ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF BROADCASTERS, MULTICULTURAL MEDIA, TELECOM AND INTERNET COUNCIL, INC., and NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS,	)	
Petitioners,	)	Case No. 21-1171
v.	)	
FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA,	)	
Respondents.	)	

MOTION FOR STAY PENDING JUDICIAL REVIEW

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INTRODUCTION

Pursuant to Federal Rules of Appellate Procedure 18 and 27, the National Association of Broadcasters, the Multicultural Media, Telecom and Internet Council, Inc., and the National Association of Black Owned Broadcasters (collectively, "Petitioners")[1] hereby request that the Court stay the effective date of the FCC's Report and Order, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, 36 FCC Rcd 7702 (2021) ("Order") pending the completion of judicial review.[2] Petitioners sought a stay of the Order pending appeal from the FCC on September 10, 2021. The FCC denied the request on December 8, 2021, and thus Petitioners now seek relief in this Court.[3]

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[1] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of broadcasters before Congress, the Commission, other federal agencies, and the courts. The Multicultural Media, Telecom and Internet Council, Inc. is a national nonprofit and non-partisan organization dedicated to promoting and preserving equal opportunity and civil rights in the mass media, telecommunications, and broadband industries. The National Association of Black Owned Broadcasters is a national not-for-profit organization dedicated to increasing ownership of broadcast radio and television stations and other media by African Americans and other people of color. Each Petitioner participated in the proceedings below. Petitioners' counsel notified Respondents' counsel via telephone that this motion would be filed. Respondents intend to file an opposition.

[2] The Order is attached as Exhibit 1.

[3] *See* Exh. 2, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Order Denying Stay Request, DA No. 21-1518 (Dec. 8, 2021).

This case satisfies the requirements for a stay. For all leased programming (even church services), the Order imposes new rules requiring every television and radio broadcaster to inquire whether the lessee or someone else in the production/distribution chain is a foreign governmental entity; if the answer is no, investigate government databases to determine that representation's accuracy; document those investigations; and announce any foreign governmental sponsor's identity and retain records of those announcements. Petitioners are likely to succeed on the merits because the Order flatly contravenes Section 317(c) of the Communications Act of 1934, as construed by this Court, and unduly burdens speech in violation of the First Amendment. Petitioners' members will suffer irreparable harm absent a stay. The Order will require many members to spend tens or hundreds of thousands of dollars to hire and train employees to conduct the required investigations, engage counsel to review their leases, and negotiate with lessees to bring existing leases into compliance. These unrecoverable costs unreasonably and unnecessarily burden the operations, resources, and programming arrangements of broadcast stations across the country. The Order will cause further irreparable harm to Petitioners' members and constituents by both compelling and chilling speech contrary to the First Amendment.

The balance of hardships and the public interest also favor a stay. The Commission's perversely designed rule addresses a phantom evil never shown to

exist: namely, that foreign governmental entities *already registered* with the U.S. Government who sponsor programming on leased airtime would refuse to disclose their status to broadcasters (even when under an independent, criminally enforceable statutory obligation to do so). Certainly, the likely harm from requiring broadcasters to undertake fruitless investigations for thousands of lease agreements—the vast majority of which have no possible connection to foreign governmental entities—outweighs the benefit of the rule. A stay is particularly justified because, with merits briefing partially completed and the rule not yet effective, the stay will likely last only a few months.

BACKGROUND

The Communications Act has long required broadcasters to identify on air the person that has paid for or furnished any matter being broadcast by the station. *See* 47 U.S.C. § 317(a)(1). A broadcaster must "exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement" required. *Id*. § 317(c).

In addition, the Foreign Agents Registration Act ("FARA") promotes transparency so that Americans are aware of foreign governmental attempts to

sway their opinions.[4] FARA requires certain agents to periodically disclose their relationship with, and activities on behalf of, foreign principals. *See* 22 U.S.C. §§ 611-621. Under FARA, physical or electronic "informational materials" that an agent disseminates for its foreign principal must conspicuously identify both agent and principal and inform audiences they can obtain more information from the DOJ. *See* 22 U.S.C. § 614(a)-(b); 28 C.F.R. §§ 5.400, 5.402. Willful violation of FARA or its implementing regulations subjects the offender to criminal sanctions. *See* 22 U.S.C. § 618(a)(1).

The Order under review modifies the FCC's sponsorship identification rules to require broadcasters to provide new standardized on-air and public inspection file disclosures when they air programming sourced from certain foreign governmental entities[5] pursuant to a "lease" of airtime. Exh. 1 ¶ 1. A "lease" is "any arrangement in which a licensee makes a block of broadcast time on its station available to another party in return for some form of compensation" regardless of "what those agreements are called, how they are styled, and whether

[4] *See* Department of Justice, FARA Homepage, https://www.justice.gov/nsd-fara.

[5] A foreign governmental entity is: 1) a "government of a foreign country" as defined by FARA; 2) a "foreign political party" as defined by FARA; 3) an entity or individual registered as an "agent of a foreign principal" under FARA, whose "foreign principal" has the meaning given such term in FARA section 611(b)(1) and that is acting as an agent of such "foreign principal"; or 4) a "U.S.-based foreign media outlet," as defined in section 722 of the Communications Act, which has filed a report with the Commission. Exh. 1 ¶ 14.

they are reduced to writing." *Id.* ¶¶ 24, 27. The Order exempted from this definition only "traditional, short-form advertising," *id*. ¶ 28, and thus covers longer "infomercials."

Beyond disclosure requirements, the Order requires all broadcasters to investigate independently whether a lessee or other party in the programming production/distribution chain is a foreign governmental entity, even if the broadcaster has no reason to believe the sponsor is affiliated with a foreign government. Broadcasters that engage in any lease must undertake the following steps at every lease execution and renewal: 1) inform the lessee of the foreign sponsorship disclosure requirement; 2) inquire of the lessee whether it qualifies as any of the four types of "foreign governmental entity"; 3) inquire of the lessee whether it knows if anyone in the chain of producing/distributing the programming to be aired under the lease, or a sub-lease, is a foreign governmental entity and has provided any inducement to air the programming; 4) if the answer to those inquiries is no, independently investigate the lessee's status using the DOJ's FARA database and the Commission's U.S.-based foreign media outlets reports; and 5) memorialize the inquiries and investigations to document compliance. *See id.* ¶¶ 38-41, App. A (proposed 47 C.F.R. § 73.1212(j)). Broadcasters must bring leases existing at the effective date of the rule (which has not yet been determined) into compliance within six months. *Id.* ¶¶ 42-43, 48.

On June 17, 2021, the Commission published the Order in the *Federal Register* as a final rule. *See* 86 Fed. Reg. 32221. On July 21, 2021, the Commission sought comment on the Order's information collection requirements pursuant to the Paperwork Reduction Act of 1995 ("PRA"). *See* 86 Fed. Reg. 38482. On August 13, 2021, Petitioners timely petitioned this Court to review the Order.

STANDARD OF REVIEW

The Court will stay the effectiveness of an order pending judicial review when the petitioner demonstrates: (1) it is likely to prevail on the merits of its petition for review; (2) it will suffer irreparable harm absent a stay; (3) a stay will not injure other parties; and (4) a stay serves the public interest. The Court balances these factors, with no single factor being dispositive.[6]

ARGUMENT

I. Petitioners Are Likely to Prevail on the Merits

A. The Order's Independent Investigation Requirements Violate Section 317(c) of the Communications Act

"[W]hen a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished." *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). "All questions

[6] *See Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc*., 559 F.2d 841, 843 (D.C. Cir. 1977).

of government are ultimately questions of ends and means." *Nat'l Fed'n of Fed. Emps. v. Greenberg*, 983 F.2d 286, 290 (D.C. Cir. 1993). "Agencies are therefore bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes." *Colo. River Indian Tribes v. Nat'l Gaming Comm'n*, 466 F.3d 134, 139 (D.C. Cir. 2006) (internal quotation marks omitted). "[O]nly Congress can rewrite" the Communications Act. *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 376 (1986).

Here, Congress has spoken exactly to the disclosure it intended broadcasters to make, and the diligence that they must perform to gather the necessary information. When a station broadcasts any matter for "which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person." 47 U.S.C. § 317(a). Section 317(c) defines the obligation of licensees in obtaining information for that disclosure: "The licensee of each radio station shall exercise reasonable diligence *to obtain from its employees, and from other persons with whom it deals directly* in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section." *Id.* § 317(c) (emphasis added).

This Court has interpreted Section 317(c) in accord with its plain language, holding that "the language of section 317, of itself, does not" "impose *any burden* of independent investigation upon licensees." *Loveday v. FCC*, 707 F.2d 1443, 1454 (D.C. Cir. 1983) (emphasis added). The Court emphasized that (outside of the duty to gather information from its own employees) a licensee could rely strictly on information received from those with whom it dealt directly.

> In contrast to subsection (a) (1), subsection (c) refers only to persons with whom a station deals directly and thus indicates that the station may rely on the data provided by such a person to determine whether the party paying is the real party in interest. In its terms, then, the "reasonable diligence" required by subsection (c) does not mandate a full-scale investigation by a broadcaster and *is satisfied by appropriate inquiries made by the station to the party that pays it for the broadcast*.

Id. at 1449 (emphasis added).

The Court buttressed its findings by noting that Congress, in enacting the original sponsorship identification requirement in 1927, "imposed only a very limited obligation upon broadcasters: to announce that a program had been paid for or furnished to the station by a third-party and to identify that party." *Id.* at 1451. Nothing in the legislative history or extrinsic evidence, the Court declared, "suggests that Congress or the legal community believed that [the Act] required broadcasters to undertake investigations." *Id.* Moreover, the Commission's implementing regulations prior to enactment of Section 317(c) in 1960 did not impose any investigatory burden, and Section 317(c) ratified those regulations. *Id.*

at 1453. The legislative history of the 1960 amendment indicated that the licensee would not be an insurer of the disclosure's accuracy; in other words, "a licensee need not go behind the information it receives to guarantee its accuracy." *Id.* at 1455 n.18. The Commission adopted that very interpretation before the *Loveday* Court. *Id.* at 1449.

In the Order, the Commission does not analyze the statutory language or history of Section 317(c), and addresses *Loveday* only in a footnote. *See* Exh. 1 ¶¶ 37-45 & n.132. In the stay denial order, the Commission attempts to rectify its failure by providing a distinct rationale, but that is both too late and unavailing. The Commission treats Section 317(c) as if it imposed a freestanding "reasonable diligence" standard under which "[w]hether someone of ordinary prudence would investigate sponsorship information depends on the circumstances at issue," such as credibility of the information or the practicability of investigation. Exh. 2 ¶ 12. The Commission ignores that Congress employed a "qualifying infinitive"[7] to delimit the broadcaster's duty of diligence: *i.e.*, the broadcaster must "exercise reasonable diligence *to obtain from its employees, and from other persons with whom it deals directly*" the necessary information. 47 U.S.C. § 317(c) (emphasis added). Thus, the only diligence the broadcaster must exercise is to obtain the

[7] *See* "The qualifying infinitive," https://www.englishgrammar.org/qualifying-infinitive/ (June 29, 2012).

information from those identified sources; the Commission is not free to expand the broadcaster's duty of diligence to other sources. "[This] court has repeatedly rejected the notion that the absence of an express proscription allows an agency to ignore a proscription implied by the limiting language of a statute." *S. Cal. Edison Co. v. F.E.R.C.*, 195 F.3d 17, 24 (D.C. Cir. 1999).

This Court so held in *Loveday*, which did not (as the Commission now posits) "grant[] deference to the Commission's interpretation of its reasonable diligence requirement in the context of the sponsorship identification rules as they existed at that time." Exh. 2 ¶ 14. *Loveday* relied on the plain language and legislative history in what in current parlance is *Chevron* Step 1 analysis, *supra* at 8-10, and declined "to find a power in the Commission to require more of licensees than it has required here unless there existed rather clear evidence that Congress intended to vest such a power," 707 F.2d at 1449. The Commission now attempts to claim the 1960 amendment's legislative history as support, *see* Exh. 2 ¶ 17, but *Loveday* interpreted the very passage from the Senate Report on which the Commission relies to declare that "a licensee need not go behind the information it receives to guarantee its accuracy." 707 F.2d at 1455 n.18.

The Commission also attempts to distinguish *Loveday* because of "congressional concern about undisclosed foreign government programming" and "amendments to the Communications Act that link identification of foreign

governmental actors to FARA, similar to the rules promulgated herein." Exh. 1 ¶ 45 n.132. None of the cited Member correspondence addressed interpretation of Section 317(c), and regardless *current* congressional concerns cannot change the scope of a 60-year-old statute. Indeed, this Court has dismissed the notion of "post-enactment legislative history" as "oxymoronic." *Cobell v. Norton*, 428 F.3d 1070, 1075 (D.C. Cir. 2005).

Next, the Commission declares that the Order "obviates the concern raised by the *Loveday* court about licensees having 'to guess in every situation what the Commission would later find to be "reasonable diligence."'" Exh. 1 ¶ 45 n.132 (quoting *Loveday*, 707 F.2d at 1457). But that discussion came after *Loveday* had interpreted Section 317(c) not to permit independent investigations, and this Court declared that "[t]here are, moreover, good reasons why this court should not read into the statute or regulations the licensee duty petitioners seek to establish." *Loveday*, 707 F.2d at 1457. Those reasons included both the obligation's indeterminacy and the constitutional questions raised. *Id.* at 1457-59. Even if *arguendo* the searches mandated by the Order are more limited than the investigation proposed by the *Loveday* petitioner, this Court's statutory construction remains unaltered: the statute does "not impose any burden of independent investigation upon licensees," and "is satisfied by appropriate

inquiries made by the station to the party that pays it for the broadcast." *Id.* at 1449, 1453.[8]

Because the Order runs afoul of both the plain language of Section 317(c) and its binding interpretation in *Loveday*, Petitioners have a reasonable likelihood of success on the merits.

B. The Order Violates the First Amendment

"Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). Accordingly, compelled speech generally warrants strict scrutiny, *see Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 193 (4th Cir. 2013) (en banc), "which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011) (internal quotation marks omitted). Although the courts apply less demanding scrutiny to disclosure obligations, *see infra*, the Order does not simply mandate disclosure of information known to the broadcaster or supplied to it by a third

[8] The Commission also relies on *United States of America v. WHAS, Inc.*, 385 F.2d 784, 788 (6th Cir. 1967). But that case interpreted Section 317(a), not (c). *WHAS* holds only that the latter would permit the Commission to require announcement of the real party in interest rather than the nominal sponsor; it did not address *what sources* the Commission can require the broadcaster to tap in obtaining that information.

party. The Order compels the broadcaster to investigate a third party's status and report it as its own representation. Strict scrutiny applies.

Even if *arguendo* a lesser standard applies, the Supreme Court instructs that disclosure requirements still demand "exacting scrutiny" under the First Amendment. *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2383 (2021) (plurality). Exacting scrutiny requires that the speech compulsion be "narrowly tailored" to "a sufficiently important" government interest, even if not the least restrictive means. *Id*.[9] The Order fails even under the narrower standard.

A regulation is narrowly tailored only if it does not "burden substantially more speech than is necessary to further the government's legitimate interests." *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (citation omitted). The Government bears the burden of proving narrow tailoring. *See id*. at 495; *Edenfield v. Fane*, 507 U.S. 761, 770 (1993). The Order fails the narrow tailoring requirement for multiple reasons.

First, the Order burdens substantially more speech than necessary to serve the asserted interest. In the abstract, the federal government has an interest in "ensuring that the public is aware of when a party has sponsored content on a

[9] The Commission invokes the "heightened rational basis" standard of *Ruggiero v. FCC*, 317 F.3d 239 (D.C. Cir. 2003), Exh. 2 ¶ 27 & n.82, but that standard governed a content-neutral character qualification and is inapposite.

broadcast station," particularly if the sponsor is a foreign governmental entity. Exh. 1 ¶ 69. But "a governmental body seeking to sustain a restriction on . . . speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield*, 507 U.S. at 770-71.

The Commission has not established a sufficiently important problem warranting nationwide regulation of *all* leased programming at *all* 1,324 commercial television stations and 11,288 commercial radio stations across the country (of which 92% and 99% respectively are small businesses). Exh. 1, App. B, ¶¶ 13-17. The FCC identified only three hyper-localized examples of foreign propaganda on U.S. airwaves: programming by Russia Today and Radio Sputnik on stations in Washington, D.C. and Kansas City, Missouri, and by China Radio International on a Washington, D.C. station without disclosure that they were foreign governmental entities. Exh. 1 at nn.1, 9, 52, 71, 74, 75 and 178. That hardly indicates a wave of foreign broadcast propaganda justifying a burdensome *nationwide* regulation applicable to all leased programming of all broadcasters.

Critically, the scant examples cited by the Commission would not have been redressed by the independent searches mandated by the Order, since the foreign entities in question were not at the time registered under FARA or disclosed as a foreign media outlet to the Commission. *See* Exh. 1 ¶ 17 n.52 (Radio Sputnik); *see* Koh Gui Qing and John Shiffman, *Beijing's covert radio network airs China-*

friendly news across Washington, and the world, Reuters Investigates (Nov. 2, 2015), https://www.reuters.com/investigates/special-report/china-radio/. Thus, the problem the Order purports to solve—undisclosed sponsorship of leased broadcast programming by FARA registrants or Commission-listed foreign media outlets—does not seem to exist. Even if it did, the Government cannot impose blanket restrictions on speech for limited, localized, or sporadic problems. *See Initiative and Referendum Inst. v. U.S. Postal Serv.*, 417 F.3d 1299, 1307-08 (D.C. Cir. 2005).

Moreover, a regulation compelling speech that is both overinclusive and underinclusive is by definition not narrowly tailored. *Cahaly v. Larosa*, 796 F.3d 399, 406 (4th Cir. 2015); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). Here, the Order is both.

The Commission only applied investigation-and-reporting obligations on broadcasters, even though the primary problems of disinformation or propaganda sponsored by foreign governments have occurred over the Internet (and to a lesser extent on cable channels, which generally do not require sponsorship disclosures).[10] A recent report found that YouTube carried 57 foreign-government

[10] Exh. 9, at 1-2 and notes 2-3; William Marcellino, Christian Johnson, Marek N. Posard & Todd C. Helmus, *Foreign Interference in the 2020 Election: Tools for Detecting Online Election Interference*, RAND CORP. (2020), https://www.rand.org/pubs/research_reports/RRA704-2.html; Jeff Kao, ProPublica,

channels without disclosure.[11] Ironically, when the Commission noted "an increase in the dissemination of programming in the United States by foreign governments and their representatives," it cited two articles discussing cable and Internet propaganda unaddressed by the Order. *See* Exh. 1 ¶ 4 & n.10 (citing William Broad, *Putin's Long War Against American Science*, NEW YORK TIMES (Apr. 13, 2020) and Julian Barnes, Matthew Rosenberg and Edward Wong, *As Virus Spreads, China and Russia See Openings for Disinformation*, NEW YORK TIMES (Apr. 10, 2020)). The Commission declined to consider its authority to impose *any* disclosure obligation on cable, satellite or online platforms. So, the Commission has ordered the entirety of the nation's broadcasters to conduct cumulatively expensive investigations into foreign propaganda that barely exists on the airwaves, while the real problem festers.

Even if differential regulation of broadcasters were permissible, the Order is significantly overinclusive and thus not narrowly tailored. *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 502 U.S. 105, 121 (1991). The

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and Raymond Zhong, Paul Mozur and Aaron Krolik, The New York Times, *How China Spreads Its Propaganda Version of Life for Uyghurs*, PROPUBLICA (June 23, 2021), https://www.propublica.org/article/how-china-uses-youtube-and-twitter-to-spread-its-propaganda-version-of-life-for-uyghurs-in-xinjiang.

[11] Ava Kofman, *YouTube Promised to Label State-Sponsored Videos But Doesn't Always Do So*, PROPUBLICA (Nov. 22, 2019), https://www.propublica.org/article/youtube-promised-to-label-state-sponsored-videos-but-doesnt-always-do-so.

Commission imposed no reasonable limit on the type of leased programming subject to investigation requirements. *See* Exh. 1 ¶¶ 44-45. A broadcaster therefore must conduct the mandated investigation into whether a foreign governmental entity has sponsored *every* infomercial (for Snuggies, Beachbody workout programs, or cosmetic treatments); *every* radio call-in program by a local financial planner on retirement options; or *every* local church's Sunday services. The absurd overkill of this regulation underscores its unlawfulness.

Furthermore, a regulation is not narrowly tailored if "it is possible substantially to achieve the Government's objective in less burdensome ways." *Edwards v. District of Columbia*, 755 F.3d 996, 1009 (D.C. Cir. 2014) (internal quotation marks omitted). Multiple alternatives would have advanced the government's interest without the Order's unnecessary burdens upon broadcaster speech.

Because ordinary commercial or local leases pose no substantial risk of undeclared foreign governmental sponsors deceiving audiences, the Commission could have limited its independent-investigation rule to program leases where that risk arguably existed. But the Commission rejected a proposal to limit its investigation requirement to circumstances where the broadcaster had reason to believe that the sponsor was affiliated with a foreign governmental entity, Exh. 1 ¶ 44, and without good reason. It matters not that the Act lacks a reason-to-believe

standard, *see id.*, for the Commission is not implementing a statutory mandate in requiring independent investigations into possible foreign governmental sponsors. Contrary to the Commission's understanding, *id.*, a "reason-to-believe" standard is objective, not subjective, and does not "favor existing lessees at the expense of new and diverse entrants," *id.* If anything, a broadcaster will have more information on existing lessees that might trigger a duty to investigate.

Regardless, the question is whether the Commission has burdened more speech than necessary. The risk that local churches, municipalities, and commercial vendors of products or services (the vast majority of lessees) are fronts for foreign governmental entities is too infinitesimal to justify broad encroachment on broadcasters' First Amendment rights. The Government "may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989).

Alternatively, the Commission could have limited investigational duties to "any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance," a category of programming already identified in the statute (47 U.S.C. § 317(a)(2)), and regulations (47 C.F.R. § 73.1212(d)). The Commission did not address this proposal. *See* Exh. 1 ¶ 33 & n.99. "To meet the requirement of narrow tailoring, the government must

demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *McCullen*, 573 U.S. at 495.

Finally, the Commission could easily have achieved its purported objectives simply by stopping at requiring the sponsor to disclose the required information to the broadcaster. The Commission has undoubted power to do that (as it did). *See* Exh. 1 ¶¶ 31, 39, 46-47; 47 U.S.C. § 508(a)-(c). Notably, the investigation required by the Order would only discover foreign governmental sponsors that are above board and compliant with the law: *i.e.*, those having already registered under FARA or disclosed their status as foreign media outlets to the Commission under 47 U.S.C. § 624. As the Commission concedes, FARA registrants are required to disclose their identity in programming. *See* Exh. 1 ¶ 51. The Commission could simply have required the lessees to add the additional information (such as the country involved) that the Order requires. The Commission, however, oddly states that "[t]here is no reason to believe this alternative would be effective when lessees' existing statutory obligation 'to communicate information to the licensee relevant to determining whether a disclosure is needed,' violation of which is subject to a $10,000 fine or imprisonment, has not prevented abuses." Exh. 2 ¶ 35 (footnotes omitted). But the Commission has not pointed to even *a single abuse* by a FARA registrant or an FCC-disclosed foreign media outlet. Because there is no

reason to expect that those compliant entities would not divulge accurate information to stations, the Order's unduly burdensome requirements accomplish nothing. For the same reasons it violates the First Amendment, the Order also is arbitrary and capricious and violates the Administrative Procedure Act.[12]

In short, Petitioners have a reasonable probability of success on their First Amendment challenge, which will likely either impel the Court to reaffirm *Loveday* to avoid the constitutional question, or to set aside the Order.

