencies to develop plans for providing greater transparency about their enforcement activities and for making such information available online. However, broadcasters we spoke with confirmed that FCC does not inform them of the status of investigations, and some indicated they currently do not know the status of several investigations. They reported the lack of information about cases and FCC decisions creates uncertainty about the propriety of their past actions. In addition, this practice of not informing broadcasters about the results of investigations does not align with the administration's goals to disclose compliance information to help regulated entities make decisions. As a result, broadcasters might not have sufficient information to determine whether they should modify their practices. This could result in stations unnecessarily editing content because of unwritten regulatory policy or what they assume the policy to be.

According to FCC officials, they do not communicate with the broadcaster named in the complaint because, among other reasons, FCC has no legal obligation to do so. In addition, FCC officials identified several other factors as to why it does not communicate with the broadcaster named in the complaint. First, FCC officials told us it does not want to inform the broadcaster named in the complaint a case was closed because it may want to reopen the case if new evidence presents itself. Second, officials also said that FCC does not want closing a case to be inaccurately interpreted as an endorsement of the action being investigated even if the investigation does not result in a finding of a violation. Finally, officials indicated informing the broadcaster named in the complaint about closure of an investigation would require crafting a letter tailored to fit the unique set of facts and requirements for each case. This would be resource intensive, and according to FCC officials, FCC does not have sufficient resources to implement such practices.

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<sup>58</sup>*The Open Government Partnership: National Action Plan for the United States of America*, September 20, 2011.

FCC sponsorship identification investigations can be lengthy, according to FCC data, taking from 10 months to over 5 years to complete. As shown in table 3, the shortest time period for resolution of a case with an enforcement action, was 10 months. The process to negotiate a consent decree takes longer because it often involves complex negotiations between FCC and a broadcaster. Even when the investigation sends a letter of inquiry and results in no enforcement action, according to FCC officials, the median length of time to close investigations was 38 months for approximately 200 cases. In 2011, FCC set a performance goal to resolve 90 percent of sponsorship identification cases within 15 months. According to FCC officials, FCC missed its goal by a few days although officials could not provide data to support this. Specific goals about timeliness of investigations provide better service for regulated entities, but in 2012 and 2013 FCC removed this goal.

**Table 3: Length of Time for the Investigations and Hearing Division to Close Cases Involving a Letter of Inquiry and Resulting in an Enforcement Action.**

Enforcement action	Total cases	Shortest case (total months)	Longest case (total months)
Notice of apparent liability	4	10	52
Consent decree	10	20	61

