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To: All Broadcast Clients

August 14, 2008

FEDERAL ELECTION COMMISSION ADVISES THAT EVEN SHORT BROADCAST ADS MUST INCLUDE THE REQUIRED AUDIO “STAND BY YOUR AD” DISCLAIMER

In a recent advisory opinion, the Federal Election Commission (“FEC”) confirmed that advertisements as short as 10- and 15-seconds in length must carry the full spoken “stand-by-your-ad” disclaimer required by the Federal Election Campaign Act of 1971 (the “Act”) and the FEC’s rules.

The Act and the FEC’s rules require that public communications made by any person, political action committee (“PAC”), or party that expressly advocate the election or defeat of a clearly identified Federal candidate must include specific disclaimers. Written disclaimers must be presented in a clear and conspicuous manner to give the viewer adequate notice of the identity of the person that paid for and/or authorized the communication. Audio disclaimers must be spoken clearly. The general FEC requirements for these disclaimers are summarized below.

THE FEC “STAND BY YOUR AD” DISCLAIMER REQUIREMENTS

Communication Authorized By Candidate

If the communication is paid for and authorized by a candidate, or by an authorized committee of a candidate, the required disclaimer must clearly state that the communication has been paid for by the candidate or the candidate’s authorized

committee. If the communication is authorized by a candidate, or by an authorized committee of a candidate, but is paid for by any other person, the disclaimer must clearly state that the communication is paid for by such other person and is authorized by such candidate, or authorized committee. If a communication is broadcast on radio or television, it must also include an *audio* disclaimer that identifies the candidate and states that he or she has approved the communication. If the communication is broadcast on television, the audio disclaimer must be conveyed either through an unobscured, full screen view of the candidate making the statement, or through a voice-over, accompanied by a clearly identifiable photograph or similar image of the candidate, and must also include a similar statement that must appear in clearly legible writing at the end of the communication.

Communication Not Authorized By Candidate

If a communication is not authorized by a candidate, or by an authorized committee of a candidate, the required disclaimer must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and indicate that the communication is not authorized by any



candidate or candidate's committee. If a communication is broadcast on radio or television, it must also include the following audio disclaimer: "XXX is responsible for the content of this advertising." If the communication is broadcast on television, the audio disclaimer must be conveyed by an unobscured, full-screen view of a representative of the PAC making the statement, or by voice-over, and must also include a similar statement that must appear in clearly legible writing at the end of the communication.

THE RECENT FEC DECISION

The Club for Growth PAC plans to purchase television time in 2008 for 10- and 15-second ads that expressly advocate the election or defeat of clearly identified Federal candidates. The advertisements will not be coordinated with or authorized by any candidate, candidate's committee, or political party. Due to the brevity of the advertisements, the PAC wanted to dispense with, or truncate, the audio "stand-by-your-ad" disclaimer, and requested an advisory opinion on the matter from the FEC.

The FEC determined that the PAC's 10- and 15-second announcements must carry the full spoken "stand-by-your-ad" disclaimer required by the Act and FEC rules, despite the brevity of the ads. The FEC noted that when Congress added the spoken "stand-

by-your-ad" disclaimer requirement for television and radio advertisements, it did not create an exception for commercials of 10 or 15 seconds or any other duration. Further, the FEC cited an earlier case in which *Metro Networks* had requested that live traffic reports broadcast from a helicopter be exempt from the "stand-by-your-ad" disclaimer requirement because it was physically impossible, considering the limitations of the broadcasting equipment used, to include any statements spoken by the candidate who paid for the ad. The FEC determined that someone other than the candidate (in this case, the airborne reporter) could deliver the spoken statement, but did not allow Metro Networks to dispense with, or shorten, the spoken "stand-by-your-ad" disclaimer.

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Please note that the **lowest unit charge period** applicable to political spots which are "uses" as defined by the FCC for the upcoming November 4, 2008 general elections begins on **September 5, 2008**. It is important that your political disclosure statements and lowest unit rate cards are finalized as soon as possible and reviewed by counsel. If you have any questions regarding the FEC's rules, the FCC's political rules, or any other elections-related matter, please contact our office.

Leventhal Senter & Lerman PLLC

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