II. Petitioners' Members Will Suffer Irreparable Harm Absent a Stay

Although economic harms do not normally constitute irreparable injury, "where economic loss will be unrecoverable, such as in a case against a Government defendant where sovereign immunity will bar recovery, economic loss can be irreparable." *Everglades Harvesting & Hauling, Inc. v. Scalia*, 427 F. Supp. 3d 101, 115 (D.D.C. 2019); *Wis. Gas Co. v. FERC*, 758 F.2d 669 (D.C. Cir. 1985) (per curiam). As described in the attached declarations, Exhs. 3-8, the Order will require many broadcasters to spend significant funds to hire and train employees to conduct the required investigations, as well as engage counsel to review and revise their program leases.[13] Broadcasters will not be able to recover

[12] *See* Petitioners' Initial Br. at 54-56.

[13] The Commission claims the number of leases cited by certain declarants does not match the time brokerage agreements in their files, Exh. 2 ¶¶ 41-42 & n.136, but

from the government the substantial economic losses they will suffer to bring their leases into compliance with the Order. Accordingly, Petitioners' members will suffer irreparable harm if a stay is not entered pending appeal.

Petitioners' members also will suffer irreparable harm arising from the First Amendment burdens imposed by the Order. The Order unlawfully compels and chills speech, *see supra* at 13-21, and "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Archdiocese of Wash. v. Wash. Metro. Area Transit Auth.*, 897 F.3d 314, 334 (D.C. Cir. 2018). A broadcaster that complies with the compelled investigation and speech requirements arising from these regulations has suffered irreparable harm. Further, some broadcasters may determine that the heavy compliance burdens imposed by the Order outweigh the benefits of airing certain sponsored content.[14] Broadcasters curtailing their use of leases due to the Order have suffered irreparable harm.

III. The Balance of Hardships and Public Interest Weigh in Favor of a Stay

The balance of hardships and public interest also favor a stay. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) ("These factors merge when the Government is

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disregards that the leases covered by the Order are not limited to such written agreements, *supra* at 5-6.

[14] *See* Exhs. 10-12 (ex parte letters from Petitioners to Commission).

the opposing party."). A stay would leave the FCC's current sponsorship identification rules in effect pending Petitioners' appeal. Under those rules, broadcasters still must disclose the sponsors of their programming and exercise reasonable diligence to determine sponsor identity to facilitate the required disclosure. Any additional public benefit the Order's requirements may provide is far outweighed by the economic and First Amendment harms that would result from imposing the Order's requirements on thousands of stations.

Furthermore, Petitioners have demonstrated that they are likely to succeed on the merits of their claims. The public interest is not served by implementing a rule that violates the Communications Act and the First Amendment. Because Petitioners have shown likely success on the merits, the public interest weighs in favor of injunctive relief. *See Catholic Legal Immigration Network, Inc. v. Exec. Office for Immigration Review*, 513 F. Supp. 3d 154, 176(D.D.C. Jan. 18, 2021) ("There is generally no public interest in the perpetuation of unlawful agency action.") (internal citation omitted).

Even in the unlikely event that the Commission prevails on appeal, the stay would only delay implementation of the rule for a few months. Although the final rules issued in April, 2021, the Commission has not yet released a Federal Register notice indicating it has requested Office of Management and Budget ("OMB") review under the PRA (which typically takes 30-60 days, *see*

https://pra.digital.gov/clearance-process/). The Order takes effect after Federal Register publication of notice of OMB approval, *see* Exh. 1 ¶ 79, which is unlikely to occur before late February. Petitioners have already filed their initial brief in this case, and final briefs are due February 25, 2022. Based on calendaring practice, this case likely will be scheduled for argument in April or May, and most (although not all) cases are decided within a few months of argument.[15]

CONCLUSION

For the foregoing reasons, the Motion for a stay pending judicial review should be granted.

Dated: December 22, 2021

Respectfully submitted,

/s/ Stephen B. Kinnaird

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[15] Petitioners will apprise the Court when the notice of the commencement of OMB review is published, and respectfully request the Court to resolve this stay request before OMB review is complete.

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CERTIFICATE OF COMPLIANCE

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

This motion complies with the word-count limitation of Fed. R. App. P. 27(d)(2)(A). This motion contains 5,190 words, not counting the parts excluded by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

/s/ Richard Kaplan
Richard Kaplan
Attorney for Petitioner National Association of Broadcasters

CERTIFICATE OF SERVICE

I, Richard Kaplan, hereby certify that on December 22, 2021, I filed the foregoing Motion for Stay Pending Judicial Review with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system which will serve participants in this case who are registered CM/ECF users.

/s/ Richard Kaplan

Richard Kaplan
Counsel for Petitioner National Association of Broadcasters

Exhibit 1

Sponsorship Identification Requirements for Foreign Government-Provided Programming, Report and Order, 36 FCC Rcd 7702 (2021)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Sponsorship Identification Requirements for	)	MB Docket No. 20-299
Foreign Government-Provided Programming	)	
	)	

REPORT AND ORDER

Adopted: April 22, 2021 **Released: April 22, 2021**

By the Commission: Acting Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION

1. For over 60 years, the Commission's sponsorship identification rules have required that disclosures be made on-air when a station has been compensated for broadcasting particular material. Reports regarding foreign governmental entities' increased use of leasing agreements to broadcast programming without disclosing the source thereof, however, persuade us that more is required to ensure transparency on the airwaves.[1] By this Order, we seek to address circumstances in which a foreign

[1] *See, e.g.,* Koh Gui Qing and John Shiffman, *Beijing's Covert Radio Network Airs China-Friendly News Across Washington, and the World* (Nov. 2, 2015), https://www.reuters.com/investigates/special-report/china-radio/ (describing how the Chinese government radio broadcaster, CRI, was able through a subsidiary to lease almost all of the airtime on a Washington, DC area station and broadcast pro-Chinese government programming on this station without disclosing the linkage to the Chinese government); Anna Massoglia and Karl Evers-Histrom, *Russia Paid Radio Broadcaster $1.4 Million to Air Kremlin Propaganda in DC*, OpenSecrets.org (July 1, 2019), https://www.opensecrets.org/news/2019/07/russia-paid-radio-broadcaster-1-4-million-to-air-kremlin-propaganda/ (continued….)

governmental entity, pursuant to a lease of airtime, is responsible for programming, in whole or in part, on a U.S. broadcast station.[2] Although under U.S. law foreign governments and their representatives are restricted from holding a broadcast license directly, there is no limitation on their ability to enter into a contract with the licensee of a station to air programming of its choosing or to lease the entire capacity of a radio or television station.[3] Nor do we prohibit such arrangements going forward. Rather, in such instances, the rules we adopt today will require that the programming aired pursuant to such an agreement contain a clear, standardized disclosure statement indicating to the listener or viewer that the material has been sponsored, paid for, or furnished by a foreign governmental entity and clearly indicate the foreign country involved.

2. The foreign sponsorship identification rules we adopt in this Order seek to eliminate any potential ambiguity to the viewer or listener regarding the source of programming provided from foreign governmental entities. Based upon comments received in response to the *NPRM*,[4] and as detailed further below, we amend section 73.1212 of the Commission's rules to require a specific disclosure at the time of broadcast if material aired pursuant to the lease of time on the station has been sponsored, paid for, or furnished by a foreign governmental entity that indicates the specific entity and country involved.[5] In so doing, we will increase transparency and ensure that audiences of broadcast stations are aware when a foreign government, or its representatives, are seeking to persuade the American public. Through the public filing requirements associated with disclosures, we will also enable interested parties to monitor the extent of such efforts to persuade the American public.

3. Our new rules seek to address the primary means identified in the record by which foreign governmental entities are accessing U.S. airwaves to persuade the American public without adequate disclosure of the true sponsor, namely the lease of time to air programming on a U.S. licensed broadcast station.[6] In focusing our disclosure requirement on such situations, we seek to address an important issue of public concern while going no further than necessary, thus balancing considerations of the First Amendment with the need for consumers to be sufficiently informed as to the origin of material broadcast on stations licensed on their behalf in the public interest. Further, our approach incorporates existing provisions of and definitions contained in the Foreign Agent Registration Act (FARA)[7] and the Communications Act of 1934, as amended,[8] so as to minimize the burden on broadcasters as they

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(describing how a Florida-based company, RM Broadcasting LLC, had been acting as a middleman brokering airtime for Russian government-owned Sputnik International).

[2] In this Order, our use of the term "foreign government-provided programming" refers to all programming that is provided by an entity or individual that falls into one of the four categories discussed in Section III.A. below. In turn, the phrase "provided by" when used in relation to "foreign government programming" covers both the broadcast of programming in exchange for consideration and furnishing of any "political program or any program involving the discussion of a controversial issue" for free as an inducement to broadcast the programming. *See* Section III.B. below (discussing sections 317(a)(1) and (2) of the Act, which discuss both programming that is paid for and furnished for free).

[3] *See* 47 U.S.C. § 310(a).

[4] *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, 35 FCC Rcd 12099 (2020) (*NPRM*).

[5] 47 CFR § 73.1212(a) (stating that "[w]hen a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of broadcast, shall announce: (1) [t]hat such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) [b]y whom or on whose behalf such consideration was supplied").

[6] *See* NPR Comments at 2-4.

[7] 22 U.S.C. § 611.

[8] 47 U.S.C. § 624.

determine whether the programming is from a foreign governmental entity. In addition, we discuss the steps that broadcasters must take to satisfy the statutory "reasonable diligence" standard in determining whether a foreign governmental entity is the source of programming provided over their stations.

4. In this manner, we refine our rules to further ensure that the public is fully informed on the source of programming consumed.[9] We find it is critical that the American public be aware when a foreign government has sponsored, paid for, or, in the case of political programs or programs involving the discussion of a controversial issue, furnished the programming for free as an inducement to air the material, particularly given what seems to be an increase in the dissemination of programming in the United States by foreign governments and their representatives.[10]

II. BACKGROUND

5. The principle that the public has a right to know the identity of those that solicit their support is a fundamental and long-standing tenet of broadcasting.[11] Congress and the Commission have sought to ensure that the public is informed when airtime has been purchased in an effort to persuade audiences, finding it essential to ensure that audiences can distinguish between paid content and material chosen by the broadcaster itself. Accordingly, beginning with the Radio Act of 1927, broadcast stations have been required to announce the name of any "person, firm, company, or corporation" that has paid "valuable consideration" either "directly or indirectly" to the station at the time of broadcasting any programming for which such consideration has been given.[12] With the creation of the Federal

[9] *See Joe Chiodo, Russian Radio Takes to Kansas City Airwaves,* KCTV News 5 (Feb. 13, 2020), https://www.kctv5.com/news/local_news/russian-radio-takes-to-kc-airwaves/article_638da88c-4eae-11ea-b931-ef157bacebfb.html (describing how a midwestern station's "hope" is that the public "stumble[s] upon" Russia radio carried on three Kansas City radio stations during the "morning drive and get[s] hooked," while critics claim the radio show "is an operation run out of Moscow" airing "propaganda and the goal is to convince you America isn't good" – once it is known there is "a Russian radio station spinning the news in a negative way," listeners "may greet all media with greater skepticism"); Letter from Rep. Anna Eshoo, United States House of Representatives, to Ajit Pai, Chairman, Federal Communications Commission (FCC) (Apr. 8, 2020) (supporting the start of a rulemaking to modify the Commission's sponsorship identification rules to require the identification of foreign government "propaganda"); *see also* Letter from Rep. Frank Pallone, Jr. et al., U.S. House of Representatives to Ajit Pai, Chairman, FCC (May 22, 2018) (on file at https://docs.fcc.gov/public/attachments/DOC-351492A2.pdf); Letter from Rep. Anna Eshoo, et. al., U.S. House of Representatives, to Ajit Pai, Chairman, FCC (Feb. 13, 2020) (on file at https://docs.fcc.gov/public/attachments/DOC-363492A1.pdf) (regarding reports about Russian government programming being broadcast over radio stations in Washington, DC, and Kansas City without disclosing the source of the programming); Letter from Rep. Anna Eshoo, U.S. House of Representatives, to Ajit Pai, Chairman, FCC (Jan. 30, 2018) (on file at https://docs.fcc.gov/public/attachments/DOC-350469A2.pdf).

[10] *See, e.g.,* William J. Broad, *Putin's Long War Against American Science*, New York Times (Apr. 13, 2020), https://www.nytimes.com/2020/04/13/science/putin-russia-disinformation-health-coronavirus.html (describing how the Russian network RT America and its predecessor organizations have spread misinformation about various global epidemics over the years); Julian Barnes, Matthew Rosenberg and Edward Wong, *As Virus Spreads, China and Russia See Openings for Disinformation*, New York Times (Apr. 10, 2020), https://www.nytimes.com/2020/03/28/us/politics/china-russia-coronavirus-disinformation.html.

[11] As the Commission asserted in the context of adopting changes to the sponsorship identification rules over a half century ago: "Perhaps to a greater extent today than ever before, the listening and viewing public is being confronted and beseeched by a multitude of diverse, and often conflicting, ideas and ideologies. Paramount to an informed opinion and wisdom of choice in such a climate is the public's need to know the identity of those persons or groups who solicit the public's support." *Amendment of Sections 3.119, 3.289, 3.654 and 3.789 of the Commission's Rules*, Report and Order, 34 FCC 829, 849, para. 59 (1963).

[12] Radio Act of 1927, Pub. L. No. 69-632, 44 Stat. 1162, 1170 § 19 (repealed 1934). Section 19 of the Radio Act provided:

> All matter broadcast by any radio station for which service, money, or any other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any (continued….)

Communications Commission and the adoption of the Communications Act of 1934 (the Act), this disclosure requirement was incorporated almost verbatim into section 317 of the Act.[13] Over the years, various amendments to the rules, decisions by the Commission, and a 1960 amendment to section 317 of the Act have continued to underscore the need for transparency and disclosure to the public about the true identity of a program's sponsor.[14]

6. The Commission last implemented a major change to its sponsorship identification rules in 1963 when it adopted rules implementing Congress's 1960 amendments to the Act.[15] The sponsorship identification rules largely tracked the provisions of section 317 of the Act and make up the current section 73.1212 of the Commission's rules.[16] As the *NPRM* noted, however, even with these rules in place there appear to be instances where foreign governments pay for the airing of programming, or provide it to broadcast stations free of charge, and the programming does not contain a clear indication, if any indication at all, to the listener or viewer that a foreign government has paid for or provided the programming's content.[17] Given the passage of nearly 60 years since the sponsorship identification rules were last updated and growing concerns about foreign government-provided programming, the Commission determined last year that there was a further need to review the sponsorship identification rules to ensure that, consistent with our statutory mandate, foreign government program sponsorship over the airwaves is evident to the American public.[18]

7. Significantly, the Commission's current sponsorship identification rules do not require a station to determine or disclose whether the source of its programming is in fact a foreign government, registered foreign agent, or foreign political party (what we refer to as a foreign governmental entity).[19] As the *NPRM* notes, in many instances a foreign government, foreign agent, or foreign political party providing programming to licensees may not be immediately identifiable as such.[20] In other instances, the

(Continued from previous page)

> person, firm, company, or corporation, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person, firm, company, or corporation.

[13] Section 317 provided:

> All matter broadcast by any radio station for which service, money, or any other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person.

48 Stat. at 1089.

[14] *NPRM*, 35 FCC Rcd at 12101-05, paras. 5-10.

[15] *Id.* at 12104, para. 10. The *NPRM* contained a thorough history of the background of the Commission's sponsorship identification rules. *Id.* at 12100-05, paras. 4-10.

[16] *See* 47 CFR § 73.1212. The sponsorship identification rules contained in section 73.1212 codify the requirements of section 317 of the Act and apply to all broadcast services. In 1963, the same sponsorship identification rules for each type of broadcast service were housed with the other rules for that broadcast service. *See Applicability of Sponsorship Identification Rules, Public Notice,* 40 FCC 141, 143-44 (1963) (laying out the separate rule sections for standard broadcast stations, FM broadcast stations, television broadcast stations, and international broadcast stations). In 1975, the rules were consolidated into the one section for broadcast services and codified at 47 CFR § 73.1212. *Amendment of Sections 73.119, 73.289, 73.654, 73.789 and 76.221 of the Commission's Rules*, Report and Order, 52 FCC 2d 701, para. 36 and Appendix (1975). We also note that pursuant to section 74.780 of the Commission's rules the sponsorship identification rules also apply to TV translator, low power TV, and TV booster stations. *See* 47 CFR § 74.780.

[17] *NPRM*, 35 FCC Rcd at 12100 n.4, 12105 n.40.

[18] *Id.* at 12105-06, para. 12.

[19] *Id.* at 12100, para. 2.

[20] *Id.* at 12106, para. 13.

linkage between the foreign governmental entity and the entity providing the programming may be deliberately attenuated in an effort to obfuscate the true source of the programming.[21] Although current rules require the disclosure of the sponsor's name, the relationship of that sponsor to a foreign country is not required as part of the current disclosure.[22]

8. Consequently, to ensure that the American public can better assess the programming that is delivered over the airwaves, the Commission found that there is a need to identify instances where foreign governmental entities are involved in the provision of broadcast programming.[23] To that end, the *NPRM* proposed to adopt specific disclosure requirements for broadcast programming to inform the public when programming has been paid for, or provided by, a foreign governmental entity and to identify the country involved.[24] Specifically, the *NPRM* proposed that when a foreign governmental entity has paid a radio or television station, directly or indirectly, to air material, or if the programming was provided to the station free of charge by such an entity as an inducement to broadcast the material, the station, at the time of the broadcast, shall include a specified disclosure indicating the name of the foreign governmental entity, as well as the related country.[25]

9. In defining "foreign governmental entity," the *NPRM* relied directly on parts of the FARA statute (specifically the definitions of a "government of a foreign country," "foreign political party," and "agents of foreign principals"), which covers entities and individuals whose activities the United States Department of Justice (Department of Justice) has identified as requiring disclosure because their activities are potentially intended to influence American public opinion, policy, and law.[26] In addition, the *NPRM* proposed to include "United States-based foreign media outlets," as defined by the Communications Act.[27] Under the proposal, any programming provided by a "foreign governmental entity" would be considered a "political program" under section 317(a)(2) of the Act, and thus require identification of the sponsor of particular broadcast programing, even if the only inducement to air the programming was the provision of the programming itself.[28] The *NPRM* further explored the "reasonable diligence" standard that broadcasters must employ pursuant to their statutory (47 U.S.C. §317 (c)) and regulatory (47 CFR §73.1212(b) and (e)) requirements to determine whether its programming was provided by a foreign governmental entity.[29]

10. The *NPRM* proposed that the disclosure requirements should apply in the context of time brokerage agreements (TBAs) and local marketing agreements (LMAs).[30] Moreover, the *NPRM* proposed to apply the new rules to entities authorized pursuant to section 325(c) to produce programing in the United States and transmit it to a non-U.S. licensed station in a foreign country for broadcast back into the United States.[31] Also, the *NPRM* proposed that the disclosure requirements would apply equally to

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 12117-18, paras. 34-35

[25] *Id.* at 12118, para 35.

[26] *Id.* at 12110, para. 19. The *NPRM* also proposed to include "foreign missions," as defined by the Foreign Missions Act. *Id.* at 12113-14, paras. 25-26.

[27] *Id.* at 12113-14, paras. 27-28.

[28] *Id.* at 12115-16, para. 32.

[29] *Id.* at 12121-23, para. 47.

[30] *Id.* at 12123-26, paras. 48-51.

[31] *Id.* at 12126-27, paras. 52-54.

any programming transmitted on a radio or television stations' multicast streams.[32] Finally, in addition to specifying the characteristics of the proposed disclosures on television and radio,[33] the *NPRM* proposed that stations place a copy of the announcement in their online public inspection file (OPIF).[34]

11. A total of seven commenters filed comments and reply comments in response to the *NPRM*.[35] The commenters generally support the Commission's goal of identifying foreign sponsorship of programming.[36] Commenters assert, however, that the Commission must address how current regulations are inadequate before adopting new rules,[37] and several commenters suggest ways to narrow the proposed scope of the rules to more directly address the programming that is of most concern, as discussed further below.

III. DISCUSSION

12. For the reasons discussed below, we adopt the rules proposed in the *NPRM* with modifications to address more precisely the primary method by which foreign governmental entities appear to be gaining carriage for their programming on U.S.-licensed broadcast stations without disclosing the origin of such programming, namely through leasing agreements with such stations. By narrowly focusing our requirements we seek to minimize the burden of compliance on licensees, including those public television and radio stations that carry programming from entities that depend upon tax credits, access to international locations, and historical or archival footage from foreign governmental sources in producing their programming. We further note that such tailoring is in keeping with the First Amendment by focusing our rules narrowly on the area of potential harm.

13. Specifically, as discussed below, our new rules require foreign sponsorship identification for programming content aired on a station pursuant to a lease of airtime if the direct or indirect provider of the programming qualifies as a "foreign governmental entity." In the first section below, we analyze which entities or individuals meet that definition and find that they include governments of foreign countries, foreign political parties, certain agents of foreign principals, and U.S.-based foreign media outlets. Next, we discuss the scope of the foreign sponsorship identification rules, explaining why and how we narrow the scope of the *NPRM*'s proposed requirements to focus on programming aired on U.S. broadcast stations pursuant to an agreement for the lease of time. We then discuss the scope of the reasonable diligence obligation that broadcast licensees must satisfy to determine if its lessee is a foreign governmental entity such that disclosures are necessary. Next, we discuss the content and frequency requirements for the mandated disclosures that will ensure the identification of foreign government-provided programming is conveyed effectively to the public. As we make clear in that section, the rules also require quarterly filings of copies of the disclosures, as well as the name of the program to which any disclosures are appended, in stations' OPIF. Then, we conclude that our foreign sponsorship identification rules apply equally to any programming broadcast pursuant to a section 325(c) permit. Finally, we conclude that our foreign sponsorship identification rules satisfy the First Amendment and provide a cost-benefit analysis of those new rules.

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[32] *Id.* at 12119-20, para. 42.

[33] *Id.* at 12117-20, paras. 34-42.

[34] *Id.* at 12120-21, paras. 43-45.

[35] The commenters were American Public Television Stations and PBS (APTS), Minnesota Public Radio (MPR), National Association of Broadcasters (NAB), National Cable and Telecommunications Association – The Internet and Television Association (NCTA), National Public Radio (NPR), REC Networks (REC), and RM Broadcasting.

[36] *See* APTS Comments at ii; NAB Comments at 2; NPR Comments at i; REC Comments at 1-2; NCTA Reply at 2.

[37] *See* NAB Comments at 5-6; NAB Reply at 2; NCTA Reply at 2; *see also* NPR Comments at 2-4 (asserting that enforcement of existing Commission rules would identify when a foreign government is the true sponsor of a broadcast); NAB Reply at 7-8 (agreeing with NPR's assertion).

A. Entities or Individuals Whose Involvement in the Provision of Programming Triggers a Disclosure

14. We require that programming aired on a station pursuant to a lease of airtime have a foreign sponsorship identification if the entity who has directly or indirectly provided the programming qualifies as a foreign governmental entity as defined herein. Specifically, a "foreign governmental entity" is defined as an entity included in one of the following categories:

1) A "government of a foreign country" as defined by FARA;[38]

2) A "foreign political party" as defined by FARA;[39]

3) An individual or entity registered as an "agent of a foreign principal," under section 611(c) of FARA,[40] whose "foreign principal" is a "government of a foreign country," a "foreign

[38] 22 U.S.C. § 611(e). FARA defines a "government of a foreign country" as:

> any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States.

Id.

[39] *Id*. § 611(f). FARA defines a "foreign political party" as:

> any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof.

Id.

[40] *Id*. § 611(c). Section 611(c) of FARA provides that, except as provided in subsection (d) of this section, the term "agent of a foreign principal" means:

> (1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—(i) engages within the United States in political activities for or in the interests of such foreign principal; (ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal; (iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and (2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

Id.

Section 611(d) of FARA states that the term "agent of a foreign principal" does not include:

> any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611 of Title 39, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and its officers and

(continued….)

political party," or is directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or by a "foreign political party" as defined by FARA, and that is acting in its capacity as an agent of such "foreign principal;"[41]

4) An entity meeting the definition of a "U.S.-based foreign media outlet" pursuant to section 722 of the Act that has filed a report with the Commission.[42]

Our adopted definition is largely consistent with the definition proposed in the *NPRM* except for the exclusion of foreign missions for the reasons discussed below.