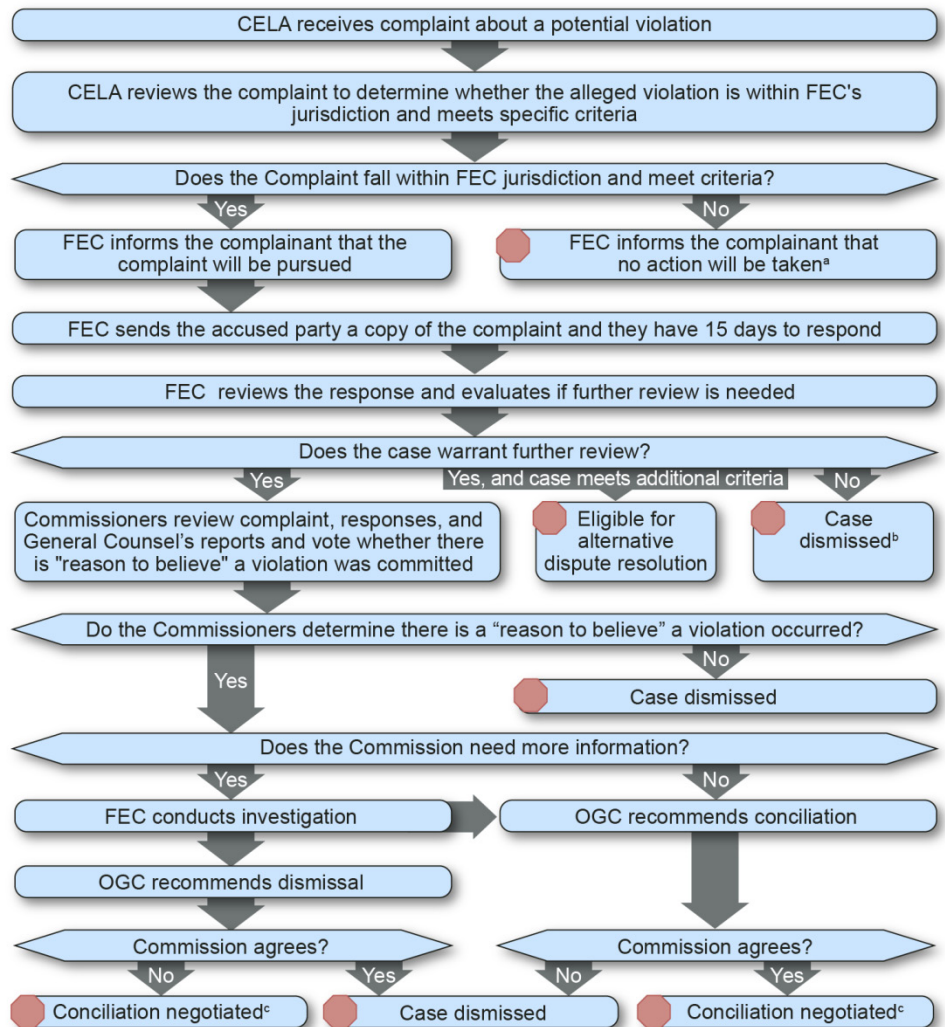
Source: FCC data.

## FEC Investigation and Enforcement Process

As previously stated, paid political advertisements require disclaimer statements and FEC's enforcement process begins typically with a complaint to CELA. FEC receives most disclaimer complaints from the public. As shown in figure 2, complaints proceed through several procedural steps, including a review and vote by the FEC commissioners. CELA reviews the complaint for compliance with required criteria, including ensuring it identifies the parties involved, involves a violation of campaign finance law, and provides supporting documentation. If a complaint does not meet these criteria, CELA notifies the complainant of the deficiencies and informs them that no action can be taken pursuant to the complaint unless those deficiencies are resolved. If the complaint meets the criteria, CELA informs the complainant that they will be notified when the matter has been resolved. From 2000 through May 15, 2012, FEC opened 301 cases based on complaints alleging violations of disclaimer statement requirements. The cases were based on complaints alleging violations of the disclaimer requirements for advertisements using various media, including television and radio, letters, and billboards. For example, in 2006, a complaint alleged a television advertisement for a

congressional candidate in Ohio failed to include an oral statement that identifies the candidate and states that the candidate has approved the communication. Less than 17 percent of the complaints alleging violations of disclaimer statement requirements involved television or radio disclaimer requirements.

**Figure 2: FEC Investigation and Enforcement Process for Disclaimer Complaints**



Source: GAO description of FEC process.

<sup>a</sup>If the complaint does not meet the criteria the complaint may be revised by the complainant. In those situations the complaint would start the process over.

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<sup>b</sup>At this point in the process OGC must review and recommend dismissal and the Commission must agree. If the Commission does not agree to dismiss it would then go to the Commission for a “reason to believe” vote.

<sup>c</sup>If a conciliation agreement is not successfully negotiated the complaint would return to the Commission for a vote on whether there is “probable cause to believe” and could eventually go to litigation. This is not a common occurrence with disclaimer complaints.

