

December 14, 2007

Kevin J. Martin, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Mr. Chairman:

On behalf of the American Association of Advertising Agencies, the American Advertising Federation, and the Association of National Advertisers, we are writing in response to an item listed on the agenda for the December 18 Commission meeting entitled "Sponsorship Identification Rules and Embedded Advertising."¹ As associations that represent the interests of media companies, advertising agencies, and advertisers, our members are keenly interested in any FCC proceeding on this matter, and we welcome the opportunity to provide input to the Commission on this important issue. At the same time, since there has not been a previous inquiry or opportunity for public comment, we believe it would be prudent for the Commission to begin with a Notice of Inquiry rather than a Notice of Proposed Rulemaking.

The issues implicated by this proceeding are varied and complex, including such things as current practices of product placement and integration, the significant economic implications for free media, the extent of the Commission's statutory and constitutional authority, and sound public policy considerations. Accordingly, we believe that the Commission's consideration of these issues would benefit from having a fact gathering proceeding first to determine whether problems exist before fashioning possible regulatory solutions. In this regard, the FTC staff decision denying a request to change FTC guidelines governing product placement is instructive. See Letter from Mary K. Engle, Associate Director for Advertising Practices, Federal Trade Commission to Gary Ruskin, Commercial Alert, February 10, 2005 (<http://www.ftc.gov/os/closings/staff/050210productplacemen.pdf>). In that instance, the FTC declined to take action in the absence of evidence that product placement was unfair, deceptive, or resulted in harm to consumers.

We understand that the issuance of an NPRM does not commit the agency to adopt rules and that there would be an opportunity for interested parties to provide comment. However, initiation of this proceeding by rulemaking rather than as an inquiry suggests a presumption by the Commission that regulatory action is necessary. In a matter of this importance, we believe that the FCC should not presume its conclusion in advance of the necessary factfinding. In the interest of sound decisionmaking processes, we think it is essential that any inquiry must be conducted with all due deliberation and without a presumption in one direction or another.

¹ See Commission Meeting Agenda (released December 11, 2007). Although Section 1.1203 of the Commission's rules generally precludes contact with decisionmaking personnel after the meeting agenda is released, the Commission waived the "sunshine period" until close of business on December 14, 2007.

We look forward to working with the Commission as it seeks to gather information on this issue.

Sincerely,

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cc: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Robert M. McDowell
Commissioner Deborah Taylor Tate