15. As discussed in the NPRM, in establishing these categories to define covered foreign governmental entities that will trigger our disclosure requirement, we rely on existing definitions, statutes, or determinations by the U.S. government as to when an entity or individual is a foreign government, a foreign political party, or acting in the United States as an agent on behalf of a foreign government or foreign political party. Relying on these sources allows us to draw on the substantial experience and authority in such matters that already exists within the federal government and avoids involving the Commission, or the broadcaster, in subjective determinations regarding who qualifies as a foreign governmental entity.

16. *FARA.* In particular, we find that reliance on both the definitions contained in FARA and the list of agents registered pursuant to that act is appropriate. As discussed in the *NRPM*, this long-standing statute was designed specifically to identify those foreign entities or individuals that Congress has determined should be known to the U.S. government and the American public when they are seeking to influence American public opinion, policy, and laws.[43] We note that no commenters object to the Commission's proposed use of the definitions set forth in FARA or the list of foreign agents registered pursuant to that statute as the primary basis for our foreign sponsorship identification rules.[44] Accordingly, we find that including "government of a foreign country" and "foreign political party," as defined by FARA, within the group of entities and individuals that trigger our foreign sponsorship identification rules[45] is appropriate given our primary goal of ensuring that foreign *government*-provided programming is properly disclosed to the public. Rather than seeking to craft our own definitions, we find it more appropriate to turn to a definition of "foreign government" and "foreign political party" contained in a pre-existing statute designed to promote transparency about foreign governmental activity in the United States. Similarly, including FARA-registered "agents of foreign principals" who are defined by their engagement in certain activities in the United States on behalf of foreign interests[46]

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directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in subsection (b) of this section, or by any agent of a foreign principal required to register under FARA. 22 U.S.C. § 611(d).

[41] *Id.* § 611(b)(1). Section 611(b)(1) of FARA provides that "[t]he term 'foreign principal' includes a government of a foreign country and a foreign political party." *Id.*

[42] 47 U.S.C. § 624.

[43] *See Meese v. Keene*, 481 U.S. 465, 469 (1987) (quoting the legislative history of FARA).

[44] *See* Letter from Joseph M. Di Scipio, Assistant General Counsel, Fox Corp., to Marlene H. Dortch, Secretary, FCC at 1 (Mar. 3, 2021) (Fox *Ex Parte* Letter) (noting that it would be appropriate to require that stations to check the Foreign Agents Registration Act registration list). *But see infra* paras. 42-44 in Section C (discussing concerns about the logistics of checking the list).

[45] 22 U.S.C. § 611(e). *See supra* note 38 (providing the text of section 611(e) of FARA).

[46] 22 U.S.C. §§ 611-21.

furthers our goal of increasing transparency when such agents may be seeking to persuade the audiences of broadcast stations.[47]

17. We note that FARA generally requires an "agent of foreign principal"[48] undertaking certain activities in the United States (such as, political activities or acting in the role of public relations counsel, publicity agent, or political consultant) on behalf of a foreign principal to register with the Department of Justice.[49] Section 611(b)(1) of FARA states that the term "foreign principal" includes the "government of a foreign country" and a "foreign political party."[50] For purposes of our foreign sponsorship identification rules, we include FARA agents whose foreign principal is either a "government of a foreign country," a "foreign political party," or is directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or by a "foreign political party" as those terms are defined in sections 611(e) and (f) of FARA respectively.[51] As stated in the *NPRM*, to the extent that an agent of a foreign principal, whose "foreign principal" is either a "government of a foreign country" or a "foreign political party" is providing programming to U.S. broadcast stations in its capacity as an agent to that principal, it is reasonable that the public should be made aware of that fact.[52] We also clarify, however, that the proposed disclosure is required not only when programming is provided by an "agent of a foreign principal" whose foreign principal is a government of a foreign country or a foreign political party, but also when the foreign principal is directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a government of a foreign country or by a foreign political party.[53] This clarification to the original proposal will ensure that the foreign sponsorship identification rules cannot be circumvented by the existence or creation of additional corporate and/or ownership layers between the entity acting as a foreign principal and the

[47] *See Meese v. Keene*, 481 U.S. at 469. *See also* Department of Justice, *Frequently Asked Questions*, https://www.justice.gov/nsd-fara/frequently-asked-questions (last visited Mar. 18, 2021):

> FARA is an important tool to identify foreign influence in the United States and address threats to national security. The central purpose of FARA is to promote transparency with respect to foreign influence within the United States by ensuring that the United States government and the public know the source of certain information from foreign agents intended to influence American public opinion, policy, and laws, thereby facilitating informed evaluation of that information. FARA fosters transparency by requiring that persons who engage in specified activities within the United States on behalf of a foreign principal register with and disclose those activities to the Department of Justice. The Department of Justice is required to make such information publicly available.

[48] *See* 22 U.S.C. § 611(c) (stating FARA's definition of "agent of a foreign principal").

[49] *Id.* § 612.

[50] *Id.* § 611(b)(1).

[51] *Id.* §§ 611(e) and (f).

[52] Linking the foreign sponsorship identification rules with entities and individuals subject to FARA registration is consistent with the Department of Justice's application of FARA. For example, in 2017, RM Broadcasting and Rossiya Segodnya had entered into a services agreement pursuant to which RM Broadcasting would provide for the broadcast of Rossiya Segodnya's "Sputnik" radio programs on AM radio channel 1390 WZHF in the Washington, D.C. region. RM Broadcasting contested the Department of Justice's determination that RM was acting as a "foreign agent" and sought a declaratory judgment in federal court that it did not have to register as an agent of a foreign principal pursuant to FARA. In 2019, a federal court upheld the Department of Justice's prior determination that, pursuant to FARA, a Florida-based company, RM Broadcasting LLC (RM Broadcasting), was a "foreign agent" of the Federal State Unitary Enterprise Rossiya Segodnya International Information Agency (Rossiya Segodnya), a Russian state-owned media enterprise created to advance Russian interests abroad. *See* Department of Justice, *Court Finds RM Broadcasting Must Register as a Foreign Agent* (May 13, 2020), https://www.justice.gov/opa/pr/court-finds-rm-broadcasting-must-register-foreign-agent; *RM Broadcasting, LLC v. United States Department of Justice*, 379 F. Supp. 3d 1256 (SDFL 2019).

[53] *See* 22 U.S.C. § 612(a)(3).

government of a foreign country or foreign political party.[54] This information is readily ascertainable by those who examine the FARA database.[55]

18. We recognize that a given entity may be registered as an agent for multiple "foreign principals" or for a "foreign principal" other than a "government of a foreign country" or a "foreign political party."[56] We emphasize, however, that our foreign sponsorship identification rules apply only when the FARA agent is acting in its capacity as a registered agent of a principal that is a "government of a foreign country," a "foreign political party," or is directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a government of a foreign country or by a foreign political party.[57]

19. *U.S.-Based Foreign Media Outlet.* In addition to drawing on FARA-based definitions and registrations and consistent with the NPRM, we conclude that our foreign governmental entity definition should also extend to any entity or individual subject to section 722 of the Act that has filed a report with the Commission.[58] Section 722 extends to any U.S.-based foreign media outlet that: a) produces or distributes video programming that is transmitted, or intended for transmission, by a multichannel video programming distributor (MVPD) to consumers in the United States and b) would be an agent of a "foreign principal" but for an exemption in FARA.[59] We note that Section 722 provides that the term "foreign principal" has the meaning given such term in section 611(b)(1) of FARA, which limits the scope of the definition of "foreign principal" to "a government of a foreign country" and a "foreign political party."[60] We incorporate this limitation from section 722 of the Act into our foreign sponsorship

[54] For example, Rossiya Segodnya, a listed foreign principal, may not fall within the FARA definition of "government of a foreign country" but its agent's FARA filings indicate that Rossiya Segodnya is financed by the Russian government and therefore its agent would qualify as a foreign governmental entity under our rules.

[55] We note that FARA requires an agent to include in its filing information about an agent's principal. *See* 22 U.S.C. § 612(a)(3), providing that, as part of its registration statement, a FARA agent must include:

> the name and address of every foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act; the character of the business or other activities of every such foreign principal, and, if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party.

[56] *See, e.g.*, *id.* § 611(b)(3) (providing that the term "foreign principal includes a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country").

[57] For example, APTS notes that some domestic law firms are FARA agents. APTS Comments at 7-8. The rule would not require all content from these law firms to have a disclosure but only any content provided by those firms pursuant to a leasing arrangement where they are acting on behalf of foreign governments, a foreign political party, or an entity operated, supervised, directed, owned, controlled, financed, or subsidized by a foreign government or foreign political party.

[58] 47 U.S.C. § 624. "U.S.-based foreign media outlets" must periodically file reports with the Commission and, in turn, the Commission must provide a report to Congress summarizing those filings. *See, e.g., Media Bureau Announces Fourth Disclosure Deadline for United States-Based Foreign Media Outlets*, Public Notice, 35 FCC Rcd 1908 (MB 2020) (seeking reports from U.S.-based foreign media outlets); *see also Fourth Semi-Annual Report to Congress on United States-Based Foreign Media Outlets*, Report, 35 FCC Rcd 4794 (MB May 8, 2020).

[59] 47 U.S.C. § 624.

[60] 47 U.S.C. § 624(d)(1); *see also* 22 U.S.C. § 611(b)(1).

identification rules to include both a "government of a foreign country" and "foreign political party," as those terms are defined by FARA, within our definition of "foreign governmental entity."[61]

20. We recognize that the term "U.S.-based foreign media outlet" refers to an entity whose programming is either transmitted or intended for transmission by an MVPD, rather than by a broadcaster. But we note that there is no prohibition on such video programming also being transmitted by a broadcast television station, and it seems likely that an entity that is providing video programming to cable operators or direct broadcast satellite television providers might also seek to air such programming on broadcast stations. Hence, we believe it is appropriate to include "U.S.-based foreign media outlets" within the ambit of our proposal when the programming provided by such entities is aired by broadcast stations. No commenter opposed this proposal in response to the *NPRM*.

21. *Foreign Missions.* While the NPRM proposed to include "foreign missions," as designated pursuant to the Foreign Missions Act,[62] within our definition of foreign governmental entities that trigger foreign sponsorship identification, commenters have persuaded us otherwise.[63] In particular, APTS expressed concern with the potential difficulty of discerning whether an entity is considered a "foreign mission" under the Foreign Missions Act. APTS noted that there is no single source identifying all foreign missions analogous to those that exist for FARA registrants and U.S.-based foreign media outlets.[64] We agree with commenters that the lack of a single source identifying all foreign missions creates an additional burden for licensees, as such entities cannot be as readily and consistently identified as FARA registrants and U.S.-based foreign media outlets.[65]

22. In addition, we note that, as discussed in the *NPRM*, most "foreign missions" are foreign embassies and consular offices.[66] The primary purpose of the Foreign Missions Act is to confer upon such missions certain benefits, privileges, and immunities, while also requiring their observance of corresponding obligations in accordance with international law and principles of reciprocity.[67] Other types of non-entities that are substantially owned or effectively controlled by a foreign government are from time to time designated as "foreign missions" at the discretion of the Secretary of State. By comparison the FARA statute is *specifically* designed to identify those entities and individuals whose activities should be disclosed because their activities are potentially intended to influence American public opinion, policy, and law.[68] Based on the concerns raised by APTS and our own further review of the intent behind the statute, we find reliance on the Foreign Missions Act to be inappropriate and unnecessary for our intended purpose.

23. *Other Potential Sources.* In addition, we decline to adopt APTS's suggestion that the list of FARA registrants included in the definition of foreign governmental entities be filtered through the United States Treasury Department's Office of Foreign Assets Control (OFAC) list of active U.S.

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[61] Although we could clarify—as we have done with respect to foreign agents—that the disclosure requirement also applies when an outlet's foreign principal is directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a government of a foreign country or by a foreign political party, we note that such a clarification would accomplish nothing as, pursuant to the NDAA, only entities whose foreign principals are a government of a foreign country or a foreign political party are required to report as U.S.-based foreign media outlets. *See* 47 U.S.C. § 624(d)(1).

[62] *NPRM*, 35 FCC Rcd at 12113, para. 25.

[63] *See* APTS Comments at 18-19.

[64] *Id.*

[65] *See id.*

[66] *NPRM*, 35 FCC Rcd at 12113, para. 25.

[67] *See* 22 U.S.C. § 4301.

[68] *See supra* note 47.

sanctions.[69] APTS asserts that its proposal would narrow the list of entities who qualify as a "foreign governmental entity" by linking this definition to a list of "carefully pre-determined countries whose interests are directly at odds with the United States."[70] We decline to adopt this proposal. First, doing so would seem to involve even more work for licensees, as it would require them to consult the OFAC list in addition to the FARA list. Second, and most importantly, we find the basis for compiling the OFAC list to be inconsistent with our purposes here. Our goal in requiring additional disclosure by foreign governmental entities is not premised on distinctions between countries that may or may not be subject to the United States sanctions. Rather, we seek to provide the American public with greater transparency about programming provided by any foreign government, consistent with the requirements of section 317 of the Act. In this regard, we find that FARA, with its associated definitions and reporting requirements premised on promoting transparency with respect to foreign influence within the United States, is better aligned with the goals of the instant proceeding than the OFAC list. As the Department of Justice has explained when discussing FARA, the government's "concern is not the content of the speech but providing transparency about the true identity of the speaker."[71]

B. Scope of Foreign Programming that Requires a Disclosure

24. While we tentatively concluded in the *NPRM* that our proposed foreign sponsorship disclosure rules should apply in any circumstances in which a foreign governmental entity directly or indirectly provides material for broadcast or furnishes material to a station free of charge (or at nominal cost) as an inducement to broadcast such material, we now narrow our focus to address specifically those circumstances in which a foreign governmental entity is programming a U.S. broadcast station pursuant to the lease of airtime. That is, for the reasons discussed below, we will require a specific disclosure at the time of broadcast if material aired pursuant to the lease of time on the station has been sponsored, paid for, or, in the case of political program or any program involving the discussion of a controversial issue, if it has been furnished for free as an inducement to air by a foreign governmental entity.[72] As explained below, leasing agreements potentially subject to our rules include any arrangement in which a licensee makes a block of broadcast time on its station available to another party in return for some form of compensation.

25. *Programming Aired Pursuant to a Lease of Time*. Based on the record before us, we agree with NPR and find that focusing on the airing of programming on U.S. broadcast stations pursuant to leasing agreements will address the primary present concern with foreign governmental actors gaining access to American airwaves without disclosing the programming's origin to the public.[73] To date, it

[69] APTS Comments at 15-16. *See also* NAB Reply at 8-9 (supporting APTS's proposal).

[70] APTS Comments at 15-16.

[71] *See* Department of Justice, *Court Finds RM Broadcasting Must Register as a Foreign Agent* (May 13, 2020), https://www.justice.gov/opa/pr/court-finds-rm-broadcasting-must-register-foreign-agent.

[72] While we focus in today's Order on the identification of programming sponsored by foreign governmental entities aired through a lease of time, we reiterate that the Commission's existing sponsorship identification rules, of course, continue to apply even outside the specific context described herein. *See, e.g., Enforcement Bureau Reminds Broadcasters of Obligation to Provide Sponsorship Identification Disclosures*, FCC Enforcement Advisory, DA 21-266 (rel. Mar. 12, 2021); *see also*, 47 U.S.C. § 317; 47 CFR § 73.1212.

[73] *See, e.g.*, NPR Comments at ii-iii, 2-4, 12-14 (proposing that should the Commission adopt rules it "narrowly tailor its approach to the specific circumstances that have raised concern: the leasing of a broadcast station or the purchasing of airtime by a foreign governmental entity or agent for purposes of broadcasting programming the foreign government entity supplies"). NAB similarly states that limiting the application of the disclosure requirement to leasing arrangements "would appropriately focus the Commission's rules on foreign propaganda, rather than the broad array of broadcast content that raised a host of concerns, including First Amendment issues, for NAB and other commenters." Letter from Erin L. Dozier, Senior Vice President and Deputy General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC at 1 (Mar. 1, 2021) (NAB *Ex Parte* Letter). In addition, Fox has noted "that it would be appropriate to require that stations carrying such programming check either the Foreign Agents (continued….)

appears that the reported instances of undisclosed foreign government programming aired on broadcast stations have involved lease agreements between a licensee and other entities.[74] It also appears that it is through such arrangements that foreign governmental entities have commonly aired programming on U.S. broadcast stations, whether directly or indirectly, without necessarily disclosing the origin of the programming.[75] Accordingly, we believe that the foreign governmental source of this programming should be disclosed in such circumstances.

26. Moreover, our action will serve to ensure greater transparency to the public, and prevent foreign governments and their representatives, which are barred from owning a U.S. broadcast license, from leasing time on a station unbeknownst to the public or the Commission. Notably, Section 310(a) of the Act outright bars "any foreign government or the representative thereof" from holding a broadcast license.[76] In addition, Section 310(b) limits the interest that a foreign corporation or individual can hold in a U.S. broadcast license, either directly or indirectly.[77] While the Commission has revised its rules in recent years to permit a greater degree of ownership in U.S. broadcast stations by non-governmental foreign entities or individuals,[78] acquisition of such interests requires Commission approval following proper consideration and public review and may also be subject to prior review and consideration by the relevant executive branch agencies.[79] Despite these longstanding restrictions, and particularly the

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Registration Act ("FARA") registration list or an equivalent FCC database at the time a program leasing agreement is entered into and at certain intervals thereafter." Fox *Ex Parte* Letter at 1.

[74] The record indicates that such contractual arrangements present the most prevalent instances of undisclosed foreign government programming to date. *See* REC Reply at 1-2 (detailing the layers of contracts that connect a broadcast licensee to the ultimate foreign state actor); *see also* Koh Gui Qing and John Shiffman, *Beijing's Covert Radio Network Airs China-friendly News Across Washington, and the World* (Nov. 2, 2015), https://www.reuters.com/investigates/special-report/china-radio/ (describing how the Chinese government radio broadcaster, CRI, was able through a subsidiary to lease almost all of the airtime on a Washington, DC area station and broadcast pro-Chinese government programming on this station without disclosing the linkage to the Chinese government); Anna Massoglia and Karl Evers-Histrom, *Russia Paid Radio Broadcaster $1.4 Million to Air Kremlin Propaganda in DC*, OpenSecrets.org (July 1, 2019), https://www.opensecrets.org/news/2019/07/russia-paid-radio-broadcaster-1-4-million-to-air-kremlin-propaganda/ (describing how a Florida-based company, RM Broadcasting LLC, had been acting as a middleman brokering airtime for Russian government-owned Sputnik International).

[75] *Id*.

[76] 47 U.S.C. § 310(a) (providing that "[t]he station license required under this Act shall not be granted to or held by any foreign government or the representative thereof," and mandating certain heightened restrictions or reviews associated with foreign involvement in the broadcast sector).

[77] 47 U.S.C. § 310(b) (providing that no broadcast station license shall be granted to any alien or the representative of any alien; any corporation organized under the laws of any foreign government; any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof; or by any corporation organized under the laws of a foreign country any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license).

[78] *See Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11272 (2016).

[79] The Commission refers applications involving foreign ownership and investment to executive branch agencies for their input on any national security, law enforcement, foreign policy, and trade policy concerns. The national security and law enforcement agencies (the Department of Defense, Department of Homeland Security and Department of Justice, informally known as Team Telecom), generally initiate review of a referred application by sending the applicant a set of questions seeking further information. Upon completion of its review, Team Telecom advises the Commission of its recommendation, and the Commission, while according an appropriate level of
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complete prohibition on a foreign government or its representatives' holding a U.S. broadcast license, some foreign governmental actors or their agents appear nonetheless to be programming stations that they otherwise would not be able to own, as detailed in the *NPRM*.[80] When they do so, the American public and the Commission may not be aware that a foreign governmental entity has leased the time on the station and is programming the station.

27. As proposed in the *NPRM,* the disclosure requirements we adopt today apply to leasing agreements, regardless of what those agreements are called, how they are styled, and whether they are reduced to writing.[81] We recognize that leasing agreements within the broadcast industry may be known by different designations. The terms time brokerage agreement (TBA) and local marketing agreement (LMA)[82] are used interchangeably to describe contractual arrangements whereby a party other than the licensee, *i.e*., a brokering party, programs time on a broadcast station, oftentimes also selling the advertising during such time and retaining the proceeds. Such leasing agreements may be for either discrete blocks of time (for example, two hours every day from 4 PM to 6 PM) or for the complete broadcast capacity of the station (i.e., 24 hours a day, seven days a week). The agreements can be for the duration of a single day or for a term of years. Regardless of the title, terms, or duration of such an agreement, the purpose of such a contractual agreement is to give one party – the brokering party or programmer – the right and obligation to program the station licensed to the other party – the licensee or broadcaster. In this manner, the programmer is able to program a radio or television station that it does not own or hold the license to operate.[83]

28. For the purposes of applying our foreign sponsorship disclosure requirement, a lease constitutes any agreement in which a licensee makes a discrete block of broadcast time on its station available to be programmed by another party in return for some form of compensation. Thus, a licensee makes broadcast time available for purposes of our rule any time the licensee permits the airing on its station of programming either provided, or selected, by the programmer in return for some form of compensation.[84] In describing a lease of time, however, we do not mean to suggest that traditional, short-

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deference to the executive branch agencies in their areas of expertise, ultimately makes its own independent decision on whether to grant a particular application. *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Report and Order, 35 FCC Rcd 10927, 10928-30, paras. 3-7 (2020).

[80] *See, e.g., NPRM*, 35 FCC Rcd at 12100, 12106, nn.4, 42.

[81] *See NPRM*, 35 FCC Rcd at 12123-26, paras. 48-51 & n.137 (describing prior Commission statements about the application of the sponsorship identification rules to leasing agreements).

[82] A "time brokerage agreement," also known as a "local marketing agreement" or "LMA," is the sale by a licensee of discrete blocks of time to a "broker" that supplies the programming to fill that time and sells the commercial spot announcements in it. 47 CFR § 73.3555, Note 2(j).

[83] *See infra* para. 37 (discussing that licensees remain responsible for programming aired on their station and for any FCC rule violations occurring during that programming).

[84] Our adoption of the disclosure obligation in the context of TBA/LMAs is consistent with Commission precedent, including the seminal 1963 guidance regarding sponsorship identification provided when the Commission implemented Congress's 1960 amendments to section 317 of the Act. The Commission's 1963 order and an accompanying public notice that laid out the new rules provided an example of the application of sponsorship identification requirements to the time brokerage situation. *See Amendment of Sections 3.119, 3.289, 3.654 and 3.789 of the Commission's Rules*, Report and Order, 34 FCC 829, 847-48, paras. 54-55 (May 1, 1963); *Amendment of Sections 73.119, 73.289, 73.654, 73.789 and 76.221 of the Commission's Rules, Report and Order,* 52 FCC 2d 701 (1975); *Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141 (1963) (containing thirty-six illustrative examples of how the statutory provisions and new rules were to be applied). Even today the Commission's rules specifically reference these interpretations. *See* 47 CFR § 73.1212(i). Pursuant to that example, a film that required a sponsorship disclosure was not transmitted by the licensee but rather was included within a time slot that had been sold to a sponsor (other than the supplier of the film) and contained proper identification of
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form advertising time constitutes a lease of airtime for these purposes.[85] Our action here today is focused on agreements by which a third party controls and programs a discrete block of time on a broadcast station. Ultimately, we believe that requiring a disclosure to inform the audience of the source of the programming whenever a foreign governmental entity provides programming to a station for broadcast pursuant to the lease of time is wholly consistent with sections 317(a)(1) and (2) of the Act.