Prior to taking any action other than dismissing a complaint, FEC provides the entity named in the complaint at least 15 days to respond and demonstrate that no violation occurred. After the response period, FEC’s Office of General Counsel evaluates the complaint and response and may refer the case to the Alternative Dispute Resolution Office. This office provides solutions for settling cases in lieu of litigation and allows FEC to settle the case early in the enforcement process. While alternative dispute resolution avoids the litigation process, the entity named in the complaint must commit to terms for participation in an alternative dispute resolution, which include setting aside the statute of limitations and participating in negotiations to settle the case, among other conditions. Alternative dispute resolution settlements generally require entities named in the complaints to take corrective action, such as hiring compliance specialists, designating persons as responsible for disclosure, and attending educational conferences. Generally, FEC does not refer cases for alternative dispute resolution that are highly complex but does refer cases that could include incidents where FEC believes there was knowing and willful intent to commit violations or potential violations in areas that FEC has set as priorities.

For cases not recommended for alternative dispute resolution, FEC Commissioners vote before an investigation is initiated. The Federal Election Campaign Act requires that FEC find reason to believe that a person has committed, or is about to commit, a violation as a precondition to opening an investigation into an alleged violation.<sup>59</sup> Should the Commissioners’ vote to find reason to believe a violation occurred, FEC and the alleged violator can negotiate a conciliation agreement that can include a monetary penalty or corrective action. If the Commission needs additional information prior to settling a case using a conciliation agreement, the Enforcement Division conducts an investigation. Violations not resolved with a conciliation agreement can result in the Commission filing suit against the respondents.

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<sup>59</sup>2 U.S.C. § 437g(a)(2).

Our review of FEC data found the disclaimer cases resulted in 330 case outcomes that range from dismissals to civil penalties through conciliation agreements.<sup>60</sup> However, as shown in table 4, of the 38 outcomes that could have ended with a civil penalty—conciliation agreement, alternative dispute resolution agreement, and lawsuit—FEC assessed civil penalties in only 29 cases, 7 of which were related to television or radio disclaimers.

**Table 4: FEC Outcomes for Disclaimer Cases, January 1, 2000, through May 14, 2012**

Outcome	Number of outcomes	Notes	Percentage of total outcomes
Cases dismissed	168	FEC dismissed the cases with no further action	51%
FEC found no reason to believe that disclaimer rules were violated	78	Cases closed with no further action	24%
FEC found a reason to believe that disclaimer rules were violated but took no further action	46	Cases closed with no further action	14%
Conciliation agreement	23	22 of the 23 conciliation agreements included a civil penalty	7%
Alternative dispute resolution agreement	14	7 of the 14 alternative dispute resolution agreements included a civil penalty	4%
FEC filed law suit	1	FEC won the case but the court did not impose a civil penalty	Less than 1%

Source: GAO presentation of FEC data.

Unlike FCC, FEC provides status updates to those involved in investigations and issues reports explaining investigation findings. On December 31, 2009, FEC issued guidelines for tracking and reporting the status and time frames of complaint responses, investigations, and enforcement actions. The guidelines require the FEC's Office of General Counsel and the Office of Alternative Dispute Resolution to provide the Commissioners and affected parties with a status report once per year for cases in which the Commissioners have not yet voted on the recommendation made by the General Counsel or the Office of Alternative Dispute Resolution based on their initial reviews. These status reports include estimate of when the Commissioners will vote.

<sup>60</sup>A single case can involve allegations against multiple parties that can result in multiple outcomes for a single case. Thus, this is why there were only 277 disclaimer cases that closed during the review period but 330 outcomes.



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Also unlike FCC, FEC issues reports explaining its resolution of enforcement cases, including case dismissals. These reports can clarify acceptable and unacceptable practices for the regulated community. For example, during 2007, FEC received a complaint alleging that a candidate had violated television advertisement disclaimer requirements by including an improper disclaimer in the advertisement. The complaint alleged that the printed disclaimer violated the requirements because it did not also state that the candidate approved the advertisement. FEC dismissed the case in an exercise of its prosecutorial discretion to not pursue a violation in part because of partial compliance with disclaimer requirements. In doing so, FEC observed that the verbal disclaimer identified the candidate and informed the public of the candidate's approval of the advertisement and the printed disclaimer informed the public that the candidate's committee paid for the advertisement.<sup>61</sup>

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## Conclusions

FCC receives hundreds of thousands of complaints related to all areas it regulates but there have only been a small number of sponsorship identification cases. Of the sponsorship identification cases opened by FCC, only a handful have resulted in enforcement actions against broadcasters, and many of those enforcement actions were for fines of less than \$100,000. Most broadcasters told us they generally have no problems meeting the sponsorship identification requirements because they have processes in place to review all content and ensure it has a sponsorship announcement if needed.

