



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

April 30, 2004

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2004-10

Tom Fanning  
National Director of Marketing  
Metro Networks Communications, Inc.  
8403 Colesville Road, 15<sup>th</sup> Floor  
Silver Spring, MD 20910

Dear Mr. Fanning:

This responds to your letters dated January 27, 2004 and March 15, 2004, on behalf of Metro Networks, Inc. (“Metro Networks”) requesting an advisory opinion concerning the application of the “stand by your ad” disclaimer requirements in the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations to Metro Networks’ “live read” radio communications paid for by Federal candidates.

***Background***

Metro Networks is a national company that provides more than 2,000 radio stations throughout the United States with live traffic, news, sports and weather reports. In exchange for providing these live reports, Metro Networks generates revenue by including a ten-second “live read” sponsorship message that is sold by Metro Networks and read by a Metro Networks reporter at the end of the traffic, news, sports, or weather report. An “opening mention” precedes the actual report and also identifies the person purchasing the sponsorship message.

You intend to market the ten-second sponsorship messages to Federal candidates, and you provide the following example of a sponsorship message paid for by a Federal candidate and imbedded in a traffic report:

*[Opening Mention:]*

*This traffic report is brought to you by the committee to elect Candidate ABC.*

*[Traffic Report:]*

*Traffic is jammed on I-95 heading to the Wilson Bridge . . . [rest of traffic report].*

*[Live read 10-Second Sponsorship Message:]*

*Candidate ABC has waged war on the terrorists who want to take away America's liberties. But the job is not done. Support Candidate ABC for re-election. Paid for by the committee to re-elect candidate ABC.]*

You indicate that the live broadcasting of the reports with embedded sponsorship messages increases the value of the sponsorship messages to Metro Networks' sponsoring clients. You assert, however, that the live nature of the reports and the limitations of your broadcasting equipment would make it "physically impossible" for Metro Networks to include any statement spoken by a candidate himself or herself. You explain that the reports are "produced live in [Metro Networks] studios and from mobile units and aircraft with [Metro Networks] reporters interacting live in real time" with the "on air talent" of radio stations. You indicate that a Metro Networks reporter would be able to read a statement for a sponsoring candidate, but is not equipped to play a recorded voice of a candidate.

### ***Question Presented***

Under the facts and circumstances described above, may a Metro Networks reporter, rather than the Federal candidate authorizing a sponsorship message, read the required "stand by your ad" statement?

### ***Legal Analysis and Conclusions***

Yes, a Metro Networks reporter may read the "stand by your ad" statement for the reasons explained below.

BCRA expanded the Act's disclaimer requirements applicable to radio advertisements authorized by Federal candidates. *See* 2 U.S.C. 441d(d)(1)(A); BCRA, sec. 311(2), 116 Stat. at 105-06; 11 CFR 110.11. Because you request guidance regarding radio messages authorized by Federal candidates, the sponsorship message you describe in your request would require a disclaimer that complies with the "general content requirements" of 11 CFR 110.11(b)(1), the

“specifications for all disclaimers” in 11 CFR 110.11(c)(1), and the “specific requirements for radio and television communications authorized by candidates” in 11 CFR 110.11(c)(3). Radio advertisements authorized by a candidate must include “an audio statement by the candidate” that identifies the candidate and states that he or she has approved the communication. 11 CFR 110.11(c)(3)(i). This is colloquially known as a “stand by your ad” requirement because it directly associates the candidate with the message he or she has authorized. There is no requirement that the message be read live in real time by the candidate, but the candidate must speak the required authorization statement. *Id.* For example, one acceptable statement provided in the regulations is: “My name is [insert name of candidate]. I am running for [insert Federal office sought], and I approved this message.” 11 CFR 110.11(c)(3)(iv)(B).

The Commission, however, has long recognized that in certain circumstances it is impracticable to provide a full disclosure statement in the prescribed manner. An exception at 11 CFR 110.11(f)(1)(ii) covers skywriting, water towers, wearing apparel, or other means of displaying an advertisement when full application of the disclaimer requirement would be “impracticable.”

In Advisory Opinion 2004-1, addressing the “stand by your ad” requirement for a television communication authorized by two Federal candidates, the Commission permitted one candidate to speak for both candidates so long as the approval statement conveyed that both candidates approved the advertisement. *See also* Advisory Opinion 1994-13 (pre-BCRA video slate advertisement featuring 10 different candidates and ballot measures required only one disclaimer indicating that the slate was “paid for by the candidates and committees identified in the slate,” rather than a number of separate disclaimer statements.)

The specific physical and technological limitations you describe do not make it impracticable to include a disclaimer at all. Rather, the impracticability caused by these limitations extends only to one particular aspect of the disclaimer otherwise required by section 110.11, specifically that the provision requiring the approving candidate himself or herself to speak the “stand-by-your-ad” statement. 11 CFR 110.11(c)(3). Thus, the Commission concludes that a disclaimer is required, but that it would be permissible for a Metro Networks reporter to speak for the candidate, or candidates, who authorized the advertisement.<sup>1</sup> As in Advisory Opinion 2004-1, this approach is practical and as faithful as possible to the “stand by your ad” statute while avoiding unnecessary burdens on political speech that could result from a rigid application of all disclaimer provisions in all instances.

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<sup>1</sup> The Commission assumes for the purposes of this request that the Federal candidate would not be physically present with the reporter, and thus would not be available to read the statement.

For the purposes of the script you provide in your request, the statement provided in the regulations as an example at 11 CFR 110.11(c)(3)(iv)(B) could be adapted and, in combination with the statement required by 11 CFR 110.11(b), read by the Metro Networks reporter as follows: “Paid for by the committee to re-elect candidate ABC. ABC approved this message.”

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Bradley A. Smith  
Chairman

Enclosures (AOs 2004-1, 1994-13)