29. We find that our focus on situations where there are leasing agreements between a station and a third party will narrow the application of the disclosure rules appropriately, and ensure that the new disclosure obligations do not extend to situations where there is no evidence of foreign government sponsored programming. For example, the record does not demonstrate that advertisements; archival, stock, or supplemental video footage; or preferential access to filming locations are a significant source of unidentified foreign sponsored programming.[86] In addition, given limitations on the ability of NCE stations to engage in leasing arrangements, [87] we expect that NCE stations will rarely, if ever, face the need to address our foreign sponsorship disclosure rules, largely assuaging the concerns of NCE commenters. Therefore, we find that limiting the application of our disclosure requirement to the context of leasing agreements obviates a number of issues and suggestions put forth by commenters concerned that the Commission would inadvertently sweep in additional programming that does not carry the same concerns with foreign influence as the unidentified lease of programming time.[88]

30. *Programming Aired in Exchange for Consideration Under 317(a)(1) of the Act*. As discussed in the *NPRM*,[89] section 317(a)(1) of the Act requires the licensee of a broadcast station to disclose at the time of broadcast if it has received any form of payment or consideration, either directly or

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the advertiser purchasing the program time slot. *Amendment of Sections 3.119, 3.289, 3.654 and 3.789 of the Commission's Rules*, Report and Order, 34 FCC 829, 847-48, paras. 54-55 (1963). Because of the manner in which the film had been provided (*i.e.*, as an inducement for the broadcasting of the film), the example indicated that a disclosure identifying the supplier of the film was required. *Id*.

[85] We note that such advertisements, whether they appear in programming aired by the licensee or provided by a third-party programmer pursuant to a lease, remain subject to the Commission's existing sponsorship identification rules under section 73.1212 and must contain a clear indication of the sponsor of the advertisement. Under the Commission's existing sponsorship identification rules in section 73.1212(f), "[i]n the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification," such identification is deemed to be sufficient. 47 CFR §73.1212(f).

[86] *See, e.g.,* NAB Comments at 10-14; NAB Reply Comments at 4-5, 8-10; APTS Comments at 3-9; REC Comments at 5-8; MPR Reply at 1-6.

[87] *See* 47 CFR §73.621(d) (providing that a "noncommercial educational television station may broadcast programs produced by or at the expense of, or furnished by persons other than the licensee, if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee"); 47 CFR §73.503(c) (providing parallel rule for noncommercial educational radio stations). Thus, any NCE station complying with either section 73.621(d) or 73.503(c) of our rules should not fall within the ambit of the foreign sponsorship identification requirements we adopt today.

[88] *See* APTS Comments at 17-18 (suggesting that the Commission add a second prong to the "foreign governmental entity" test that narrows the scope of the rule to "entities that provide the consideration or programming in order to further a propagandizing intent); NAB Comments 8-14 (proposing that we limit the disclosure requirement only to programming that both comes from a foreign governmental entity and that addresses a "controversial issue of public importance."); NPR Comments at 12-14 (suggesting making "an active editorial role by the putative sponsor" a prerequisite to any adopted disclosure requirement). Accordingly, we decline to pursue those suggestions as they are no longer relevant under the approach we adopt today.

[89] *NPRM*, 35 FCC Rcd at 12115-16, paras. 31-32.

indirectly in exchange for the broadcast of programming.[90] Thus, consistent with the statute and our current sponsorship identification rules, the foreign sponsorship identification rules we adopt today will be triggered if any money, service, or other valuable consideration is directly or indirectly paid or promised to, or charged or accepted by a broadcast station in the context of a lease of broadcast time in exchange for the airing of material provided by a foreign governmental entity.[91]

31. While we expect that such consideration received by the station directly will be apparent from the terms and exercise of any lease agreement, as discussed below, we note that under section 507 of the Act, parties involved in the production, preparation, or supply of a program or program material that is intended to be aired on a broadcast station also have an obligation to disclose to their employer or to the party for whom the programming is being produced or to the station licensee, if they have accepted or agreed to accept, or paid or agreed to pay, any money or valuable consideration for inclusion of any program or material.[92] Thus, as detailed further below, we require that licensees will exercise reasonable diligence to ascertain whether consideration has been provided in exchange for the lease of airtime or in exchange for the airing of materials directly or indirectly to the station, as well as whether anyone involved in the production, preparation, or supply of the material has received compensation, and that an appropriate disclosure will be made about the involvement of any foreign governmental entity. We discuss what this obligation means for the licensee and lessee below. [93]

32. *Programming Provided for Free as an Inducement to Air Under 317(a)(2).* In addition to the payment of monetary or other valuable consideration, section 317(a)(2) of the Act establishes that a sponsorship disclosure may also be required in some circumstances, even if the only "consideration" being offered to the station in exchange for the airing of the material is the programming itself.[94] As

[90] 47 U.S.C. § 317(a)(1). While there is no minimum level of "consideration" required to trigger the disclosure requirement under this section, the statute does permit the exclusion of services or property furnished without charge or at nominal charge in certain circumstances. One notable exception to the exclusion, however, is the provision of certain material furnished free of charge or at nominal cost as an inducement to air the program and that is related to any political program or program involving the discussion of any controversial issue, as discussed further below. 47 U.S.C. §317(b)(1).

[91] In the *NPRM*, we tentatively concluded that to the extent our prior precedent may not require a sponsorship announcement to identify the broker's involvement in programming the station airs pursuant to an LMA or a TBA -- for example, in situations involving a barter-type arrangement-- any such precedent should not apply in the case of foreign government-provided programming. Despite our seeking comment on the extent to which foreign governmental entities may have entered into barter-type arrangements to provide programming to U.S. broadcast stations, no commenters addressed this issue. Nor are we aware of any circumstances in which a foreign governmental entity is providing programming to a station pursuant to a barter-type arrangement of the type noted in *Sonshine*. Accordingly, we need not address this issue today, but may revisit if warranted in the future. *Sonshine Family Television, Inc.*, Forfeiture Order, 24 FCC Rcd 14830, 14834-35, para. 14 (2009). In *Sonshine*, the Commission noted that:

> In barter-type arrangements, which can include network affiliation agreements, the program supplier provides the station its program, which the station purchases by allowing the program provider to use some or all of the station's advertising airtime during the program. Thus, in barter arrangements the broadcaster effectively purchases programming in exchange for valuable consideration in the form of advertising time, thereby immunizing the exchange from the sponsorship identification requirement.

[92] 47 U.S.C. § 508(a)-(c); *see also* Amendments to Communications Act of 1934, Pub. L. No. 86-752, sec. 8, § 508, 74 Stat. 889, 896 (1960). The Act also provides for the possibility of a fine or imprisonment for failure to adhere to these requirements. 47 U.S.C. § 508(g) (providing that "[a]ny person who violates any provision of this section shall, for each such violation, be fined not more than $10,000 or imprisoned not more than one year, or both").

[93] *See infra* paras. 38-46 at Section C.

[94] Section 317(a)(2) provides that "any films, records, transcriptions, talent, scripts, or other material or service of any kind [that] have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program" will qualify as "consideration." 47 U.S.C. § 317(a)(2).

stated above, we believe that, as a practical matter, leasing agreements will involve the exchange of money or other valuable consideration from the programmer to the licensee. It is not typical for a station to enter into an agreement for the lease of airtime in exchange solely for the promise of free programming to be aired on the station. However, to account for such a circumstance, and consistent with our discussion in the *NPRM*, we find it is equally important that our foreign sponsorship identification rules apply in that instance, should such a circumstance arise. Section 317(a)(2) provides that a disclosure is required at the time of broadcast in the case of any "political program or any program involving the discussion of a controversial issue" if the program itself was furnished free of charge, or at nominal cost, as an inducement for its broadcast.[95] The Commission has previously interpreted "political program" in the context of section 317(a)(2) to generally involve programming seeking to persuade or dissuade the American public on a given political candidate or policy issue.[96]

33. While the *NPRM* tentatively concluded that all programming provided by a foreign governmental entity should be treated as a "political program" pursuant to section 317(a)(2) of the Act, and, thus, the provision of such programming in and of itself could be sufficient to trigger a disclosure, based on the record before us and upon further consideration, we decline to expand the definition of political program in this context.[97] Rather, consistent with our approach in the instant Order to narrow the scope of our rules to target more appropriately the reported instances of undisclosed foreign governmental programming, we believe it is unnecessary to expand the interpretation of "political program" and elect to apply the existing interpretation of that term at this time.[98] Similarly, for purposes of the foreign sponsorship identification rules we will continue to interpret "any program involving the discussion of any controversial issue" under section 317(a)(2) in a manner consistent with precedent.[99] We find that applying the existing definition of "political program" consistent with long-standing Commission precedent in this area addresses many of the concerns raised by commenters about various types of

[95] *NPRM*, 35 FCC Rcd at 12117, paras. 32-33.

[96] *Id.* As discussed in the *NPRM*, the Commission and the federal courts have previously treated such things as a program discussing a political candidate's past record, as well as a proposition on the California ballot, as "political programs" pursuant to section 317(a)(2) of the Act. *See, e.g., United States v. WHAS*, Inc., 385 F.2d 784 (6th Cir. 1967); *Amendment of the Commission's Sponsorship Identification Rules (Sections 73.119, 73.289. 73.654, 73.789, and 76.221)*, 52 FCC 2d 701 (1975); *Loveday v. Federal Communications Commission*, 707 F.2d 1443 (D.C. Cir. 1983).

[97] *NPRM*, 35 FCC Rcd at 12115-17, paras. 30-33.

[98] *See, e.g., United States v. WHAS*, Inc., 385 F.2d 784 (6th Cir. 1967); *Amendment of the Commission's Sponsorship Identification Rules (Sections 73.119, 73.289. 73.654, 73.789, and 76.221)*, 52 FCC 2d 701 (1975) (treating a program discussing a political candidate's past record as a "political program" pursuant to section 317(a)(2) of the Act); *Loveday v. Federal Communications Commission*, 707 F.2d 1443 (D.C. Cir. 1983) (treating an advertisement seeking to persuade voters about a proposition on the California ballot as a "political program" for purposes of section 317(a)(2) of the Act).

[99] 47 U.S.C. § 317(a)(2). In *Sonshine*, the Commission stated: "[G]iven the limitless number of potential controversial issues and the varying circumstances in which they might arise, the Commission approaches this determination on a case-by-case basis." *Sonshine Family Television, Inc.*, 22 FCC Rcd 18686, 18689, para. 6 (2007). With regard to the *NPRM*'s proposed definition of "political program," NAB suggests that the Commission should limit the disclosure requirement to programming that both comes from a foreign governmental entity and that broadcasters determine in good faith discusses a "controversial issue of public importance." *See* NAB Comments at 13-14; NAB Reply at 4. As we have determined above that we will apply the existing interpretation of "political program" and not expand it in the way proposed in the *NPRM*, we see no need to pursue NAB's suggestion and merely note that we will similarly apply Commission precedent when interpreting the term "controversial issue of public importance" in section 317(a)(2) of the Act.

programming that inadvertently might be swept into the ambit our new foreign sponsorship identification rules.[100]

34. Additionally, similar to our analysis above, we find that section 507 applies in this context as well.[101] Specifically, we believe it is reasonable to consider the provision of any "political program or any program involving the discussion of a controversial issue" by a foreign governmental entity to a party in the distribution chain for no cost and as an inducement to air that material on a broadcast station to be "service or other valuable consideration" under the terms of section 507.[102] Accordingly, in the event that an entity involved in the production, preparation, or supply of programming that is intended to be aired on a station has received any "political program or any program involving the discussion of a controversial issue" from a foreign governmental entity for free, or at nominal charge, as an inducement for its broadcast, we find that under section 507 it must disclose that fact to its employer, the person for whom the program is being produced, or the licensee of the station and will require an appropriate foreign sponsorship identification. We discuss what this obligation means for the licensee and lessee below.[103]

C. Reasonable Diligence

35. We adopt our tentative conclusion from the *NPRM* that the final responsibility for any necessary foreign sponsorship identification disclosure rests with the licensee in accordance with the statutory scheme.[104] Accordingly, we find that a broadcast station licensee must exercise "reasonable diligence"[105] to determine if an entity within the scope addressed above - *i.e*. an entity or individual that is purchasing airtime on the station or providing any "political program or any program involving the discussion of a controversial issue" free of charge as an inducement to broadcast such material on the station - is a foreign governmental entity, such that a disclosure is required under our foreign sponsorship identification rules.[106] As explained below, we conclude that such diligence requires that the licensee must, at a minimum:

(1) Inform the lessee at the time of agreement and at renewal of the foreign sponsorship disclosure requirement;

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[100] We also clarify that our new rules do not override the guidance provided in the Commission's 1963 seminal order and accompanying public notice about what would be considered an "inducement" to broadcast programming. *See Amendment of Sections 3.119, 3.289, 3.654 and 3.789 of the Commission's Rules*, Report and Order, 34 FCC 829, 847-48, paras. 54-55 (May 1, 1963); *Amendment of Sections 73.119, 73.289, 73.654, 73.789 and 76.221 of the Commission's Rules, Report and Order,* 52 FCC 2d 701 (1975); *Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141 (1963) (containing thirty-six illustrative examples of how the statutory provisions and new rules were to be applied); *see also* NPR Comments at 9-10 (discussing how these examples should guide the Commission's thinking in the instant proceeding about what should be viewed as an "inducement" to broadcast programming).

[101] 47 U.S.C. § 508(a)-(c).

[102] *See, e.g., In re Sponsorship Identification of Broadcast Material,* Public Notice, 40 FCC 69, 70-71 (1960) (explaining that situations in which a manufacturer, distributor or other person donates recordings to a station as an inducement for exposure on the air constitutes consideration requiring sponsorship identification). We note that the bedrock principle underlying this notion is that if "consideration" were not broadly defined, then parties would endeavor to manipulate their arrangements to avoid this element and the required sponsorship identifications. *See, e.g.*, *Fuqua Communications, Inc.*, Memorandum Opinion and Order, 30 FCC 2d 94, 97 (1971) (finding that consideration has been construed to involve many forms, including barter of goods or services and "trade-outs").

[103] *See infra* paras. 38-46 at Section C.

[104] *NPRM*, 35 FCC Rcd at 12124, para. 49.

[105] 47 U.S.C. § 317(c).

[106] *NPRM*, 35 FCC Rcd at 12121-23, para. 47.

(2) Inquire of the lessee at the time of agreement and at renewal whether it falls into any of the categories that qualify it as a "foreign governmental entity";

(3) Inquire of the lessee at the time of agreement and at renewal whether it knows if anyone further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;

(4) Independently confirm the lessee's status, at the time of agreement and at renewal by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports for the lessee's name. This need only be done if the lessee has not already disclosed that it falls into one of the covered categories and that there is no separate need for a disclosure because no one further back in the chain of producing/transmitting the programming falls into one of the covered categories and has provided some form of service or consideration as an inducement to broadcast the programming; and

(5) Memorialize the above-listed inquiries and investigations to track compliance in the event documentation is required to respond to any future Commission inquiry on the issue.

36. Finally, as discussed below, we clarify that the lessee, in accordance with sections 507(b) and (c) of the Act likewise carries an independent responsibility both to respond to the licensee's inquiries and inform the licensee if, during the course of the lease arrangement, it becomes aware of any information that would trigger a disclosure pursuant to our new foreign sponsorship identification rules.

37. *Licensee's Responsibilities*. Pursuant to section 317(c) of the Act, the licensee bears the responsibility to engage in "reasonable diligence" to determine the true source of the programming aired on its station. Section 317(c) of the Act states that "[t]he licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section."[107] This statutory provision is categoric and does not provide any exceptions, as it is the licensee who has been granted the right to use the public airwaves. As discussed in the *NPRM*,[108] the licensee of a broadcast station must ultimately remain in control of the station and maintain responsibility for the material transmitted over its airwaves, even when it has entered into a leasing agreement.[109] While this responsibility adheres in every instance, we find that it is particularly important here, where the record shows that the audience is typically unaware that the lessee/brokering party that is sponsoring, paying for, or furnishing the programming could either be a foreign governmental entity or be passing through programming on behalf of such an entity.

38. As a threshold matter, we expect the licensee to convey clearly to the prospective lessee that there is a Commission disclosure requirement regarding foreign government-provided programming. In this regard, we find that "reasonable diligence" also includes inquiring of the potential lessee whether it qualifies under our definition of a "foreign governmental entity."[110] Given that the licensee is entering into a contractual agreement that allows the lessee to program airtime or provide programming on the station, we find it reasonable to expect that the licensee make these basic inquiries of the lessee to

[107] 47 U.S.C. § 317(c).

[108] *NPRM*, 35 FCC Rcd at 12124, para. 49.

[109] *Editorializing by Broadcast Licensees*, Report, 13 FCC 1246, 1247-48 (1949) (https://docs.fcc.gov/public/attachments/DOC-295673A1.pdf) (stating that the responsibility for the selection of program material "can neither be delegated by the licensee to any network or other person or group, or be unduly fettered by contractual arrangements restricting the licensee in his free exercise of his independent judgments").

[110] *See supra* at paras. 14-20 and *infra* at Appendix A (defining the term "foreign governmental entity").

ascertain whether the programming to be aired will require a disclosure under the rules we adopt herein.[111]

39. We also expect the licensee to inquire of the lessee whether "in connection with the production or preparation of any program or program matter" that it, or any sub-lessee, intends to air it is aware of any money, service or other valuable consideration from a foreign governmental entity provided as an inducement to air a part of such program or program matter.[112] Such an inquiry is consistent with sections 507(b)[113] and (c)[114] of the Act, which impose a duty on the lessee to inform the licensee to the extent it is aware of any payments or other valuable consideration, including inducements to air for free, associated with the programming such as to trigger a disclosure. Likewise, section 317(b) of the Act imposes an associated requirement on the licensee to make any disclosures necessitated by learning such information pursuant to section 507 of the Act.[115] We find that this type of inquiry by the licensee is particularly important given reports about instances where programming originating from foreign governmental actors is being passed through program distributors who lease time on U.S. broadcast stations.[116]

[111] We note that broadcasters may choose to implement these requirements through contractual provisions between the licensee and lessee though they are not required to do so. *See* NAB Comments at 17 (stating that stations could comport with the requirement by, for example, adding a provision to their contracts requiring all advertisers and programmers to disclose this information, or providing content suppliers with a notice that the station requires information about a program's sponsor or a third-party buyer of airtime). *See also* NAB April 16 *Ex Parte* at 2 (changing its position to assert that it is problematic for broadcasters to include provisions related to foreign government-provided programming in their contracts).

[112] *See* 47 U.S.C. § 508(b).

[113] Section 507(b) of the Act states that "any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for which such program or matter is being produced, or to the licensee of such station over which such program is broadcast." 47 U.S.C. § 508(b).

[114] Section 507(c) of the Act states that "any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter." 47 U.S.C. § 508(c).

[115] 47 U.S.C. §317(c).

[116] *See supra* note 52.

40. If in response to the licensee's initial inquiry, the lessee states that it falls within the definition of a "foreign governmental entity," or is otherwise aware of the need for a foreign sponsorship identification disclosure,[117] then the licensee needs to ensure that the programming contains the appropriate disclosure. On the other hand, if the lessee's response is that it does not fall within the definition and is not separately aware of the need for a disclosure, we require the licensee to verify independently that the lessee does not qualify as a "foreign governmental entity." To do so, at a minimum, the licensee will need to conduct certain independent searches. Specifically, the licensee should check if the lessee appears on the Department of Justice's most recent FARA list as an agent that is acting on behalf of a foreign principal that is either a "government of a foreign country," as defined by FARA,[118] or a "foreign political party," as defined by FARA.[119] The licensee should also check if the lessee appears on the FARA list as an agent whose principal is either directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by a "government of a foreign country," as defined by FARA, or a "foreign political party" as defined by FARA.[120]

41. In this regard, we note that the FARA database is simple to use and allows for a search by terms. Consequently, we anticipate that in most cases a licensee will need to do no more than merely run a search of the lessee's name on the FARA database. If the search does not generate any results, the licensee can safely assume that the lessee is not a FARA agent and no further search is needed on the FARA database. If the lessee's name does appear on the FARA database, the licensee may need to review the materials filed as part of a given agent's registration to ascertain whether the lessee qualifies as a "foreign governmental entity." The licensee should also check if the lessee's name appears in the Commission's semi-annual reports of U.S.-based foreign media outlets.[121] If the lessee's name does not appear on either the FARA list or in the U.S.-based foreign media outlet reports then no further checks are

[117] As discussed above, licensees may become aware of the need for a foreign sponsorship identification disclosure via the reporting obligation contained in section 507 of the Act. *See supra* para. 40; 47 U.S.C. § 508.

[118] 22 U.S.C. § 611(e).

[119] *Id.* § 611(f).

[120] Put differently, if a lessee named "ABC Corp." appears as an agent on the FARA list, but ABC Corp.'s principal is XYZ Corp., the licensee's search does not stop at this point simply because XYZ Corp. is neither a government of a foreign country nor a foreign political party. Rather the licensee should review ABC Corp's filing to see whether XYZ Corp is in fact directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by a government of a foreign country or a foreign political party. Such information will be indicated on the filing. If there is such direct or indirect operation, supervision, direction, ownership, control, financing, or subsidization, in whole or in part, then the programming aired by ABC Corp. will need a foreign sponsorship disclosure. *See supra* note 55 (noting that FARA requires an agent to include in its filing information about the supervision, direction, ownership, control, financing, or subsidization, in whole or in part of an agent's principal).

[121] We find that NAB's assertion that the phrase "deals directly" in section 317(c) bars the type of inquiries laid out above is an overly narrow reading of the statute. *See* NAB Comments at 15-16 (arguing that consulting lists of FARA registrants on DOJ websites and lists of U.S.-based foreign media outlets on the Commission website would be contrary to section 317(c)). The inquiries described here concern the entity with whom the licensee is dealing directly – *i.e.,* the lessee with whom it is entering into a contractual relationship. In other words, we find these inquiries are similar to the reasonable due diligence, such as credit checks or other background checks, that one would reasonably expect any responsible business owner to conduct before entering into a contractual relationship with someone. Moreover, we note that reasonable due diligence under our existing rules envision situations where the licensee may have to take account of the principals of those entities/individuals with whom it is dealing directly. Section 73.1212(e) of our existing rules require that "Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent." 47 CFR § 73.1212(e).

needed of these sites.[122] Finally, we require that the licensee memorialize its inquiries to track compliance and create a record in the event of any future Commission inquiry.[123]

42. We require that a licensee investigate the nature of the party to whom it is leasing airtime both at the time the agreement between the parties is executed and at renewal.[124] As part of its inquiries, the licensee should also inquire whether the lessee is aware of anyone further back in the chain of producing/transmitting the programming who might qualify as a foreign governmental entity and has provided some form of consideration as an inducement to air the programming. To the extent that the lessee confirms that it still qualifies as a foreign governmental entity, no other investigation on the part of the licensee is necessary beyond ensuring that the disclosures specified by our rules continue to be made. If the lessee indicates that it is no longer a foreign governmental entity, then programming disclosures are no longer required under our rules after the licensee independently verifies that this is the case.

43. We require reasonable diligence to be conducted not only at the time of the agreement is entered into, but also at renewal time. We recognize the lessee's status may change, particularly if the duration of the lease agreement is for a term of years.[125] That is, over the course of the lease, not only might the lessee in fact become, due to actions on its part, a "foreign governmental entity," for example,

[122] We disagree with the National Religious Broadcasters' suggestion that we must make a finding of "widespread confusion among broadcasters about whether they were airing foreign government sponsored programming" in order to justify the straightforward steps laid out above for determining whether programming provided by a given lessee requires the standardized foreign sponsorship identification disclosure. *See* Letter from Troy A. Miller, CEO, National Religious Broadcasters, to Marlene H. Dortch, Secretary, FCC at 2 (Apr. 15, 2021) (NRB *Ex Parte* Letter) (asserting a purported lack of such documented confusion makes the requirement to engage in certain basic inquiries and two searches on government websites arbitrary and capricious); NAB April 16 *Ex Parte* Letter at 1. As described above, the requirements established herein respond to instances of undisclosed foreign government programming and provide objective criteria for licensees to follow so as to meet their "reasonable diligence" requirement with regard to such programming.

[123] Based on concerns expressed in the record, we agree with NAB and others that a general Internet search of the lessee's name should not be required. *See* Letter from Rick Kaplan, General Counsel and Executive Vice President, NAB, to Marlene H. Dortch, Secretary, FCC at 7-8 (Apr. 13, 2021) (NAB April 13 *Ex Parte* Letter); Letter from Joseph M. Di Scipio, Assistant General Counsel, Fox Corp., to Marlene H. Dortch, Secretary, FCC at 1 (Apr. 15, 2021) (Fox April 15 *Ex Parte* Letter); Letter from Mark J. Prak, Counsel for the ABC Television Affiliates Association and NBC Television Affiliates, and John R. Feore, Counsel for the CBS Television Network Affiliates Association and FBC Television Affiliates Association, to Marlene H. Dortch, Secretary, FCC at 2 (Apr. 15, 2021) (Joint Affiliates *Ex Parte* Letter) (requesting that the Commission not include an Internet search in its reasonable diligence standard).