However, FCC guidance for the sponsorship identification requirements has not been updated in nearly 50 years to address more modern technologies and applications. We have previously reported that retrospective reviews of regulations can change behavior of regulated entities.<sup>62</sup> Similarly, a review and update of FCC guidance that discusses outdated technologies could result in changes in behavior. One example discusses a broadcaster's use of expensive kinescope prints as part of a story on a controversial issue. The example directs such a use should receive a sponsorship announcement because of the controversial issue being discussed and the cost of the film. Yet, today, because the expense of providing film is no longer relevant, broadcasters may be unsure on

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<sup>61</sup>FEC, *Matter under Review 5834: Darcy Burner for Congress*, June 28, 2007.

<sup>62</sup>[GAO-05-939T](#)

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whether the concern is the expense of the film or the controversial issues discussed in the film. FCC should clarify its guidance to clearly address how, when content is provided with no money or payment in-kind and it does not discuss a controversial issue, the situation should be treated. Furthermore, FCC should clarify its examples to direct broadcasters' treatment of content provided with no money or payment in-kind that does not highlight a product or brand beyond the "reasonably related" standard, such as a VNR. FCC has indicated VNRs must have a sponsorship announcement; however, FCC's enforcement of VNRs has not found fault with the use of the VNR but rather when the VNRs focus on a specific product. Stakeholders disagree on the use of VNRs. FCC's enforcement actions and guidance do not distinguish how to act when portions of VNRs are used or when a VNR does not disproportionately focus on a product or brand. FCC indicated in 2005 that it would issue a report or take other necessary action regarding this issue and updating the guidance could serve this purpose.

Unlike FEC in its enforcement of disclaimer requirements, FCC's enforcement process for sponsorship identification cases generally does not inform the broadcasters or cablecasters named in the complaint when investigations have been closed. In cases where a letter of inquiry has been sent, the broadcaster or cablecaster must fulfill its responsibility and provide FCC with the requested information. Yet, according to FCC, because they have no legal obligation to inform broadcasters that an investigation has concluded, it typically does not provide that information. By providing this information, for cases in which FCC conducts a full investigation and determines the broadcaster's actions not to be a violation of requirements, the outcome could provide guidance to the broadcaster of allowable activities. Even in cases where FCC closed a case with no investigation, informing the broadcaster that the case is closed, even if it may be reopened in the future, would support government-wide goals of greater transparency and sound oversight practices.

Finally, while in 2011 FCC had specific goals related to the timeliness of completing sponsorship identification investigations, it was unable to provide data supporting how it met those goals, and in subsequent years it withdrew the goals. In an effort to achieve greater openness, the timeliness of reporting and publishing information has been identified as an essential component. By re-establishing goals about completing sponsorship identification investigations in a timely manner, FCC would support broader government goals of completing actions in a timely manner to better serve its constituencies and regulated entities.

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## Recommendations

We recommend that the Chairman of the FCC take the following three actions:

- To provide clarity on how sponsorship identification requirements apply to activities not directly addressed by FCC's current guidance, such as the use of video news releases, and to update its guidance to reflect current technologies and recent FCC decisions about video news releases, FCC should initiate a process to update its sponsorship identification guidance and consider providing additional examples relevant to more modern practices.
- To improve its transparency concerning which investigations are ongoing or have been concluded and to provide guidance on allowable activities, FCC should communicate the closure of all sponsorship identification investigations with the broadcaster named in the complaint after a letter of inquiry was sent. The letter should indicate the case has been closed, but in doing so, FCC could note that closing the case does not signify an endorsement of the actions that were being investigated and that the case could be reopened.
- To improve timeliness of investigations and ensure, when possible, that investigations are completed in an expeditious manner, FCC should develop goals for completing sponsorship identification cases within a specific time frame and develop a means to measure and report on how well it meets those goals.

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## Agency Comments and Evaluation

We provided a draft of our report to FCC and FEC for review and comment. FCC provided comments in a letter dated January 23, 2013, that is reprinted in appendix II. Overall, FCC indicated that it will consider our recommendations and how to address the concerns discussed in our report.

In response to our second recommendation—to communicate the closure of investigations with the broadcaster named in the complaint when a letter of inquiry has been sent—FCC identified a number of issues, many of which were cited in our report. Specifically, FCC has concerns that reporting the closing of a case may be misinterpreted as an endorsement of a broadcaster's actions. FCC further noted its limited number of Enforcement Bureau staff available to work on the large portfolio of cases could and that it could not dedicate the necessary time to craft closing letters tailored to each case. However, we feel that FCC could create a standard letter—stating that a case has been closed, that the closing of the case does not endorse the actions of the broadcaster named in the complaint, and that the case could be reopened because of new evidence. We believe such a standard letter would require minimal

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resources to create and send, yet would contribute to greater transparency. FCC also noted that it is reluctant to single out sponsorship identification matters for special treatment in terms of closure letters but are also concerned about the even greater impact on resources if closure letters are instituted on a broad basis. However, we believe that this could serve as a pilot program for greater adoption of closure letters for other types of FCC investigations. In response to FCC's concerns, we updated our recommendation to demonstrate how a closure letter could be worded to indicate the closure did not indicate an endorsement of the actions being investigated and that a case could be reopened.

Both FCC and FEC provided technical comments that were incorporated as appropriate. When providing its technical comments, FCC discussed the treatment of VNRs indicating that although the 2005 Public Notice states VNRs generally must have a sponsorship announcement, recent cases involving VNR complaints have resulted in FCC treating VNRs similar to other programming subject to the sponsorship identification requirements. We reflected this change in the report, and added a reference to FCC decisions about VNRs to our first recommendation.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of his letter. At that time, we will send copies of this report to the Chairman of the Federal Communications Commission, and the Chair of the Federal Election Commission. We will also make copies available to other on request. In addition, the report will be available on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any question, please contact me at (202) 512-2834 or [goldsteinm@gao.gov](mailto:goldsteinm@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff that made major contributions to this report are listed in appendix III.



Mark L. Goldstein  
Director, Physical Infrastructure Issues

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# Appendix I: Objectives, Scope, and Methodology

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We were asked to review requirements for identifying the sponsors of broadcast commercial and political advertisements and to determine the extent to which agencies responsible for administering them address complaints alleging violations of the requirements. Specifically, we (1) describe the sponsorship identification requirements and guidance for commercial and political content, the federal election disclaimer requirements, as well as stakeholders' views of these requirements and guidance and (2) assess how and to what extent FCC and FEC address sponsorship complaints through each agency's enforcement process.

To describe the sponsorship identification requirements and guidance as well as stakeholders views on these requirements and guidance, we reviewed sponsorship identification statutes and regulations, including the Communication Act of 1934, as amended<sup>1</sup>, and the Federal Election Campaign Act.<sup>2</sup> We also reviewed relevant academic literature and interviewed FCC and FEC officials to gather their understanding of the governing statutes and regulations, how they have changed, their purposes, and how they apply to various media platforms, including conventional and embedded advertising and video news releases, and political and controversial advertisements. We conducted interviews with over one-dozen stakeholders selected because they are either subject to sponsorship identification requirements, have monitored broadcasters' compliance with sponsorship identification requirements, or contributed research to the topic. These stakeholders' interviews were conducted with representatives from the four major television broadcast networks as well as two additional groups that own television and radio stations. We also interviewed representatives from a consumer watchdog organization, academics, and trade associations that represent broadcasters and news directors and producers. These interviews were conducted to obtain views on the effect of statutes and regulations and possible changes to them.