[124] We note that requiring such inquiries only at the time the agreement is entered into and at renewal addresses the concerns raised in the record about having to make more regular, periodic inquiries regarding the status of the lessee and its programming. *See, e.g.,* Joint Affiliates *Ex Parte* Letter at 2 (urging "the Commission to eliminate the requirement that licensees repeat their diligence efforts every six months regardless of whether there was any new information or any indication that the previous diligence efforts were not still accurate"); NAB April 13 *Ex Parte* Letter at 6-7 (stating "[i]nforming lessees of the foreign sponsorship identification rules, making inquiries of the lessee, and researching specified Department of Justice (DOJ) and FCC websites . . . is more appropriately done at the time an agreement is executed and at renewal"); *and* Fox April 15 *Ex Parte* Letter at 1 (stating that "any such governmental database search should be required once an agreement is entered into and upon renewal – not every six months as proposed in the Draft Order"). *But, see* NAB *Ex Parte* Letter at 4 (stating that "[r]eviewing the lists on a semiannual basis after that (i.e., every six months after the agreement is executed) also would not be unduly burdensome"); Fox *Ex Parte* Letter at 1 (stating "that it would be appropriate to require that stations carrying such programming check either the Foreign Agents Registration Act ("FARA") or an equivalent FCC database at the time a program leasing agreement is entered into and at certain intervals thereafter").

[125] *See* Joint Affiliates *Ex Parte* Letter at 2 (noting "[o]f course, if licensees became aware of new information pertinent to the issue of foreign governmental entities sponsoring programming, they would be under their licensee obligation to undertake further diligence.").

by entering into an agency relationship pursuant to FARA, but it may also be the case that the lessee contests the Department of Justice's designation of the lessee as a FARA agent such that the lessee's name only appears on the FARA list subsequent to the establishment of the lease agreement. Moreover, we require the licensee to memorialize the results of its diligence in some manner for its own records and maintain this documentation for the remainder of the then-current license term or one year, whichever is longer. In this manner, the licensee will have the necessary documentation should the Commission inquire about a particular lease agreement or particular programming aired on the licensee's station pursuant to the lease of time.

44. In addition, we strongly encourage licensees to include a provision in their lease agreements requiring the lessee to notify the licensee about any change in the lessee's status such as to trigger our foreign sponsorship identification rules. We expect that inclusion of such a provision will impress upon the lessee the importance of our rules and result in a statement to the licensee if there is a change in status. Some commenters assert that in lieu of the clear objective steps laid out above for meeting the statutory "reasonable diligence" requirement, the Commission should instead require broadcasters to engage in "reasonable diligence" "only if they have reason to believe that their lessee is affiliated with a foreign governmental entity."[126] The Act does not, however, contain a threshold showing of "reason to believe" in advance of requiring that broadcasters engage in "reasonable diligence."[127] Moreover, the adoption of such a subjective standard would make the rules adopted in the instant Order virtually ineffectual and unenforceable by leaving it up to the broadcasters' discretion whether to check the status of a lessee, rather than relying on quick objective searches of reliable government databases. Some of those that propose this "reason to believe" standard assert by way of example that there is no reason to believe that a church or school group with whom a licensee has had an extended relationship is likely to be, or have any connection with, a foreign governmental entity, and, hence there is no reason to inquire about such a lessee's status or its programming.[128] The practical implication of linking the

[126] *See* NAB April 13 *Ex Parte* Letter at 3; *see also* Joint Affiliates *Ex Parte* Letter at 2 (stating that "[i]n short, of the diligence action items listed in paragraph 35 of the proposed Report and Order, Affiliates Counsel submit that only items (1), (2) and (3) should be adopted, and that those duties should be triggered only if the licensee, in its reasonable, good faith judgement, determines that further scrutiny is required to ensure compliance with the sponsorship identification rules"); Letter from James L. Winston, President, National Association of Black Owned Broadcasters, Inc. to Marlene H. Dortch, Secretary, FCC at 1 (Apr. 14, 2021) (NABOB *Ex Parte* Letter) (proposing that the Commission further tailor its proposal to those situations where there is reason to believe the programming maybe coming from a foreign government source); Letter from Maurita Coley, President and CEO, Multicultural Media, Telecom and Internet Council, to Marlene H. Dortch, Secretary, FCC at 1 (Apr. 15, 2021) (MMTC *Ex Parte* Letter) **(**urging the Commission to have "any due diligence requirements apply in those circumstances where the broadcaster has reason to believe the programming may be coming from a foreign governmental source").

[127] *See* 47 U.S.C. 317(c). The commenters arguing for a "standard of reasonableness" base their proposal on the recently adopted *Political File Reconsideration Order,* which clarified that the Commission will apply a standard of reasonableness and good faith to broadcasters in (1) determining whether, in context, a particular issue ad triggers disclosure obligations under section 315(e)(1)(B) of the Act; (2) identifying and disclosing in their online political files all political matters of national importance that are referenced in each issue ad; and (3) determining whether it is appropriate to identify an issue advertiser or provide other information relating to an issue ad using an acronym or other abbreviated notation. *Complaints Involving the Political Files of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC, et al.,* Order on Reconsideration, 35 FCC Rcd 3846 ¶ 8 (2020), *citing Codification of the Commission's Political Programming Policies,* Report and Order, 7 FCC Rcd 678 ¶ 4 (1991) (stating that the Commission will "[c]ontinue to defer to licensees' reasonable, good faith judgment in determining whether sufficient sponsorship identifications have been provided in political programming and advertising"). *See, e.g.* NAB April 13 *Ex Parte* Letter at 4-5. The requirements at issue here, however, are distinguishable from the political file requirements, which involve a broadcaster's good fairth judgment in determining, for example, which issues qualify as matters of national importance or which acronyms were appropriate to use for purposes of identifying the advertiser. Here, the requirements for triggering our foreign sponsorship disclosure requirements involve straightforward and limited search requirements.

[128] *See* Joint Affiliates *Ex Parte* Letter at 1.

"reasonable diligence" steps described above to a broadcaster's *belief* based on its previous long-term relationships with given lessees, however, is that only new lessees or perhaps those with characteristics unknown to the broadcaster will be subject to "reasonable diligence," an approach that would seem to favor existing lessees at the expense of new and diverse entrants and to jeopardize the Commission's efforts to ensure broadcast audiences know who is seeking to persuade them.[129]

45. Some commenters suggest that the requirement to check the FARA list is unduly burdensome.[130] We find that limiting the application of our foreign sponsorship disclosure rules to situations involving leasing agreements and also narrowing the scope of the term "political program" to align with prior interpretations, should greatly diminish the overall compliance burden on licensees by limiting the circumstances in which such searches will be necessary to those areas that raise important issues of public concern -- as compared to the proposal laid out in the *NPRM*, which applied to *all* programming arrangements and required a special disclosure for all programming provided by a foreign governmental entity -- while taking necessary steps to ensure broadcasters will identify those instances where foreign sponsorship identification is necessary.[131] In addition, the objective tests laid out above should facilitate compliance, by specifying what licensees have to do to comply with the "reasonable diligence" requirement in terms of straightforward and limited search requirements that minimize the burden on broadcasters and are necessary to ensure that the public is adequately informed about the true identity of a programmer's ties to a foreign government.[132] Thus, we find that these reasonable diligence

[129] In this regard, we reject MMTC's assertion that our requirements will make it more difficult for small entities and new entrants to the broadcast industry to enter into LMAs to facilitate the training and incubation that often form the pathway to new and diverse ownership. MMTC *Ex Parte* Letter at 1. To the contrary, we find that only requiring inquiries based on the broadcaster's belief of who may have connections to a foreign governmental entity rather than a uniform requirement applying to all lease agreements inserts an unnecessary level of ambiguity into whether new entrants are receiving nondiscriminatory treatment.

[130] *See* APTS Comments at 18 (asking that the new rules only apply on a going forward basis and noting the difficulty of locking in content if licensees must keep abreast of changes in an entity's status in real time); *see also* NAB Comments at 16-17; NPR Comments at 7; Letter from Rick Kaplan, General Counsel and Executive Vice President, NAB, to Marlene H. Dortch, Secretary, FCC at 1 (Apr. 15, 2021) (NAB April 15 *Ex Parte* Letter) (seeking revisions to the reasonable diligence standard to avoid sweeping in "thousands of leasing agreements"). *But see* NAB *Ex Parte* Letter at 1 (stating that focusing the application of the disclosure requirement on leasing arrangements would be appropriate) *and* Fox *Ex Parte* Letter at 1 (noting that it would be appropriate to require that stations to check whether they are dealing with a foreign entity at the time a program leasing agreement is entered into and at certain intervals thereafter).

[131] *See* NAB Comments at 14-17; NPR Comments at 5-8; NAB Reply at 5-6.

[132] We note that the U.S. Court of Appeals for the Sixth Circuit has stated previously that the Commission is not precluded "from adopting a Regulation calculated to require a station to make reasonable efforts to go beyond a named 'sponsor' for a political program in order to ascertain the real party in interest for purposes of announcement." *United States of America v. WHAS, Inc*., 385 F.2d 784, 788 (6th Cir. 1967). In a subsequent decision, the U.S. Court of Appeals for the D.C. Circuit found the licensees in that case did not have to look beyond the entity who had provided them the programming to determine the sponsor for purposes of compliance with the Commission's rules. *Loveday v. Federal Communications Commission*, 707 F.2d 1443 (D.C. Cir. 1983). We find that the regulations promulgated in the instant *Order* do not fall within the *Loveday* court's analysis for several reasons. First, we are promulgating our foreign sponsorship identification rules in the context of congressional concern about undisclosed foreign government programming and on the heels of amendments to the Communications Act that link identification of foreign governmental actors to FARA, similar to the rules promulgated herein. *See supra* note 9 (citing letters from congressional representatives seeking additional Commission action on undisclosed foreign government programming); *see also supra* paras. 19-20 (discussing the addition of new section 722 to the Communications Act, which calls for identification of "U.S.-based foreign media outlets" based on FARA). By contrast, the *Loveday* court expressed concern about the lack of support in the legislative history for the type of investigations petitioners were seeking. *Loveday* at 707 F.2d at 1450-55. Moreover, we find that the specific guidance we provide above about what constitutes "reasonable diligence" with regard to foreign government-provided programming (*i.e.*, what inquiry to make of whom, where specifically to

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inquiries do not pose undue burden on broadcast licensees and, more importantly, will help ensure that the licensee is cognizant of whether the entity seeking to lease time on its station is a foreign governmental entity.

46. *Lessee's Obligations*. As previously discussed, pursuant to section 507, the lessee also holds an independent obligation to communicate information to the licensee relevant to determining whether a disclosure is needed. In this regard, we adopt the tentative conclusion contained in the *NPRM* that sections 507(b)[133] and (c)[134] of the Act impose a duty on the broker/lessee to inform the licensee to the extent it is aware of any payments (or other valuable consideration) associated with the programming such as to trigger a disclosure.[135] No party commented on our tentative conclusion that sections 507(b) and (c) of the Act impose a duty on the broker/lessee to inform the licensee to the extent it is aware of any payments (or other valuable consideration) associated with the programming.[136] As stated in the *NPRM*, in its 1960 amendments to the Act, Congress imposed on non-licensees associated with the transmission or production of programming a requirement to disclose any knowledge of consideration paid as an inducement to air particular material.[137] Congress added this provision in recognition that individuals other than the licensee were increasingly involved in programming decisions.[138] Thus, consistent with the statute, we conclude that it is incumbent on a lessee to convey to the licensee its knowledge of any payment or consideration provided by, or unpaid programming received as an inducement from, an entity or individual that triggers the foreign sponsorship identification rules laid out in this Order.

47. We emphasize here that the reach of sections 507(b) and (c) of the Act is not limited only to those entities or individuals who have entered into lease agreements with the licensee. Rather, these provisions impose a disclosure obligation on *any person* "who, in connection with the production or preparation of any program…" or "who supplies to any other person any program" to convey any information such person may have about the provision of any inducement to broadcast the program in order to necessitate a sponsorship identification disclosure by the licensee. Specifically, such non-licensees must disclose to their employer, the person for which such program is being produced (*e.g.*, the next individual involved in the chain of transmitting the programming to the licensee), or the licensee itself, their knowledge of any payment or "valuable consideration" provided or accepted by a foreign governmental entity. Section 507(a) of the Act imposes a similar disclosure obligation on the licensee's own employees.[139] Likewise, section 317(b) of the Act[140] imposes a parallel requirement on licensees to

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look when investigating a lessee's status, and the frequency of such inquiries) obviates the concern raised by the *Loveday* court about licensees having "to guess in every situation what the Commission would later find to be 'reasonable diligence.'" *Loveday* at 707 F.2d at 1457. The *Loveday* court addressed a situation where a licensee confronted with undocumented allegations was being asked by the petitioner to question the apparent sponsor's representations, and, thus, in the court's eyes potentially opening the door to wide-ranging investigatory responsibilities on the licensee's part. *Loveday* at 707 F.2d at 1449, and 1457-58. We emphasize here that adherence to our "reasonable diligence" standard with regard to foreign government-provided programming requires no guesswork, but rather the posing of certain questions, and review of lists of already identified foreign governmental actors.

[133] 47 U.S.C. § 508(b).

[134] *Id.* § 508(c).

[135] *NPRM*, 35 FCC Rcd at 12125-26, para. 51.

[136] *Id.*

[137] 47 U.S.C. §§ 508(b)-(c).

[138] The 1960 House Report that accompanied the addition of section 507 to the Act described the need to extend the coverage of section 317 because "licensees now delegate much of their actual programming responsibilities to others"). *See* House Report 1800, 86th Cong., 2d Sess., at 19 (June 13, 1960).

[139] Section 507(a) of the Act states that "any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, (continued….)

make a required disclosure to the public at the time of broadcast if they learn of the need for a disclosure via the mechanism laid out in section 507 of the Act.

48. *Reasonable Diligence Requirements to Apply on a Prospective Basis.* Some commenters have asked that any new rules only apply on a going forward basis.[141] Recognizing that some lease agreements may last for several years, we decline to delay application of our rules to only new lease agreements. Rather, we believe that the public interest is best served if audiences are notified of foreign sponsorship as soon as reasonably possible. Thus, in addition to applying our rules to new lease agreements and renewals of existing agreements, we require that lease agreements in place when the changes to the rules adopted herein become effective come into compliance with the new requirements, including undertaking reasonable diligence, within six-months. In this manner, the transparency we seek to achieve can be accomplished in a way that does not unduly burden licensees.

D. Contents and Frequency of Required Disclosure of Foreign Sponsorship

49. Consistent with the *NPRM*, we adopt standardized language to inform audiences at the time of broadcast that the program material has been provided by a foreign governmental entity. Such standardized language will avoid confusion and ensure that the information is conveyed clearly and concisely to the audience. Accordingly, as discussed below, we adopt the disclosure language proposed in the NPRM with two modifications, one to provide greater flexibility in the language used and the other to harmonize our labeling requirements with those imposed pursuant to FARA. In addition, we adopt a requirement that stations airing programming subject to the proposed disclosure requirement must place copies of the disclosures in their OPIFs, in a standalone folder marked as "Foreign Government-Provided Programming Disclosures" so that the material is readily identifiable to the public pursuant to the timing requirements discussed below.

50. *Labeling Requirement.* First, as requested by NAB, we allow licensees the flexibility to use any of three terms (sponsored, paid for, or furnished) in an on-air foreign sponsorship disclosure statement, rather than mandate the use of "paid for, or furnished" as proposed, in order to conform the new requirement more closely to existing sponsorship identification requirements.[142] We note that the language proposed by NAB is consistent with existing sponsorship identification requirements.[143] To the extent that our foreign sponsorship identification rules comport with existing rules and with how broadcast station personnel are accustomed to operating, we find that such allowances should facilitate compliance by licensees and minimize the burden on them.[144] Hence, at the time a station broadcasts

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any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station. 47 U.S.C. § 508(a).

[140] *See* 47 U.S.C. § 317(b) (stating "[i]n any case where a report has been made to a radio station, as required by section 507 of this Act, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.").

[141] *See* APTS Comments at 18 (asking that the new rules only apply on a going forward basis and noting the difficulty of locking in content if licensees must keep abreast of changes in an entity's status in real time); *see also* NAB Comments at 16-17; NPR Comments at 7.

[142] *See* NAB Comments at 21.

[143] *See* 47 CFR § 73.1212(a)(1).

[144] In adopting standardized disclosure language, we reject the suggestion by APTS and NPR that NCE stations be permitted to devise their own on-air sponsorship disclosure. *See* APTS Comments at 9; NPR Comments at 14-16. Such an amorphous approach is inconsistent with our stated goal of increasing transparency and providing audiences with clear, specific information as to the foreign governmental sponsorship of program material at the time of broadcast. Also, the Commission has stated that diverging from the existing language of a rule can lead to confusion or misunderstanding. *See Sonshine Family Television, Inc., Licensee of Station WBPH-TV Bethlehem, PA*, Notice of (continued….)

programming that was provided by a foreign governmental entity,[145] we require a disclosure identifying that fact and the origin of the programming as follows:

> "**The [following/preceding] programming was [sponsored, paid for, or furnished,] either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].**"

51. In establishing this disclosure language, we recognize that FARA also has a labelling requirement and clarify that the programming need not have two separate labels – both the FARA label and our full disclosure.[146] Rather, for those entities that are subject to FARA, we accept for compliance purposes the contents of the FARA label as long as it is modified to include the country associated with the foreign governmental entity named in the label and comports with the format and frequency requirements described below.[147] As discussed further below, we note that FARA requires only that FARA agents label materials, including broadcast programming, with a conspicuous statement identifying the FARA agent and its principal when distributed in the United States; therefore, unless the licensee has registered under FARA, the licensee may not have the required FARA label.[148] Thus, for those entities not registered under FARA, we require the disclosure language we adopt today. Moreover, we find that our disclosure statement—or, alternatively, the passthrough of modified FARA labels—provides audiences of broadcast stations greater insight about the source of foreign government-provided programming than may exist with existing FARA labeling practices. As described above, the language we adopt today requires that the country associated with the foreign governmental entity be named in the disclosure, which will provide additional information when that entity is a foreign political party or an agent registered under FARA.

52. In the interest of ensuring transparency for the intended viewers and listeners of foreign government-provided programming, we also require that, if the primary language of the programming is other than English, the disclosure statement should be presented in the primary language of the programming.[149]

53. With regard to the format of the disclosure, for televised programming, we require the disclosure to be in letters equal to or greater than four percent of the vertical picture height and be visible

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Apparent Liability for Forfeiture, 22 FCC Rcd 18686, 18693-94, para. 15 (2007). In any event, as discussed above in section III.B., we find that most, if not all, NCE programming will fall outside the ambit of the rules we adopt today. Consequently, the issue of disclosure language should have minimal, if any, impact on NCE stations.

[145] The phrase "provided by" when used in relation to "foreign government programming" covers both the broadcast of programming in exchange for consideration and furnishing any "political program or any program involving the discussion of a controversial issue" for free as an inducement to broadcast the programming. *NPRM*, 35 FCC Rcd at 12100, para. 3 n.5.

[146] *See* 28 CFR § 5.402(d); Department of Justice, *FARA, Frequently Asked Questions, What Should the Conspicuous Statement Say?*, https://www.justice.gov/nsd-fara/frequently-asked-questions#46 (last visited June 11, 2020). The Department of Justice currently requires the following standardized language for FARA disclosures: "This material is distributed by (name of foreign agent) on behalf of (name of foreign principal). Additional information is available at the Department of Justice, Washington, DC."

[147] See also Section III.E. below discussing how the disclosure we adopt today complements the FARA label and is more expansive and/or fills in gaps in coverage.

[148] *See* 22 U.S.C. § 614(b).

[149] Although the *NPRM* sought comment on this issue, no commenters addressed this point. *NPRM*, 35 FCC Rcd at 12118, para. 36. For programming that contains a "conspicuous statement" required by FARA, and such a conspicuous statement is in a language other than English, an additional disclosure in English is not needed. *See* 22 U.S.C. § 611 et. seq.

for not less than four seconds to ensure readability.[150] As this format convention replicates our existing format rule for a televised political advertisement concerning a candidate for public office, we anticipate minimal compliance burden on licensees.[151] For radio broadcasts, we incorporate into our rules the Department of Justice guidance provided to FARA registrants that the disclosure shall be audible.[152]

54. With regard to the frequency of the disclosure, consistent with the *NPRM*[153] and our existing rules for political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance,[154] we require that the disclosure be made at both the beginning and conclusion of the broadcast station programming to ensure the audience is aware of the source of its programming. Also consistent with our existing rules for political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance, we require that for any broadcast of 5 minutes duration or less, only one such announcement must be made at either the beginning or conclusion of the program.[155]

55. We deviate from our existing sponsorship identification rules in one respect. We adopt our tentative conclusion from the *NPRM* that for programming of greater than sixty minutes in duration, an announcement must be made at regular intervals during the broadcast, but no less frequently than once every sixty minutes.[156] While NAB urges the Commission not to deviate from the existing timing and frequency rules, we believe that this one additional requirement is necessary given the importance of disclosure related to foreign government-provided programming.[157] As discussed in the *NPRM*, we find that periodic announcements are necessary, particularly in those instances where a foreign governmental entity is continually broadcasting programming without an identifiable beginning or end, such as through a lease of a 100% of a station's airtime.[158]

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[150] The *NPRM* sought comment on this format, but no commenters addressed this point. *NPRM*, 35 FCC Rcd at 12118, para. 38.

[151] 47 CFR § 73.1212(a)(2)(ii).

[152] Once again, although the *NPRM* sought comment on this issue, no commenters addressed this point. *NPRM*, 35 FCC Rcd at 12118-19, para. 39. *See* Department of Justice, *FARA, Frequently Asked Questions, How Do I Label Radio Broadcasts?*, https://www.justice.gov/nsd-fara/frequently-asked-questions#51 (last visited Mar. 12, 2021).

[153] *NPRM*, 35 FCC Rcd at 12119, at para. 40.

[154] 47 CFR § 73.1212(d).

[155] *Id.*

[156] *NPRM,* 35 FCC Rcd at 12119, para. 40. Sponsorship announcements at regular intervals are not explicitly required under our current rules.

[157] NAB Comments at 20-21. While APTS notes that NCE stations are prohibited by statute from interrupting programming to identify funding sources, which could override and nullify the proposed frequency requirement in the context of NCE stations, as stated above, we believe that NCE stations will rarely, if ever, fall within the ambit of our rules. *See supra* note 88 and accompanying text; APTS Comments at 18. To the extent an issue does arise, we will address such situations on a case-by-case basis through either our waiver process or the means that appear appropriate at that time. *See* 47 CFR § 1.3 (stating that any of the Commission's rule provisions maybe waived by the Commission on its own motion or on petition if good cause therefor is shown).

[158] *See NPRM*, 35 FCC Rcd at 12119, at para. 41. No commenter objected to our reasoning for this finding nor commented on the burden of recurring announcements. We note that in the case of a political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance – which typically does not have an obvious sponsor – our current rules require a sponsorship identification both at the beginning and conclusion of any such broadcast of greater than 5 minutes. 47 CFR § 73.1212(d). Similarly, here we believe that periodic announcements (once every 60 minutes) are necessary for any foreign government-provided programming with a duration of greater than one hour because of the lack of transparency regarding the true sponsor of such programming. We note that periodic announcements (*i.e.*, once every hour versus at the beginning and conclusion of the program) are also necessary because of the longer blocks of programming time foreign governmental entities

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56. Finally, consistent with the proposal in the *NPRM*, we find that our standardized disclosure requirements apply equally to any programming transmitted on a broadcast station's multicast streams.[159] We received no objections to this proposal, and consequently find no reason to exclude multicast streams. As such, multicast streams are subject to all the disclosure requirements pertaining to foreign government-provided programming that we adopt today.