To determine how and to what extent FCC and FEC address sponsorship identification complaints, we interviewed FCC and FEC officials responsible for receiving, processing, and investigating complaints. In

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<sup>1</sup>Act of June 19, 1934, ch. 652, 48 Stat. 1064, (Communications Act), codified in title 47, United States Code.

<sup>2</sup>Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972), as amended, codified as 2 U.S.C. ch. 14.

addition, we analyzed relevant FCC and FEC documents describing agency methods and processes for identifying violations, receiving sponsorship identification complaints, communicating with the complainant and subject of the complaint, initiating and conducting investigations, and taking enforcement actions. We also analyzed relevant FCC and FEC data to describe sponsorship identification complaints, investigations, and enforcement actions. We analyzed FCC data showing all complaints received by FCC from 2000 through June 2012 to determine the percentage of complaints that were sponsorship identification complaints, FCC actions in response to sponsorship identification complaints, and the time frames for resolving these complaints. We determined the FCC data to be sufficiently reliable for our purposes based on previous analysis of the FCC database and based on current interviews. To determine the extent to which FCC addresses sponsorship identification complaints, we analyzed all FCC enforcement actions pursuant to these complaints from 2000 through June 2012. We also analyzed FEC data showing all complaints received by FEC from 2000 through May 15, 2012, to determine the percentage of complaints that were disclaimer statement complaints, FEC actions in response to disclaimer statement complaints, and the time frames for resolving these complaints. The FEC data were not materially relevant to our findings and so while we asked a series of questions about the internal controls and data reliability, we did not make a final determination of its reliability. To determine the extent to which FEC addresses disclaimer statement complaints, we analyzed all FEC disclaimer statement cases, including cases dismissed by FEC, and all FEC disclaimer statement enforcement actions from 2000 through May 15, 2012. We also analyzed FCC and FEC strategic plans describing the agencies' respective goals for sponsorship identification and disclaimer statement complaint processing and enforcement. In addition, we analyzed FCC and FEC data and documents describing whether the agencies met their respective goals. We interviewed FCC and FEC officials about their goals and their progress toward achieving them.

We conducted this performance audit from March 2012 through January 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Comments from the Federal Communications Commission

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Federal Communications Commission  
Washington, D.C. 20554

January 23, 2013

Mark Goldstein  
Director, Physical Infrastructure Team  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Goldstein:

Thank you for the opportunity to respond to the draft Government Accountability Office (GAO) report addressing the Federal Communications Commission's (Commission or FCC) implementation of the sponsorship identification requirements in the Communications Act of 1934, as amended, and the Commission's Rules. These requirements for broadcast stations and cable operators are grounded in the principle that listeners and viewers deserve to know who is trying to persuade them.

The GAO report finds that broadcasters whom GAO interviewed for this report indicate that the guidance provided by the Commission regarding the sponsorship identification requirements is helpful and that they generally have no problems meeting these requirements. The report also acknowledges that the Commission receives hundreds of thousands of complaints concerning all the areas that it regulates, a small percentage of which include allegations regarding sponsorship identification requirements. Of those complaints including such allegations, the report also indicates that the vast majority are determined not to require any enforcement action by either the Commission's Consumer and Governmental Affairs Bureau (CGB) or Enforcement Bureau (EB).

The report recommends that the FCC initiate a process to update its sponsorship identification guidance and consider providing additional examples relevant to modern practices, including the use of video news releases (VNRs). We are pleased that GAO noted that the Commission has publicly issued documents through the years regarding its sponsorship identification regulations, including public notices and decisions regarding complaints filed with the Commission. In fact, the report references a recent decision adopted by the Commission's Enforcement Bureau in 2011, which resolved a complaint concerning a station's on-air use of a VNR, which are prepackaged news stories provided to stations or cable operators by outside entities. The decision sets forth the circumstances of the case and clearly and thoroughly explains why the station's failure to identify the sponsor of the subject VNR violated the Commission's Rules. While we believe that these documents have provided useful guidance to our regulatees regarding compliance with our sponsorship identification rules, we appreciate the GAO's recommendation and will review this area to determine if further guidance is necessary.

The GAO report recommends that the FCC communicate the closure of sponsorship identification investigations with the broadcaster named in the complaint if a letter of inquiry was sent to the broadcaster. As the report acknowledges, the FCC does not routinely communicate case closings for several reasons, including the resources associated with preparing such communications; the risk of misinterpretation by the recipient of the significance of the closing; and the chance that a case may be re-opened if we receive additional information or further complaints that support enforcement action.

These points remain valid reasons for generally avoiding case closing letters. We are particularly concerned that communicating case closures may be viewed by the recipient as an endorsement of its conduct. Cases may be closed for reasons other than a finding that the subject of an investigation complied with the law, e.g., insufficient evidence, expiration of the statute of limitations, competing priorities, etc. Such misunderstandings would be counter to GAO's concern - and ours - that entities subject to sponsorship identification requirements be accurately informed about the propriety of future actions.

Moreover, as acknowledged in the GAO report, EB has extremely limited staff who work on a large variety of cases beyond the sponsorship identification matters. Crafting closing letters tailored to address the unique circumstances of each sponsorship identification case would require diverting staff resources that might otherwise be directed to investigating and resolving cases that also represent critical public interest concerns, including matters affecting safety of life or property. In addition, we are reluctant to single out sponsorship identification matters for special treatment in terms of closure letters but are also concerned about the even greater impact on resources if we institute closure letters on a broad basis.

Nevertheless, we appreciate GAO's suggestions and share their emphasis on the government-wide goals of greater transparency and sound oversight practices. We are reviewing our practices with respect to communications with investigative targets, as well as considering how other similar enforcement agencies handle case closure communications in analogous circumstances.

We appreciate the suggestion to develop specific goals for completion of sponsorship identification cases and to improve monitoring and measurement for reporting purposes. As described in the report, the complexity of these cases varies widely, ranging from those complaints that can be closed by CGB before referral to EB; to those that are referred but can be closed without further examination; and further compared to those that require a full and detailed investigation, involving letters of inquiry, factual and legal analysis, interviews, and drafting orders or negotiating consent decrees. It is precisely because we recognize the importance of these cases that we devote time to identify promising complaints and pursue them as individual circumstances warrant. This complexity and variety makes it difficult to establish a timeframe that is uniformly appropriate for all cases, or even as an average timeframe.

As the draft report also recognizes, sponsorship identification cases are a tiny fraction of our responsibilities. They comprise roughly one percent of the cases handled by EB's Investigations and Hearings Division. Such cases constitute an even smaller percentage of EB's caseload overall and merely .01% of the complaints received at the FCC as a whole. Because of



limited staff resources, the same attorneys and analysts responsible for the investigation and resolution of sponsorship identification matters also may have other time-sensitive assignments. Consequently, our allocation of resources must account for competing public interest priorities; for example, addressing cases involving public safety and other urgent issues may take precedence over a sponsorship identification matter. Nevertheless, we respect and value GAO's suggestions and will consider how to further enhance our performance goals and measure our progress going forward. We expect that the implementation of EB's new and more robust database (the Enforcement Bureau Automated Tracking System or EBATS) will improve the tracking and reporting process.

Once again, we appreciate GAO's recommendations and thoughtful review of our sponsorship identification requirements. We are considering the recommended actions and how the concerns you raise may best be addressed. We are, for example, already improving our ability to measure and report on goals through the ongoing implementation of the EBATS database. We will review the other areas you have highlighted to determine what additional action may be appropriate consistent with all of our responsibilities.

Sincerely,



William T. Lake  
Chief, Media Bureau

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

Mark Goldstein (202) 512-2834 or [goldsteinm@gao.gov](mailto:goldsteinm@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Ray Sendejas, Assistant Director; Eric Hudson; Bert Japikse; Michael Mgebhoff; Amy Rosewarne; and Andrew Stavisky made key contributions to this report.

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