57. *Public File.* Consistent with the *NPRM*, we adopt a requirement that stations airing programming subject to the proposed disclosure requirement must place copies of the disclosures in their OPIFs,[160] in a standalone folder marked as "Foreign Government-Provided Programming Disclosures" so that the material is readily identifiable to the public,[161] as well as a requirement with regard to the frequency of placing such material in the public file. For broadcast stations that do not have obligations to maintain OPIFs, we recommend such stations retain a record of their disclosures in their station files consistent with previous Commission guidance.[162] We do not, however, require licensees to submit additional information to their OPIFs concerning the list of persons operating the foreign governmental entity providing programming.

58. Specifically, we find that licensees must place in their OPIFs the actual disclosure and the name of the program to which the disclosure was appended. In addition, the licensee must state the date and time the program aired. If there were repeat airings of the program, then those additional dates and times should also be included in the OPIF. With regard to the frequency with which licensees must update their OPIFs with this disclosure information, we align this requirement with our existing requirement to update the TV Issues/Programs Lists on a quarterly basis, as this will minimize the need for licensees to track different public filing requirements.[163] We also establish the same OPIF two-year retention period for disclosures related to foreign government-provided programming as currently exists for the retention of lists regarding the executives of any entity that sponsored programming concerning a political or controversial matter.[164]

59. We do not adopt the "as soon as possible" disclosure standard contained in section 73.1943 of our rules or require posting to occur "within twenty-four hours of the material being

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typically purchase in connection with leasing arrangements. *See, e.g.,* Fox *Ex Parte* Letter at 1 (for purposes of "long form foreign government-provided programming aired pursuant to leasing arrangements," it would be "appropriate" to require a station to include a sponsorship announcement "at the top and bottom of the hour").

[159] As a result of the digital television transition, television stations possess the ability to broadcast not only on their main program stream but also, if they choose, over additional program streams—broadcasting that is commonly referred to as multicasting. Similarly, radio stations that are broadcasting in digital possess the ability to distribute multiple programming streams over the air. Radio multicast streams are known as HD2, HD3, and HD4 channels. *See NPRM*, 35 FCC Rcd at 12119, para. 42 & n.117.

[160] *NPRM*, 35 FCC Rcd at 12120, para. 43.

[161] *Id.* at 12121, para. 46.

[162] *See Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Applications*, Second Report and Order, 35 FCC Rcd 5094, 5115, para. 45 n.152 (2020).

[163] *See* 47 CFR §73.3526 (e)(i) and 47 CFR §73.3527(e)(8). These provisions state that commercial and NCE broadcast TV stations must every three months place in their public inspection files a list of programs that have provided the station's most significant treatment of community issues during the preceding three-month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October - December, April 10 for the quarter January - March, etc.). Licensees that find it more convenient to upload their disclosures more frequently that quarterly may do so, but in no instance should any disclosure from a prior calendar quarter be uploaded later than the tenth day of the succeeding calendar quarter.

[164] 47 CFR §73.1212(e). We agree with NAB that aligning these retention periods will minimize the administrative burden on licensees. NAB Comments at 20.

broadcast" as proposed in the *NPRM*.[165] We are persuaded by NAB's comments that the "as soon as possible" standard contained in section 73.1943(c) of our rules need not apply to disclosures associated with foreign governmental entities.[166] As NAB notes, the immediacy requirement in the political advertising context stems from the need to ensure that candidates can exercise their statutory rights to equal opportunities at statutorily mandated rates and the time-sensitive need to reach potential voters before an election.[167] We find no corresponding need to respond within an expedited timeframe in the case of foreign government-provided programming.

60. We conclude that, to the extent the foreign programming consists of "a political matter or matter involving the discussion of a controversial issue of public importance," licensees obtain and disclose in their OPIFs a list of the persons operating the entity providing the programming, as currently required.[168] We are not persuaded by NAB's contention—that, in the case of foreign-government-provided programming, the on-air and OPIF disclosures will provide the necessary information to the American public identifying the foreign governmental entity that provided the programming and the foreign country with which it is affiliated—to grant what effectively would be an exemption to existing sponsorship identification rules for political programming provided by foreign governmental entities.[169] However, we determine at this time that the licensee need not provide any additional information in its OPIF, as considered in the *NPRM*, regarding the relationship between the foreign governmental entity and the foreign country that the foreign governmental entity represents, having no evidence to support the need for such information to enhance public disclosure at this time.[170]

61. Finally, we adopt the unopposed tentative conclusion contained in the *NPRM* that licensees maintain in their OPIFs the disclosures associated with foreign government-provided programming rather than giving them the option of maintaining such information at the network headquarters if the programming was originated by a network.[171]

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[165] *See NPRM*, 35 FCC Rcd at 12120-21, para. 45.

[166] NAB Comments at 19-20.

[167] *Id.*

[168] *NPRM*, 35 FCC Rcd at 12120, para. 43. Our existing sponsorship identification rules require that "[w]here the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection" in the station's OPIF. 47 CFR §73.1212(e). We clarify that licensees can satisfy the required OPIF disclosures by identifying the officers and directors of the lessee in a single filing per lessee (rather than separate filings concerning each individual program sponsored by the same lessee) together with other filings required by the foreign sponsorship identification rules. *See* Letter from Erin L. Dozier, Senior Vice President and Deputy General Counsel, NAB, to Marlene H. Dortch, Secretary, FCC at 1 (Apr. 14, 2021) (NAB April 14 *Ex Parte* Letter).

[169] *See* NAB Comments at 18-19. *See also* 47 CFR §73.1212(e).

[170] *See NPRM*, 35 FCC Rcd at 12120, para. 44; NAB Comments at 18-19.

[171] Section 73.1212(e) of the Commission's rules provides that certain information concerning a political matter or controversial issue may be retained at the headquarters office of the network if the broadcast is originated by a network, instead of the location where the originating station maintains its public inspection file. 47 CFR § 73.1212(e). Given the revised approach we adopt today to focus on a narrow set of circumstances, we find that the programming of concern to the foreign sponsorship identification rules is unlikely to be provided by a network, making this existing flexibility likely inapplicable. However, as there are no objections in the record, we find no reason not to adopt the *NPRM*'s tentative conclusion.

E. Concerns About Overlap with Other Statutory or Regulatory Requirements

62. We reject any suggestion that our foreign sponsorship identification rules are either duplicative of requirements imposed under FARA[172] or unnecessary given the Commission's current sponsorship identification rules.[173] Rather, as discussed above and consistent with the admonitions of commenters,[174] we adopt disclosure requirements that further the Commission's statutory mandate to provide transparency to audiences of broadcast stations regarding the source of sponsored programming, while avoiding unnecessary duplication with the FARA requirements.

63. As a preliminary matter, we emphasize that although the requirements laid out in the *NPRM* and the instant Order look to FARA for assistance in determining what qualifies as a "foreign governmental entity," section 317 of the Act and FARA each cover different types of entities with respect to their labeling requirements. Section 317 and the Commission's sponsorship identification rules speak specifically to the obligations of licensees of broadcast stations, imposing transparency requirements regarding the origin of sponsored content as an element of the licensee's stewardship of the public airwaves.[175] In contrast, FARA imposes an obligation on agents required to register under FARA to label materials with a conspicuous statement identifying the FARA agent and its principal when it is distributing relevant materials within the United States by any means or media.[176] Accordingly, unless the licensee of a broadcast station itself is a registered agent under FARA, the label required by FARA may not appear. [177] Even if such labels are being passed through in some instances, as discussed above and in the *NPRM*, the reports about incidents of undisclosed foreign government programming indicate

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[172] NAB asserts that the rules as proposed in the *NPRM* would duplicate the existing FARA disclosure regime that NAB contends regulates the same content across all media platforms. Moreover, NAB contends that the FCC must demonstrate how the existing disclosures required under FARA and related regulations are inadequate. NAB Comments at 5-6. NAB urges the Commission to rework the proposal to rely primarily on FARA by requiring broadcasters and all entities subject to the sponsorship identification rules to pass through the disclosures already mandated by FARA. *Id.* at 6-8 (suggesting that the Commission determine whether requiring a "duplicative" identification regime serves a compelling governmental interest). *But see* NAB *Ex Parte* Letter at 1 (finding that our narrowed approach "would appropriately focus the Commission's rules on foreign propaganda, rather than the broad array of broadcast content that raised a host of concerns"). NCTA similarly suggests that the Commission should limit any adopted rules to address gaps, if any, in what FARA requires to avoid subjecting entities to a duplicative and potentially conflicting regulatory scheme. NCTA Reply at 2.

[173] NPR notes that section 73.1212(e) already requires broadcasters to identify the "true identity" of the entity by whom or on whose behalf valuable consideration or programming is provided and that failure to identify when a foreign government is the true sponsor of broadcast would violate existing law. NPR Comments at 2-4.

[174] NAB Comments at 5-6; NCTA Reply at 2.

[175] The goal of the statutory disclosure requirement and the Commission's implementing regulations is to ensure that the public knows who had sponsored, furnished, or paid for particular broadcast programming, and ultimately who is seeking to persuade the audience using the licensee's airwaves. *See NPRM*, 35 FCC Rcd at 12100-05, paras. 4-11.

[176] 22 U.S.C. § 614 (b) provides that:

> [i]t shall be unlawful for any person within the United States who is an agent of a foreign principal and required to register under the provisions of this subchapter to transmit or cause to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any informational materials for or in the interests of such foreign principal without placing in such informational materials a conspicuous statement that the materials are distributed by the agent on behalf of the foreign principal, and that additional information is on file with the Department of Justice, Washington, District of Columbia.

Id.

[177] As stated above, the rules adopted today effectively would allow broadcast stations simply to pass through any such label already contained in the programming, with specified additional information in some cases, and not remove such information prior to broadcast to comply with the foreign sponsorship identification rules. We have allowed for that contingency by providing the flexibility in our labeling requirement as discussed above.

the need for greater action to ensure transparency.[178] Consistent with the Commission's own statutory mandate, the requirements adopted in the instant Order focus specifically on *broadcast licensees* to ensure they disclose foreign government provided-programming consistent with the intent and language of section 317 of the Act.

64. Further, as noted in Section D above, the rules we adopt today require identification of the *country* associated with the foreign governmental entity that provided the programming, whereas the FARA disclosure statement does not require this information.[179] Rather, FARA requires identification of only the *foreign principal*, whose name may not identify its connection to a foreign country.[180] In addition, while FARA requires that covered materials "that are televised or broadcast, or which are caused to be televised or broadcast …shall be *introduced* by a statement which is reasonably adapted to convey to the viewers or listeners thereof such information as is required [under FARA]," it does not dictate whether such information should be repeated during a broadcast or at what frequency.[181] In contrast, the foreign sponsorship identification rules we adopt today contain specific guidance for broadcast licensees as to the frequency and content of the required label to increase transparency and ensure audiences are aware of the foreign sources of such programming.

65. Given the key differences between the FARA requirements and those we adopt today, we reject NPR's assertion that enforcement of section 73.1212(e) could achieve the Commission's goals in this proceeding.[182] As REC notes, compliance with the Commission's existing sponsorship identification rules does not currently result in the identification of a foreign government as the ultimate provider of programming to the extent this is the case.[183]

F. Section 325(c) Permits

66. We adopt the *NPRM's* tentative conclusion that the proposed foreign sponsorship identification rules should apply expressly, to the extent applicable, to any programming broadcast pursuant to a section 325(c) permit, in addition to U.S.-licensed broadcast stations. A section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S.-licensed station, transmits or delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country and broadcasts the programming from the

[178] For example, in the case of station WZHF discussed above, which airs programming provided by RM Broadcasting (RM), commenter REC notes it was "unable to verify" whether WZHF broadcasts any announcements to that effect. REC Reply at 1 n.3. *See also*, *NPRM*, 35 FCC Rcd at 12100 n.4 (citing Koh Gui Qing and John Shiffman, *Beijing's Covert Radio Network Airs China-Friendly News Across Washington, and the World* (Nov. 2, 2015), https://www.reuters.com/investigates/special-report/china-radio/ (describing how the Chinese government radio broadcaster, CRI, was able through a subsidiary to lease almost all of the airtime on a Washington, DC area station and broadcast pro-Chinese government programming on this station without disclosing the linkage to the Chinese government).

[179] See *NPRM*, 35 FCC Rcd at 12117, para. 34.

[180] *See* 28 CFR § 5.402(d); Department of Justice, *FARA, Frequently Asked Questions, What Should the Conspicuous Statement Say?*, https://www.justice.gov/nsd-fara/frequently-asked-questions#46 (last visited March 13, 2021) (stating that the disclosure should say "This material is distributed by (name of foreign agent) on behalf of (name of foreign principal). Additional information is available at the Department of Justice, Washington, DC.").

[181] *See* 28 CFR § 5.402(d) (emphasis added); *see also*, Department of Justice, *FARA, Frequently Asked Questions, What Should the Conspicuous Statement Say?*, https://www.justice.gov/nsd-fara/frequently-asked-questions#46 (last visited March 13, 2021).

[182] *See* NPR Comments at 2-4.

[183] REC Reply at 2.

foreign station with a sufficient transmission power or from a geographic location that enables the material to be received consistently in the United States.[184]

67. We find that applying the same disclosure requirements to programming broadcast pursuant to a section 325(c) permit serves the public interest because, like programming from a U.S.-licensed station, programming from a section 325(c) station is received by audiences in the United States. In this context, the section 325(c) permit holder has full control over its programming content and whether and how any programming provided by foreign governmental entities should be incorporated in the programming broadcast pursuant to its section 325(c) permit and broadcasted by the foreign station. Accordingly, any programming agreement with a section 325(c) holder will be subject to the foreign sponsorship disclosure if material aired on the foreign station has been sponsored, paid for, or furnished for free as an inducement to air by a foreign governmental entity. Under the rules we adopt herein, a section 325(c) permit holder must ensure that the foreign station will broadcast the disclosure along with the programming provided under its section 325(c) permit. We find that treating U.S.-licensed broadcast station licensees and section 325(c) permittees in the same manner with respect to foreign government-provided programming would serve the public interest and could avoid creating a potential loophole in our regulatory framework with respect to the identification of foreign government-provided programming.

68. The Commission received no comment on its tentative conclusion regarding programming provided pursuant to section 325(c) permits, including regarding whether any aspect of the foreign sponsorship identification requirements should be modified for section 325(c) permit holders. We therefore find no reason to depart from our tentative conclusion in this regard and find that the foreign sponsorship identification rules will apply to any programming broadcast pursuant to a section 325(c) permit. We note, however, that the section 325(c) permit holders are not required to maintain an online public inspection file. Accordingly, a section 325(c) permit holder shall place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Bureau's public filing System (IBFS) under the relevant IBFS section 325(c) permit file. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the IBFS in the same manner.

G. First Amendment Considerations

69. Consistent with the *NPRM* we find that the foreign sponsorship identification rules we adopt today comport with the strictures of the First Amendment to the Constitution, even under the highest level of scrutiny. As discussed above and at length in the *NPRM*, the government has a compelling interest in ensuring that the public is aware of when a party has sponsored content on a broadcast station.[185] We find that interest is even more important when a foreign governmental entity is

[184] *Wrather–Alvarez Broadcasting, Inc. v. F.C.C.*, 248 F.2d 646, 651 (D.C. Cir. 1957). *See also* Remote Control Border Stations: Hearing before the Comm. on Merchant Marine, Radio, and Fisheries at 7, 14, 73d Cong. 2 (1934) (Statement of C. B. Jolliffe, Chief Engineer Federal Radio Commission), ftp://ftp.fcc.gov/pub/Bureaus/OSEC/library/legislative_histories/50.pdf. Section 325(c) permit applications are subject to the requirements of section 309 (applicable to applications for U.S. station licenses). 47 U.S.C. § 325(d).

[185] *NPRM*, 35 FCC Rcd at 12127-29, paras. 55-57. As we stated in the *NPRM*, the Commission's application of section 317 for over eighty years, as well as Congress's 1960 amendments thereto, which further strengthened the statutory provision, demonstrate a compelling governmental interest in accurate sponsorship identification. As set forth in the *NPRM*, complete and accurate disclosure regarding the source of programming is critical to allowing audiences to determine the reliability and credibility of the information they receive. We consider such transparency to be a critical part of broadcasters' public interest obligation to use the airwaves with which they are entrusted to benefit their local communities. Thus, rather than abridging broadcasters' freedom of speech rights, disclosure of sponsorship promotes First Amendment and Communications Act goals by enhancing viewers' ability to assess the (continued….)

involved in the sponsorship of the programming material, and that transparency to American audiences as to the sponsorship of such programming is a compelling interest.[186] Having narrowed the rules even further than initially proposed, we find the final rules to be "narrowly tailored" to fulfill a "compelling" government interest using the "least restrictive means" to serve that goal.[187] That being said, consistent with the *NPRM's* further tentative conclusion, we believe the disclosure requirement we adopt today will be evaluated under a less restrictive, intermediate scrutiny standard applied to content neutral restrictions on broadcasters and thus will be upheld if narrowly tailored to achieve a substantial government interest.[188] Moreover, because the disclosure requirement is content neutral—that is, it does not ban any type of speech but merely requires factual disclosure of the source of certain of programming—we believe that the rules comply with the First Amendment as they are narrowly tailored to achieve a substantial government interest.[189] Thus, we find that, regardless of the level of scrutiny applied, our foreign sponsorship identification rules satisfy the First Amendment.

70. In addition, we have significantly narrowed the scope of the programming covered by today's rule and minimized both the amount of speech potentially affected and the compliance burdens placed on broadcast licensees to focus on the context in which the record shows there are significant transparency concerns.[190] As discussed above, the disclosure will now be required only for programming

(Continued from previous page)
substance and value of foreign government-provided programming, thus promoting an informed public and improving the quality of public discourse.

[186] *NPRM*, 35 FCC Rcd at 12128, para. 56. We note that Congress has recognized the critical importance of accuracy and transparency with regard to foreign government-provided programming in a number of contexts, including by its recent action extending the national security concerns underlying FARA to require the Commission to provide annual reports on U.S.-based foreign media outlets, defined by reference to FARA's foreign agent definitions, airing programming in the United States. *See* 47 U.S.C. § 624. Further, as explained in the *NPRM,* foreign governments increasingly are making use of U.S. airwaves to promote their policies and viewpoints to the American public, thereby making the government's interest in accuracy and transparency regarding broadcast of foreign government-provided programming even more compelling. *NPRM*, 35 FCC Rcd at 12128, para. 56.

[187] *NPRM*, 35 FCC Rcd at 12127, para. 55 (citing *U.S. v. Playboy Entertainment Group, Inc*., 529 U.S. 803, 813 (2000)).

[188] *See FCC v. League of Women Voters,* 468 U.S. 364, 380-81 (1984) (invalidating under the First Amendment a statute forbidding any non-commercial educational station that receives a grant from the Corporation for Public Broadcasting to "engage in editorializing"). While a content-based regulation of speech is typically subject to strict scrutiny, the Supreme Court has described First Amendment review of broadcast regulation as "less rigorous" than in other contexts based on the spectrum scarcity rationale. *See Turner Broadcasting System Inc. v. FCC,* 512 U.S. 622, 637 (1984) (citing *Red Lion Broadcasting Co. v. FCC,* 395 U.S. 367, 388-89 (1969); *see also League of Women Voters,* 468 U.S. at 377 ("our cases have taught that, given spectrum scarcity, those who are granted a license to broadcast must serve in a sense as fiduciaries for the public by presenting 'those views and voices which are representative of [their] community and which would otherwise, by necessity, be barred from the airwaves") (quoting *Red Lion*, 395 U.S. at 389). As noted in the *NPRM*, however, some judges have questioned the validity of the scarcity doctrine as justification for less rigorous First Amendment scrutiny of content-based regulation of broadcasters. *Cf. FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 532-535 (2009) (Thomas, J., concurring) (questioning the validity of *Red Lion*).

[189] *See, e.g., Sorrell v. IMS Health*, 564 U.S. 552, 563-64 (2011). Pursuant to the same analysis set forth in the *NPRM* regarding our proposed rules, we find it is likely that the foreign sponsorship identification requirements we adopt herein are content-neutral and therefore would not be subject to strict scrutiny. The disclosure requirements do not act as a complete ban on foreign government-provided programming nor prohibit participation in public discussion; rather, the rules merely require a factual statement regarding the sponsor of the programming. *See Virginia Pharmacy Bd v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 771 (1976) (defining "content-neutral" speech regulations as "those that are justified without reference to the content of the regulated speech).

[190] *Supra*, Sections III.B.-C.

aired pursuant to a lease of airtime if directly or indirectly provided by a foreign governmental entity.[191] By focusing our foreign sponsorship identification rules on leased programming, we exclude from coverage programming that does not raise the same level of transparency concerns and a significant number of broadcast stations that do not engage in such leasing agreements and virtually all non-commercial, educational broadcasters, which rarely lease time to third parties in the manner discussed.[192]

71. Additionally, based on comments in the record, we have clarified above how broadcast stations can comply with the narrowed scope of the rules to ensure that they are no more burdensome than necessary to serve the vital need for transparency about who is attempting to influence viewers. For example, we have adopted the commenters' suggestion that if the programming already contains an appropriate disclosure pursuant to FARA that conveys the same information required by our rules and that is aired with at least the same frequency, then the station need not apply an additional disclosure.[193]

72. Ultimately, the rules we adopt today are a minimal extension of the long-standing sponsorship identification rules required by section 73.1212 of our rules and well within the authority granted under section 317 of the Act.[194] Similarly, we believe our rules are consistent with, and not duplicative of, the equally long-standing labeling requirement contained in FARA. As such, we find that the modification of the sponsorship identification rules we adopt herein is entirely consistent with the existing statutes and precedent in this area and complies with the First Amendment.

73. Broadcasters have stated that focusing our rules on the type of programming subject to FARA disclosures and exempting inconsequential programming "would appropriately focus the Commission's rules on foreign propaganda, rather than the broad array of broadcast content that raised a host of concerns, including First Amendment issues, for NAB and other commenters."[195] Fox similarly states that the rules should apply to longer programming provided by a FARA registrant and aired pursuant to a lease agreement.[196] NAB based its previous claim that the rules would not withstand either intermediate or strict scrutiny on the assertion that they are duplicative of FARA obligations and thus fail to serve a compelling or substantial government interest.[197] As we have discussed above, our foreign sponsorship identification rules apply to entities and programming not necessarily covered by FARA because they impose obligations directly on broadcasters and their programming suppliers. Further, the rules we adopt herein promote greater transparency by requiring identification of the specific foreign government attempting to influence American viewers rather than referring viewers to a government

[191] *Supra*, Section III.B.

[192] *Supra*, para. 29 and note 87 and accompanying text (discussing limitations on consideration that noncommercial educational radio and television stations may receive in exchange for airing programs produced by or at the expense of, or furnished by persons other than the licensee); *see also*, NPR comments at 4.

[193] *Supra*, para. 49.

[194] As the Commission has noted previously, section 317(e) of the Act directs the Commission "to prescribe appropriate rules and regulations to carry out the provisions of this section." 47 U.S.C. §317(e). As discussed in detail in the *NPRM*, the Commission has repeatedly used its authority under section 317 to address evolving concerns about undisclosed program sponsorship as they arise. *NPRM*, 35 FCC Rcd at 12100-05, paras. 4-11. Because the rule we adopt today follows in the same vein, we find we have ample statutory authority for our action.

[195] NAB *Ex Parte* Letter at 1.

[196] Fox *Ex Parte* Letter at 1.

[197] NAB Comments at 5-6. *See also*, NAB Reply at 7.

website to review.[198] For these reasons we conclude that our modified foreign sponsorship identification rules comply with the First Amendment.[199]

H. Cost-Benefit Analysis

74. The *NPRM* sought comment on the benefits and costs associated with adopting foreign sponsorship identification rules.[200] The *NPRM* also requested specific data and analysis in support of any claimed costs and benefits. No commenter provided quantified calculations of the benefits or costs of the proposed rules. Nevertheless, we find that by limiting the proposed rules to the circumstances stated above, the costs associated with the rules are reduced significantly from the initial proposal. Research reviewed by Commission staff also suggests that there are measurable benefits to sponsorship identification disclosures.[201] Moreover, the lack of transparency regarding foreign influence and foreign government sponsored media has become a major public concern, including in Congress and for the United States Department of State.[202] The public filing requirement will provide data on the extent of foreign government sponsored programming airing on broadcast stations. Therefore, we find that the costs associated with adopting the foreign sponsorship identification rules, as modified herein, do not outweigh the public benefits we have identified regarding transparency of the source of programming heard or viewed by the American public.

IV. PROCEDURAL MATTERS

75. *Regulatory Flexibility Act*. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended,[203] an Initial Regulatory Flexibility Certification was incorporated into the *NPRM*. Pursuant

[198] *See supra* para. 49 and note 149.

[199] NAB argues that "overbroad" rules covering programming such as tourism advertising, "along with the fact that the proposals are only directed at over-the-air broadcasters, would likely chill protected speech and fail to balance First Amendment interests." NAB Comments at 2. As explained above, our rules comport with the requirements of the First Amendment. *See* Section III.G. above. Our action today responds to evidence that foreign governmental entities, pursuant to leases of airtime, have programmed U.S. broadcast stations without adequate disclosure of the true sponsor.

[200] *NPRM*, 35 FCC Rcd at 12130, paras. 61-62.

[201] *See* Fisher, Aleksandr, 2020, "Demonizing the enemy: the influence of Russian state-sponsored media on American audiences," Post-Soviet Affairs, 36(4): 281-296. https://doi.org/10.1080/1060586X.2020.1730121 (finding that disclosures mitigate the effect of foreign government-sponsored media on audiences with high levels of political awareness). *See generally* Amazeen, Michelle A. and Bartosz W. Wojdynski, 2020, "The effects of disclosure format on native advertising recognition and audience perceptions of legacy and online news publishers," Journalism, 21(12): 1965-84, https://doi.org/10.1177/1464884918754829; Wojdynski, Bartosz W., 2016, "The Deceptiveness of Sponsored News Articles: How Readers Recognize and Perceive Native Advertising," American Behavioral Scientist, 60(12): 1475-91, https://doi.org/10.1177/0002764216660140; Wojdynski, Bartosz W. and Nathaniel J. Evans, 2016, "Going Native: Effects of Disclosure Position and Language on the Recognition and Evaluation of Online Native Advertising," Journal of Advertising, 45(2): 157-68, https://doi.org/10.1080/00913367.2015.1115380 (all three studies finding that disclosures on native advertising successfully inform a small share of the audience that the content viewed is advertising).

[202] *See*, *e.g.*, *supra* note 9. *See generally* United States Department of State, Global Engagement Center, GEC Special Report: Pillars of Russia's Disinformation and Propaganda Ecosystem (2020), https://www.state.gov/wp-content/uploads/2020/08/Pillars-of-Russia%E2%80%99s-Disinformation-and-Propaganda-Ecosystem_08-04-20.pdf.

[203] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996.

to the RFA,[204] the Commission's Final Regulatory Flexibility Certification relating to this Report and Order is attached as Appendix B.

76. *Paperwork Reduction Act.* This Report and Order contains proposed new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520). The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

77. *Congressional Review Act.* The Commission has determined, and Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

78. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 2, 4(i), 4(j), 303(r), 317, 325(c), 403, and 507 of the Communications Act, 47 U.S.C §§ 151, 152, 154(i), 154(j), 303(r), 317, 325(c), 403, and 508 this Report and Order **IS ADOPTED** and shall be effective 30 days after publication in the Federal Register**.**

79. **IT IS FURTHER ORDERED** that Part 73 of the Commission's Rules **IS AMENDED** as set forth in Appendix A. The rule changes to section 73.1212 adopted herein contain new or modified information collection requirements subject to OMB review under the Paperwork Reduction Act. The Commission directs the Media Bureau to announce the effective date for those information collections in a document published in the Federal Register after the completion of OMB review and directs the Media Bureau to cause section 73.1212 to be revised accordingly.

80. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

81. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[204] *See* 5 U.S.C. § 604.

APPENDIX A

Final Rules

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73 – RADIO BROADCAST SERVICE

1. The Authority citation for Part 73 continues to read as follows: AUTHORITY: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. In § 73.1212, add paragraph (j) to read as follows:

(j) Where the material broadcast consistent with section (a) or (d) above has been aired pursuant to the lease of time on the station and has been provided by a foreign governmental entity, the station, at the time of the broadcast, shall include the following disclosure:

> The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].

If the material broadcast contains a "conspicuous statement" pursuant to the Foreign Agents Registration Act of 1938 (22 U.S.C. § 614(b)), such conspicuous statement will suffice for purposes of this rule if the conspicuous statement also contains a disclosure about the foreign country associated with the individual/entity that has sponsored, paid for, or furnished the material being broadcast.

1) The term "foreign governmental entity" shall include governments of foreign countries, foreign political parties, agents of foreign principals, and United States-based foreign media outlets.
    i. The term "government of a foreign country" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(e)).
    ii. The term "foreign political party" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(f)).
    iii. The term "agent of a foreign principal" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose "foreign principal" is a "government of a foreign country," a "foreign political party," or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or a "foreign political party" as defined above in subsection 73.1212(j) (i) and ii, and that is acting in its capacity as an agent of such "foreign principal";
    iv. The term "United States-based foreign media outlet" has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).
2) The licensee of each broadcast station shall exercise reasonable diligence to ascertain whether the foreign sponsorship disclosure requirements apply at the time of the lease agreement and at any renewal thereof, including:
    i. Informing the lessee of the foreign sponsorship disclosure requirement in section (j) above;
    ii. Inquiring of the lessee whether the lessee falls into any of the categories that qualify the lessee as a foreign governmental entity;

iii. Inquiring of the lessee whether the lessee knows if anyone involved in the production or distribution of the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;

iv. Independently confirming the lessee's status, by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports, if the lessee states that it does not fall within the definition of "foreign governmental entity" and that there is no separate need for a disclosure because no one further back in the chain of producing/transmitting the programming falls within the definition of "foreign governmental entity" and has provided an inducement to air the programming; and

v. Memorializing the above-listed inquiries to track compliance therewith and retaining such documentation in the licensee's records for either the remainder of the then-current license term or one year, whichever is longer, so as to respond to any future Commission inquiry.

3) In the case of any video programming, the foreign governmental entity and the country represented shall be identified with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.

4) At a minimum, the required announcement shall be made at both the beginning and conclusion of the programming. For programming of greater than sixty minutes in duration, an announcement shall be made at regular intervals during the broadcast, but no less frequently than once every sixty minutes.

5) Where the primary language of the programming is other than English, the disclosure statement shall be made in the primary language of the programming. If the programming contains a "conspicuous statement" pursuant to the Foreign Agents Registration Act of 1938 (22 U.S.C. § 614(b)), and such conspicuous statement is in a language other than English so as to conform to the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611 et. seq.), an additional disclosure in English is not needed.

6) A station shall place copies of the disclosures required by paragraph (j) and the name of the program to which the disclosures were appended in its online public inspection file on a quarterly basis in a standalone folder marked as "Foreign Government-Provided Programming Disclosures." The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the online public inspection file in the same manner.

(k) The requirements in paragraph (j) of this section shall apply to programs permitted to be delivered to foreign broadcast stations under an authorization pursuant to the section 325(c) of the Communications Act of 1934 (47 U.S.C. § 325(c)) if any part of the material has been sponsored, paid for, or furnished for free as an inducement to air on the foreign station by a foreign governmental entity. A section 325(c) permit holder shall place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Bureau's public filing System (IBFS) under the relevant IBFS section 325(c) permit file. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the IBFS in the same manner.

(l) Paragraphs (j) and (k) of this section contain information-collection and recordkeeping requirements. Compliance with paragraphs (j) and (k) of this section shall not be required until after review by the Office of Management and Budget. The Commission will publish a document

in the Federal Register announcing compliance dates and removing this paragraph (l) accordingly.

3. Add paragraph (e)(19) to § 73.3526 to read as follows:

Foreign sponsorship disclosures. Documentation sufficient to demonstrate that the station is continuing to meet the requirements set forth at § 73.1212(j)(6).

4. Add paragraph (e)(15) to § 73.3527 to read as follows:

Foreign sponsorship disclosures. Documentation sufficient to demonstrate that the station is continuing to meet the requirements set forth at § 73.1212(j)(6).

APPENDIX B

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in this proceeding.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Proposed Rules

2. As stated in the IRFA, broadcast programming viewers and listeners deserve to know when a foreign governmental entity has provided programming so that they can better evaluate the value and accuracy of such programming. Broadcast stations are entrusted with using the public airwaves to benefit their local communities and this obligation includes ensuring that any foreign government-provided programming is clearly identified. The rules we adopt today update our sponsorship identification rules to provide specific guidance on the language and frequency of the necessary disclosures, provide clarity about how to identify a foreign governmental entity, and specify the steps broadcasters should take to ensure compliance with the "reasonable diligence" standard contained in section 317(c) of the Communications Act of 1934, as amended (Act).[4]

3. While the *NPRM* proposed that the foreign sponsorship identification rules would apply in any circumstance in which a foreign governmental entity directly or indirectly provided material for broadcast or furnished material to a station free of charge (or at nominal cost) as an inducement to broadcast such material, the Report and Order (R&O) narrows the rule to address specifically those circumstances in which a foreign governmental entity is programming a U.S. broadcast station pursuant to the lease of airtime. The rules adopted in the R&O require a specific disclosure at the time of broadcast if material aired pursuant to the lease of time on the station has been sponsored, paid for, or, in the case of political programming or programming involving a controversial issue, furnished for free as an inducement to air by a foreign governmental entity. The focus on leasing agreements narrows the application of the disclosure rules significantly, thereby minimizing the burden on broadcasters while ensuring that viewers and listeners are sufficiently informed as to the origin of material broadcast on stations when foreign governmental entities are providing programming. For example, we anticipate that most, and possibly all, noncommercial educational (NCE) station programming arrangements will fall outside the ambit of our rules given limitations on the ability of NCE stations to engage in leasing agreements.[5] The foreign sponsorship identification rules apply to any programming broadcast pursuant to a section 325(c) permit. A section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S.-licensed station, transmits or

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[2] *Sponsorship Identification Requirements for Foreign Government-Provided Programming,* Notice of Proposed Rulemaking, 35 FCC Rcd 12099 (2020) (*NPRM*).

[3] *See* 5 U.S.C. § 604.

[4] 47 U.S.C. § 317(c).

[5] *See* 47 CFR §73.622(d) (stating that a "noncommercial educational television station may broadcast programs produced by or at the expense of, or furnished by persons other than the licensee, if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee"); 47 CFR §73.503(c) (stating parallel rule for noncommercial educational radio stations).

delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country and broadcasts the programming from the foreign station with a sufficient transmission power or from a geographic location that enables the material to be received consistently in the United States.

4. The R&O defines foreign governmental entities by referring to existing statutory definitions included in the Foreign Agents Registration Act of 1938, as amended (FARA)[6] and the Communications Act. The definition adopted in the R&O includes:

1) A "government of a foreign country" as defined by FARA;[7]

2) A "foreign political party" as defined by FARA;

3) An individual or entity registered as an "agent of a foreign principal," under section 611(c) of FARA, whose "foreign principal" is a "government of a foreign country," a "foreign political party," or is directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or by a "foreign political party" as defined by FARA, and that is acting in its capacity as an agent of such "foreign principal;"

4) An entity meeting the definition of a "U.S.-based foreign media outlet" pursuant to section 722 of the Act that has filed a report with the Commission.

Based on broadcaster concerns regarding the difficulty of determining whether an entity is a "foreign mission" as included in the proposed definition of "foreign governmental entity," the final definition we adopt in this R&O excludes "foreign missions."

5. The revised required standard foreign sponsorship identification disclosure must state:

> **"The [following/preceding] programming was [sponsored, paid for, or furnished,] either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country]."**

In establishing this disclosure language, the R&O first adjusts the language proposed in the *NPRM* to allow including the word "sponsored" as one of the options that can be used. Broadcasters sought this change because it is consistent with existing sponsorship identification language. In addition, recognizing that FARA requires a standard disclosure, the R&O simplifies compliance by allowing broadcasters, including small broadcasters, to pass through any required FARA label included with the programming, so long as it also adds the name of the foreign country involved in providing the programming and comports with the format and frequency requirements described in paragraph 7, *infra*. The R&O concludes that the FARA disclosure with the addition of the country name satisfies the need to provide viewers and listeners greater insight regarding the source of foreign government-provided programming.

6. The R&O details what is required of broadcasters to meet the "reasonable diligence" standard contained in section 317(c) of the Act so that broadcasters can determine if a foreign sponsorship identification disclosure is needed. The R&O concludes that such diligence at a minimum requires the broadcaster to at the time of agreement and at renewal:

(1) Inform the lessee of the foreign sponsorship disclosure requirement;

(2) Inquire of the lessee whether it falls into any of the categories that qualify it as a "foreign governmental entity";

(3) Inquire of the lessee whether it knows if anyone further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a

[6] 22 U.S.C. § 611 *et seq.*

[7] For exact definitions of this term and terms in quotes in the subsequent items on this list *see infra* notes 38-41.

sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;

(4) Independently confirm the lessee's status, by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports. This need only be done if the lessee states that it does not fall into one of the covered categories and that there is no separate need for a disclosure because no one further back in the chain of producing/transmitting the programming falls into one of the covered categories and has provided some form of service or consideration as an inducement to broadcast the programming; and

(5) Memorialize the above-listed inquiries and investigations to track compliance in the event documentation is required to respond to any future Commission inquiry on the issue.

7. The R&O specifies that the licensee must memorialize the results of its diligence in some manner for its own records and maintain this documentation for the remainder of the then-current license term or one year, whichever is longer. In addition, the R&O clarifies that, under the revised rules, the lessee of airtime, in accordance with sections 507(b) and (c) of the Act, also holds an independent obligation to communicate information to the licensee relevant to determining whether a disclosure is needed.

8. In the interest of ensuring transparency for viewers and listeners of foreign government-provided programming, the R&O requires that, if the primary language of the programming is other than English, the disclosure statement should be presented in the primary language of the programming The disclosure for televised programming should be in letters equal to or greater than four percent of the vertical picture height and be visible for not less than four seconds to ensure readability.[8] As this requirement tracks existing rules for televised political advertisements, television licensees are familiar with this format. For radio broadcasts, the R&O incorporates the existing DOJ interpretation for programming provided by FARA registrants: that the disclosure shall be audible. The R&O requires that the disclosure be made at both the beginning and end of the programming, and, consistent with an existing requirement for "political broadcast matter,"[9] for any broadcast of 5 minutes or less, only once. Finally, for programming longer than sixty minutes, the disclosure must be made at regular intervals during the broadcast, but no less frequently than once every sixty minutes. The R&O finds that periodic announcements are necessary, particularly in those instances where a foreign governmental entity is continually broadcasting programming without an identifiable beginning or end, such as through a lease of a 100% of a station's airtime.[10] Other than this final requirement for longer programming, the new size, frequency and duration requirements of the new foreign sponsorship identification rules are consistent existing sponsorship identification rules and are thus familiar to broadcasters.

9. Consistent with the *NPRM*, the R&O adopts a requirement that stations airing foreign government-provided programming must place copies of the disclosures in their Online Public Information Files (OPIFs), in a standalone folder marked as "Foreign Government-Provided Programming Disclosures" so that the material is readily identifiable to the public.[11] The R&O adopts the proposal discussed in the *NPRM*, that, to the extent the foreign programming consists of a political matter or matter involving the discussion of a controversial issue of public importance, licensees obtain and disclose in their OPIFs a list of the persons operating the foreign governmental entity that has provided

[8] The *NPRM* sought comment on this format, but no commenters addressed this point. *NPRM*, 35 FCC Rcd at 12118, para. 38.

[9] 47 CFR § 73.1212(d).

[10] *See NPRM*, 35 FCC Rcd at 12119, para. 41. No commenter objected to our reasoning for this finding, nor commented on the burden of recurring announcements.

[11] This requirement does not apply if a station has no existing obligation to maintain an OPIF.

the programming.[12] The R&O rules require licensees to place in their OPIFs the actual disclosure and the name of the program to which the disclosure was appended.[13] In addition, the licensee must state the date and time the program aired. If there are repeat airings of the program, then those additional dates and times should also be included in the OPIF. In response to broadcaster concerns about burdens, the R&O does not adopt the *NPRM*'s "as soon as possible" standard for updating OPIFs contained in section 73.1943 of existing rules, nor interpret this phrase to mean "within twenty-four hours of the material being broadcast." Rather, for frequency of updating OPIFs, the R&O adopts rules that align with an existing requirement to update the TV Issues/Programs Lists on a quarterly basis, as this will minimize the need for licensees to track different public filing requirements. The R&O also adopts the same OPIF two-year retention period as currently exists for the retention of lists of the executives of any entity that sponsored programming concerning a political or controversial matter. For broadcast stations that do not have obligations to maintain OPIFs, we recommend such stations retain a record of their disclosures in their station files consistent with previous Commission guidance. The R&O rules also require section 325(c) permit holders must place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Bureau's public filing System (IBFS) under the relevant IBFS section 325(c) permit file. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the IBFS in the same manner.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

10. There were no comments filed in response to the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

11. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to a comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[14] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Apply

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted.[15] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[16] In addition, the term "small business" has

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[12] *NPRM*, 35 FCC Rcd at 12120, para. 43. This approach is consistent with current rules, which require that, where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance, and a corporation, committee, association, or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, stations must place a list of chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association, or other unincorporated group, or other entity in the station's OPIF. 47 CFR §73.1212(e).

[13] Licensees may file these data in a format of their choosing until the Media Bureau issues a standard format for these data filings.

[14] 5 U.S.C. § 604(a)(3).

[15] 5 U.S.C. § 603(b)(3).

[16] 5 U.S.C. § 601(6) (explaining the definition of "small business" under 5 U.S.C. § 601(3)); *see* 5 U.S.C. § 601(4) (defining "small organization" as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal (continued….)

the same meaning as the term "small business concern" under the Small Business Act (SBA).[17] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[18] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

13. *Television Broadcasting*. This U.S. Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."[19] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[20] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $41.5 million or less in annual receipts.[21] The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $25 million and $49,999,999 and 70 had annual receipts of $50 million or more.[22] Based on these data, we estimate that the majority of commercial television broadcast stations are small entities under the applicable size standard.

14. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,374.[23] Of this total, 1,269 stations (or 92%) had revenues of $41.5 million or less in 2020, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 20, 2021, and therefore these stations qualify as small entities under the SBA definition. In addition, the Commission estimates the number of noncommercial educational stations to be 384.[24] The Commission does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

(Continued from previous page)
Register"); 5 U.S.C. § 601(5) (defining "small governmental jurisdiction" as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register").

[17] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)(1)). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.*

[18] 15 U.S.C. § 632(a)(1)-(2)(A).

[19] U.S. Census Bureau, 2017 NAICS Definitions, "515120 Television Broadcasting," http://www.census.gov./cgi-bin/sssd/naics/naicsrch.

[20] *Id*.

[21] 13 CFR § 121.201; 2012 NAICS code 515120.

[22] U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting). https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

[23] Broadcast Station Totals as of March 31, 2020, News Release (MB Apr. 5, 2021) (March 31, 2021 Broadcast Station Totals), available at https://www.fcc.gov/document/broadcast-station-totals-march-31-2021.

[24] *Id*.

There are also 386 Class A stations.[25] Given the nature of this service, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard.

15. *Radio Stations.* This U.S. Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public."[26] Programming may originate in the establishment's own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $41.5 million or less in annual receipts.[27] Economic Census data for 2012 show that 2,849 firms in this category operated in that year.[28] Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more.[29] Based on these data, we estimate that the majority of commercial radio broadcast stations were small under the applicable SBA size standard.

16. The Commission has estimated the number of licensed commercial AM radio stations to be 4,546 and the number of commercial FM radio stations to be 6,682 for a total of 11,228 commercial stations[30] Of this total, 11,227 stations (or 99%) had revenues of $41.5 million or less in 2020, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 20, 2021, and therefore these stations qualify as small entities under the SBA definition. In addition, there were 4,213 noncommercial educational FM stations.[31] The Commission does not compile and does not have access to information on the revenue of NCE radio stations that would permit it to determine how many such stations would qualify as small entities.

17. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[32] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the proposed rules may apply does not exclude any radio or television station from the definition of small business on this basis and is therefore possibly over-inclusive.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. The R&O adopts rules that require a specific disclosure at the time of broadcast if material aired pursuant to the lease of time on the station has been sponsored, paid for, or, in the case of political programming or programming involving a controversial issue, furnished for free as an

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[25] *Id*.

[26] U.S. Census Bureau, 2017 NAICS Definitions, "515112 Radio Stations," http://www.census.gov./cgi-bin/sssd/naics/naicsrch.

[27] 13 CFR § 121.201; 2017 NAICS code 515112.

[28] U.S. Census Bureau, U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112 Radio Stations) https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515112|.

[29] *Id*.

[30] March 31, 2021 Broadcast Station Totals.

[31] *Id*.

[32] "[Business concerns] are affiliates of each other when one [concern] controls or has the power to control the other, or a third party or parties controls or has to power to control both." 13 CFR § 121.103(a)(1).

inducement to air by a "foreign governmental entity." As described in para. 5, *supra*, the term "foreign governmental entity" is defined by reference to existing definitions in the Foreign Agents Registration Act of 1938 as amended (FARA)[33] and Section 722 of the Communications Act of 1934, as amended (the Act).[34] The R&O requires that stations use the following standard disclosure:

> **The [following/preceding] programming was [sponsored, paid for, or furnished,] either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].**

In addition, recognizing that FARA requires a standard disclosure, the R&O simplifies compliance by allowing broadcasters, including small broadcasters, to pass through any required FARA label included with the programming, so long as it also adds the name of the foreign country involved in providing the programming. The R&O concludes that the FARA disclosure with the addition of the country name satisfies the need to provide viewers and listeners greater insight regarding the source of foreign government-provided programming. To further reduce compliance burdens for broadcasters, including small broadcasters, the size, frequency, and duration of the required disclosure generally matches size, frequency and duration requirements for other types of programming requiring sponsorship identification.

19. In response to requests from broadcasters, including small broadcasters, the R&O details what is required of broadcasters to meet the "reasonable diligence" standard contained in section 317(c) of the Act so that broadcasters can determine if a foreign sponsorship identification disclosure is needed. As described in paragraph 6, *supra*, the R&O lists five specific steps broadcasters must take to satisfy the standard. The R&O states that searches of the FARA database may require more than simply reviewing the initial screens that appear on the list, but rather may also necessitate reviewing materials filed as part of an agent's registration and using whatever search features are available to investigate the list's contents. Licensees should also check if the lessee's name appears in the Commission's semi-annual reports of U.S.-based foreign media outlets. The R&O also requires, that, at regular intervals, the licensee should memorialize the results of its diligence in some manner for its own records and maintain this documentation for the remainder of the then-current license term or one year, whichever is longer. The R&O clarifies that, under the revised rules, the lessee of the airtime, in accordance with sections 507(b) and (c) of the Act,[35] also holds an independent obligation to communicate information to the licensee relevant to determining whether a disclosure is needed.

20. In the interest of ensuring transparency for viewers and listeners of foreign government-provided programming, the R&O requires that, if the primary language of the programming is other than English, the disclosure statement should be presented in the primary language of the programming. The disclosure for televised programming should be in letters equal to or greater than four percent of the vertical picture height and be visible for not less than four seconds to ensure readability.[36] As this requirement tracks existing rules for televised political advertisements, television licensees are familiar with this format, minimizing their compliance burdens.[37] For radio broadcasts, the R&O incorporates the existing DOJ interpretation for programming provided by FARA registrants: that the disclosure shall be audible. The R&O requires that the disclosure be made at both the beginning and end of the programming, and, consistent with an existing requirement for "political broadcast matter,"[38] for any

[33] 22 U.S.C. § 611 *et seq*.

[34] 47 U.S.C. § 624(a).

[35] 47 U.S.C § 508(a) and (c).

[36] The *NPRM* sought comment on this format, but no commenters addressed this point. *NPRM*, 35 FCC Rcd at 12118, para. 38.

[37] 47 CFR § 73.1212(a)(2)(ii).

[38] *Id*. § 73.1212(d).

broadcast of 5 minutes or less, only once. Finally, for programming longer than sixty minutes, the disclosure must be made at regular intervals during the broadcast, but no less frequently than once every sixty minutes. The R&O finds that periodic announcements are necessary, particularly in those instances where a foreign governmental entity is continually broadcasting programming without an identifiable beginning or end, such as through a lease of 100% of a station's airtime..[39] Other than this final requirement for longer programming, the new rules are consistent with existing sponsorship identification rules and are thus familiar to broadcasters to reduce compliance burdens.

21. Consistent with the *NPRM*, the R&O adopts a requirement that stations airing foreign government- provided programming must place copies of the disclosures in their Online Public Information Files (OPIFs),[40] in a standalone folder marked as "Foreign Government-Provided Programming Disclosures" so that the material is readily identifiable to the public.[41] The R&O adopts the proposal discussed in the *NPRM*, that, to the extent the foreign programming consists of a political matter or matter involving the discussion of a controversial issue of public importance, licensees obtain and disclose in their OPIFs a list of the persons operating the foreign governmental entity providing the programming. In response to broadcaster concerns about burdens, the R&O also does not adopt the *NPRM*'s "as soon as possible" standard for updating OPIFs contained in section 73.1943 of existing rules, nor interpret this phrase to mean "within twenty-four hours of the material being broadcast." Rather, for frequency of updating OPIFs, the R&O adopts rules that align with an existing requirement to update the TV Issues/Programs Lists on a quarterly basis, as this will minimize the need for licensees to track different public filing requirements. The R&O also adopts the same OPIF two-year retention period as currently exists for the retention of lists of the executives of any entity that sponsored programming concerning a political or controversial matter.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. The RFA requires an agency to describe any significant alternatives that it has considered in adopting its rules, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[42]

23. While the *NPRM* proposed that foreign sponsorship disclosure rules should apply in any circumstances in which a foreign governmental entity directly or indirectly provided material for broadcast or furnished material to a station free of charge (or at nominal cost) as an inducement to broadcast such material, the R&O narrows the rule to address specifically those circumstances in which a foreign governmental entity is programming a U.S. broadcast station pursuant to the lease of airtime. The rules adopted in the R&O require a specific disclosure at the time of broadcast if material aired pursuant to the lease of time on the station has been sponsored, paid for, or, , in the case of political programming or programming involving a controversial issue, furnished for free as an inducement to air by a foreign governmental entity. The focus on leasing agreements narrows the application of the disclosure rules significantly, thereby minimizing the burden on broadcasters while ensuring that viewers and listeners are sufficiently informed as to the origin of material broadcast on stations when foreign governmental entities are providing programming. Most, and possibly all, noncommercial educational NCE programming

[39] *See NPRM*, 35 FCC Rcd at 12119, at para. 41. No commenter objected to the reasoning for this finding.

[40] *NPRM*, 35 FCC Rcd at 12120, para. 43. We note that this requirement does not apply if a station does not have an existing obligation to maintain OPIFs.

[41] *NPRM*, 35 FCC Rcd at 12121, para. 46.

[42] *See* 5 U.S.C. § 603(c).

arrangements will fall outside the ambit of our narrowed rules given limitations on the ability of NCE stations to engage in leasing arrangements. Also, while the *NPRM* proposed to include "foreign missions," as designated pursuant to the Foreign Missions Act,[43] within the definition of foreign governmental entities that would trigger foreign sponsorship identification, based on broadcaster concerns regarding the difficulty and compliance burden of including these entities, the R&O eliminates then from the definition.

24. Additionally, based on comments from broadcasters, including small broadcasters, the R&O clarifies compliance obligations to ensure that, under the narrowed scope of the rules, they are no more burdensome than necessary to serve the vital need for transparency about who is attempting to influence viewers and listeners. The R&O details what is required of broadcasters to meet the "reasonable diligence" standard contained in section 317(c) of the Act so that broadcasters can determine if a foreign sponsorship identification disclosure is needed. The R&O lists specific steps broadcasters must take to satisfy the standard. The R&O also advises broadcasters to include a provision in their lease agreements requiring the lessee to notify the broadcaster about any change in the lessee's status such as to trigger our foreign sponsorship identification rules. The R&O also adopts broadcaster suggestions to reduce compliance burdens by matching, to the extent possible, disclosure language, size, frequency and duration requirements contained in existing sponsorship identification rules and allowing broadcasters to satisfy our new foreign sponsorship identification requirements by simply passing through existing FARA programming labels if they also disclose the country involved with provision of the programming and comport with the size and frequency requirements contained in the R&O. Similarly, in response to comments from broadcasters, including small broadcasters, to the extent possible we match obligations to place and update disclosures in station OPIFs to other broadcaster OPIF obligations. Broadcasters have indicated that implementing such changes would mean the burden on broadcasters would be considerably less and more appropriate.[44]

25. The *NPRM* sought comment on the benefits and costs associated with adopting foreign government-provided programming sponsorship identification rules and requested specific data and analysis in support of any claimed costs and benefits.[45] No commenters provided quantified calculations of the benefits or costs of the proposed rules. Thus, the R&O finds that by narrowing the scope of the programming for which foreign governmental entity sponsorship is required and minimizing compliance burdens as described in the preceding paragraphs, the costs for broadcasters, including small broadcasters, associated with the rules are reduced significantly from the initial proposal. Research reviewed by Commission staff also suggests that there are measurable benefits to sponsorship identification disclosures.[46] Therefore, the R&O finds that the costs, including the costs for small businesses, associated with adopting the rules, as modified by the R&O, do not outweigh the substantial public benefits associated with transparency regarding the source of programming heard or viewed by the American public.

[43] *NPRM*, 35 FCC Rcd at 12113, para. 25.

[44] NAB *Ex Parte* Letter at 1; Fox *Ex Parte* Letter at 1.

[45] *NPRM*, 35 FCC Rcd at 12130, paras. 61-62.

[46] *See* Fisher, Aleksandr, 2020, "Demonizing the enemy: the influence of Russian state-sponsored media on American audiences," Post-Soviet Affairs, 36(4): 281-296. https://doi.org/10.1080/1060586X.2020.1730121 (finding that disclosures mitigate the effect of foreign government-sponsored media on public opinion and facilitate application of an audience's prior knowledge).

G. Report to Congress

26. The Commission will send a copy of this R&O, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[47] In addition, the Commission will send a copy of the R&O, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the R&O and FRFA (or summaries thereof) will also be published in the *Federal Register*.[48]

H. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

27. The R&O contains requirements that may somewhat overlap with, but do not duplicate, DOJ rules for labelling of broadcast programming provided by an "agent of a foreign principal," as that term is defined in the Foreign Agents Registration Act.

[47] *See* 5 U.S.C. § 801(a)(1)(A).

[48] *See id*. § 604(b).

STATEMENT OF
ACTING CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, MB Docket No. 20-299.

Today the Federal Communications Commission requires disclosure when foreign governments and their agents lease time to broadcast content on airwaves in the United States.

The principle that the public has a right to know the identity of those who solicit their support is a fundamental and long-standing tenet of broadcasting. In fact, the Communications Act requires that programming "for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person."

The Communications Act also prohibits foreign governments from obtaining a broadcast license. Still, we know that foreign entities are purchasing time on broadcast stations in markets across the country, including Chinese government-sponsored programming and Russian government-sponsored programming right here in our nation's capital. This is not strictly a recent phenomenon. During the last several years, press reports about the presence of this programming have multiplied. Moreover, Congresswoman Anna Eshoo wrote this agency eight times to demand that it do something to shed light on the use of our airwaves by foreign government actors. Today's decision is a testament to her perseverance. It is also a statement about national security and the preservation of our democratic values.

Going forward, when a broadcaster leases a portion of their airwaves, they will need to ask lessees if they or their programming are from a foreign governmental entity. If the answer is yes, a sponsorship identification will need to be placed on air and documented in the station's public file. If the answer is no, a broadcaster will need to independently verify the lessee using the Foreign Agent Registration Act website from the Department of Justice and the FCC's semi-annual foreign media outlet reports.

This is simple. It's about transparency. It's consistent with the law. I want to thank my colleagues for their contributions to this effort. I also want to thank the staff for their work, including Michelle Carey, Sarah Whitesell, Brendan Holland, Radhika Karmarkar, Chad Guo, and Julie Saulnier from the Media Bureau; Susan Aaron and David Konczal from the Office of General Counsel; Olga Madruga-Forti and Brandon Moss from the International Bureau; Jeff Gee, Chris Sova, and Phillip Rosario from the Enforcement Bureau; and Belford Lawson from the Office of Communications Business Opportunities.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, MB Docket No. 20-299.

As early as 2017, stories began to surface about programming from foreign state-controlled media being aired on U.S. broadcast stations in cities like Kansas City and Washington D.C. As reports increased about the use of leasing agreements to broadcast foreign government programming without disclosing the source of that programming, I became alarmed. It appeared that fundamental notions of transparency—core to our regulations in this space—were being disregarded, resulting in audiences failing to know who was speaking to them. I joined several other voices in calling for investigation and, if necessary, regulatory action to ensure that our sponsorship ID rules require source identification when programming on U.S. airwaves is provided or paid for by a foreign governmental entity.

The fact of the matter is that these sponsorship ID rules were last updated in 1963. I am pleased with today's modern update, as this item closes identified loopholes that have allowed foreign government-sponsored programming to reach American audiences without notice of its true source of origin. The public has a right to know the identity of those using the public airwaves to inform, persuade, or solicit support; otherwise, the public is missing a crucial piece of the puzzle that informs their decision-making and helps in assessing the truth of what they see and hear.

The rules we adopt today require broadcasters to make specific disclosures at reasonable intervals when airing material provided or sponsored by foreign governmental entities pursuant to a leasing agreement. By narrowing the scope to leasing agreements, we focus this action to known sources of the unattributed programming.

The rules we adopt today also are reasonably tailored to minimize the burden on broadcast licensees. Given the stakes, we aim to ensure that *all* foreign government-sponsored broadcasts are properly identified as such. It is therefore reasonable to require *every* licensee that leases airtime under the circumstances described herein to exercise reasonable diligence by independently determining whether a foreign government is the source of leased programming.

After careful review of recent filings in the record, we determined that reasonable diligence should still require a search of two readily-accessible, government-provided sources—the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports. However, after hearing from commenters that requiring licensees also to perform "unbounded" internet searches of lessees' names would be overly burdensome, we eliminated that requirement. I support this and other minor modifications to the rules as put forth in the circulated version of this item because they are informed by the record, which is precisely how the rulemaking process should work.

I want to thank the Commission staff, especially those in the Media and Enforcement Bureaus, and the Office of General Counsel, for their very thoughtful work on this important item.

Exhibit 2

Sponsorship Identification Requirements for Foreign Government-Provided Programming, Order Denying Stay Request, MB Docket No. 20-299, DA No. 21-1518 (rel. Dec. 8, 2021)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Sponsorship Identification Requirements	)	MB Docket No. 20-299
for Foreign Government-Provided	)	
Programming	)	

ORDER DENYING STAY PETITION

Adopted: December 8, 2021 **Released: December 8, 2021**

By the Chief, Media Bureau:

I. INTRODUCTION

1. On April 22, 2021, the Commission released its Report and Order (*Order*) in the above captioned proceeding adopting requirements that radio and television stations broadcast clear disclosures for programming that is provided by a foreign governmental entity, and how such stations would exercise reasonable diligence to determine whether a disclosure is needed.[1] On September 10, 2021, the National Association of Broadcasters (NAB), the Multicultural Media, Telecom and Internet Council (MMTC), and the National Association of Black Owned Broadcasters (NABOB) (collectively, Petitioners) filed a Petition for Stay Pending Judicial Review (Stay Petition).[2] Petitioners ask the Commission to stay the *Order* while their petition for review of the *Order* is pending before the United States Court of Appeals for the District of Columbia Circuit.[3] We find that the Petitioners have failed to make the required four-part showing to support such extraordinary equitable relief,[4] having failed to demonstrate that: (1) they are likely to prevail on the merits; (2) they will suffer irreparable harm absent the grant of preliminary

[1] *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702, 7702-03, para. 1 (2021) (*Order*).

[2] Petition for Stay Pending Judicial Review of the National Association of Broadcasters (NAB), the Multicultural Media, Telecom and Internet Council (MMTC), and the National Association of Black Owned Broadcasters (NABOB), MB Docket No. 20-299 (filed Sept. 10, 2021) (Stay Petition).

[3] *Id.* at 1; *Petition for Review, the National Association of Broadcasters, the Multicultural Media, Telecom and Internet Council, and the National Association of Black Owned Broadcasters v. FCC*, No. 21-1171 (D.C. Cir. filed Aug. 13, 2021). In addition, on July 19, 2021, the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (the Affiliates) filed a petition with the Commission seeking a clarification of the *Order*. *See* Affiliates' Petition for Clarification, MB Docket No. 20-299 (filed July 19, 2021) (Petition for Clarification). The Affiliates seek a clarification that the rules contained in the Commission's *Order* and the inquiries associated with these rules do not apply when a station "sells time to advertisers in the normal course of business," in contrast to when it leases airtime on the station. *Id.* The Petition for Clarification is currently pending before the Commission.

[4] As stated by the Supreme Court, "[a] stay is an 'intrusion into the ordinary processes of administration and judicial review,' . . . and accordingly 'is not a matter of right, even if irreparable injury might otherwise result'" to the movant. *Nken v. Holder*, 556 U.S. 418, 427 (2009) (internal citations omitted). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id.* at 433-34.

relief; (3) other parties will not be harmed if the stay is granted; and (4) the public interest would favor grant of the stay.[5] Accordingly, we deny the request to stay the effectiveness of these rules.

II. BACKGROUND

2. The principle that the public has a right to know the identity of those soliciting their support is a fundamental and long-standing tenet of broadcast regulation.[6] Indeed, the Commission promulgated its recent foreign sponsorship identification rules against the backdrop of regulation that has evolved over ninety years to ensure that the public is informed when airtime has been purchased on broadcast stations in an effort to persuade audiences and to enable the public to distinguish between paid content and material chosen by the broadcaster itself.[7]

3. The Commission adopted the foreign sponsorship identification rules specifically to target situations where a station broadcasts material sponsored by a foreign governmental entity.[8] Although foreign governments and their representatives are legally prohibited from holding a broadcast license directly, foreign governments have contracted with the licensee of a broadcast station to air programming of the foreign government's choosing, or to lease the entire capacity of a radio or television station, without adequately disclosing the true source of the programming.[9] As noted in the *NPRM*, in many such instances, foreign government programming is not provided to licensees by an entity or individual immediately identifiable as a foreign government.[10] For example, an agency or department of a foreign government may not include the name of the foreign country or government in its title.[11] In other instances, the linkage between the foreign government and the entity providing the programming may be attenuated in an effort to obfuscate the true source of the programming.[12] Prior to the Commission's *Order*, there was no specific requirement to identify a foreign governmental entity by name nor indicate the country to which the governmental entity was linked. Accordingly, the foreign sponsorship identification rules adopted in the *Order* sought to eliminate ambiguity for the viewer or listener regarding the source of programming provided by foreign governmental entities.

4. In the *Order*, the Commission adopted requirements modifying the Commission's existing sponsorship identification rules by requiring broadcast stations to air clear disclosures for

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[5] *Washington Metro. Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (per curiam); *see also Nken v. Holder*, 556 U.S. at 425, 435 (noting that "[t]here is always a public interest in prompt execution" of government orders and, thus, the harm to the government in not being able to execute its duty factors into public interest considerations).

[6] The Commission's words from nearly sixty years ago, in the context of adopting changes to the sponsorship identification rules, remain equally applicable today: "Perhaps to a greater extent today than ever before, the listening and viewing public is being confronted and beseeched by a multitude of diverse, and often conflicting, ideas and ideologies. Paramount to an informed opinion and wisdom of choice in such a climate is the public's need to know the identity of those persons or groups who solicit the public's support." *Amendment of Sections 3.119, 3.289, 3.654 and 3.789 of the Commission's Rules*, Report and Order, 34 FCC 829, 849, para. 59 (1963).

[7] *See Sponsorship Identification Requirements for Foreign Government-Provided Programming, Notice of Proposed Rulemaking,* 35 FCC Rcd 12099-105, paras. 1-11 (2020) (*NPRM*) (describing the evolution of the statutory sponsorship identification requirements in section 317 of the Act and the Commission's implementing regulations).

[8] *Order*, 36 FCC Rcd at 7708-13, paras. 14-23. The *Order* defined the term "foreign governmental entity" to include those entities or individuals who would trigger a disclosure pursuant to the foreign sponsorship identification rules. *Id.* The instant order accords to the term "foreign governmental entity" the definition established in the *Order*.

[9] *Id.* at 7702-04, paras. 1, 4 & nn.9, 10. *NPRM*, 35 FCC Rcd at 12099, 12106, 12120, paras. 1, 13, & n.118.

[10] *NPRM*, 35 FCC Rcd at 12106, para 13.

[11] *Id*.

[12] *Id*.

programming that is provided by a foreign governmental entity pursuant to leasing agreements.[13] The foreign sponsorship identification rules require a disclosure at the time of broadcast if material aired pursuant to the lease of time on the station has been sponsored, paid for, or furnished by a foreign governmental entity.[14] The required disclosure uses standardized language to indicate the specific entity and country involved and must be made at the beginning and end of the broadcast and no less frequently than every 60 minutes for broadcasts of over an hour in duration.[15]

5. The *Order* also adopted a requirement that a station airing foreign government-provided programming[16] pursuant to a lease agreement must place copies of its disclosures, the names of any programming to which the disclosures are appended, and the date and time the programming aired in its Online Public Inspection File.[17] To make the rules' terms clear and easy to understand, the *Order* uses existing definitions, statutes, or determinations by the U.S. government as to when an entity or individual qualifies as a "foreign governmental entity."[18] These definitions draw from the Foreign Agents Registration Act of 1938 and the Communications Act of 1934, as amended.[19]

6. Finally, to provide broadcast licensees with detailed guidance for complying with the rules, the *Order* explains how a licensee may fulfill its existing statutory obligation to "exercise reasonable diligence" to determine if a disclosure is required under the adopted foreign sponsorship identification rules.[20] The *Order* states that broadcasters must inform lessees of the newly adopted requirement and inquire of lessees, when entering into a new lease agreement and at renewal, whether the lessee falls into any of the categories that would qualify the lessee as a foreign governmental entity.[21] Broadcasters must also inquire of the lessee whether the lessee knows if anyone involved in the production or distribution of the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming.[22] If the response to these inquiries is in the negative, then a broadcast licensee is to confirm the lessee's status, by consulting the Department of Justice's Foreign Agents Registration Act (FARA) website and the Commission's semi-annual U.S.-based foreign media outlets report, both of which are publicly accessible.[23] A broadcast licensee must also memorialize the inquiries listed above to track compliance and retain such documentation in the licensee's records for either the remainder of the

[13] *Order*, 36 FCC Rcd at 7703-04, 7713-17, paras. 3, and 24-31.

[14] *Id.* at 7708-09, para. 14.

[15] *Id.* at 7727-30, paras. 50-56.

[16] In this *Order*, use of the term "foreign government-provided programming" refers to all programming that is provided by an entity or individual that qualifies as a "foreign governmental entity" pursuant to the Commission's foreign sponsorship identification rules. *See Order*, 36 FCC Rcd at 7739-41, Appendix A (listing new section 73.1212(j)(1) of the Commission's rules).

[17] *Order*, 36 FCC Rcd at 7730-31, paras. 57-61.

[18] *Id.* at 7709-12, paras. 15-20.

[19] *Id.*

[20] *Id.* at 7719-20, 7739-41, para. 35, and Appendix A (laying out the new 47 CFR § 73.1212(j).

[21] *Id.* at 7720-21, para. 38. The *Order* also requires that lease agreements that are in place when the foreign sponsorship identification rules become effective come into compliance with the new requirements, including undertaking reasonable diligence, within six months. *Id.* at 7727, para. 48.

[22] *Id.* at 7721, 7739-41, para. 39, and Appendix A.

[23] *Id.* at 7722-23, 7739-41, paras. 40-41, and Appendix A. The Commission's semi-annual U.S.-based foreign media outlets report is accessible via the Commission's website.

then-current license term or one year, whichever is longer, so as to respond to any future Commission inquiry.[24]

7. In their Stay Petition, Petitioners contend that the *Order* contravenes section 317 of the Act, violates the Administrative Procedure Act (APA) by being arbitrary and capricious, and unduly burdens speech in contravention of the First Amendment.[25] Petitioners assert that by requiring licensees to verify a lessee's status via publicly accessible sources, the *Order* violates the plain language of section 317(c) as interpreted by the D.C. Circuit Court, asserting that section 317(c) requires licensees to do no more than obtain information from entities with which they are in immediate contact.[26] Petitioners also argue that the *Order* is arbitrary and capricious because the Commission does not establish a problem warranting regulation of all leased programming nationwide, fails to impose the disclosure requirements on non-broadcast media distributors, and subjects more types of leased programming to the investigation requirements than reasonably should be included.[27] Petitioners cite these same reasons in asserting that the *Order* unduly burdens speech and violates the First Amendment.[28] Finally, Petitioners contend that compliance with the Commission's foreign sponsorship identification rules will subject them to irreparable economic harm of the sort that justifies a stay and that the balance of hardships and public interest weigh in favor of a stay.[29] For the reasons discussed below, the Bureau finds that Petitioners have failed to meet their requisite burden of demonstrating why the circumstances at issue here justify such extraordinary relief.[30]

III. DISCUSSION

A. Petitioners Have Failed to Show a Likelihood of Success on the Merits

8. Petitioners' allegations that the *Order* violates section 317(c) of the Act, is arbitrary and capricious, and contravenes the First Amendment are unlikely to succeed on the merits. As discussed in greater detail below, the relevant statutory provisions and their accompanying legislative history, the careful tailoring of the Commission's new requirements to address the identified harm, as well as First Amendment jurisprudence highlight the fallacies of Petitioners' claims and demonstrate why a stay is not justified in this case.

1. The Order's Reasonable Diligence Requirements Do Not Violate Section 317(c) of the Act

9. The Order's reasonable diligence requirements regarding foreign government-sponsored programming are wholly consistent with section 317(c) of the Act.[31] The minimal requirements address

[24] *Id.*

[25] Stay Petition at 1-2.

[26] *Id.* at 8-12.

[27] *Id.* at 12-15.

[28] *Id.* at 16.

[29] *Id.* at 17-20.

[30] *See supra* para. 1 (laying out criteria for a stay).

[31] Section 317(a) of the Act requires a licensee to make an announcement about any content aired in exchange for money or other consideration disclosing by whom on or whose behalf such payment was made. 47 U.S.C. § 317(a). Section 317(c), in turn, states that "[t]he licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section." 47 U.S.C. § 317(c). Drawing from the additional statutory authority contained in section 317(e), which directs the Commission to prescribe regulations to implement the provisions of section 317, the Commission modified its existing sponsorship identification rules to address the circumstance of a foreign governmental entity's leasing time on a station. *See* 47 U.S.C. § 317(e) and *Order generally*.

the root problem of foreign governments' leasing time on broadcast stations without full disclosure and provide an efficient and objective means by which to determine whether a foreign governmental entity is the source of the programming at issue. Moreover, any suggestion that the foreign sponsorship identification rules disregard the "deals directly" language contained in section 317(c)[32] are based on a mischaracterization of the rules themselves.

10. The rules require that, as an initial matter, the licensee make inquiries of the lessee -- *i.e.*, a person with whom the licensee "*deals directly*" -- about whether the lessee is either a foreign governmental entity or is aware of anyone further back in the chain of production or distribution qualifying as a foreign governmental entity. If the lessee responds in the negative, the licensee must independently verify *only* the lessee's status via two publicly accessible websites.[33] To the extent that Petitioners claim that the foreign sponsorship identification rules require the licensee to undertake an independent investigation of whether someone further back in the chain of production or distribution qualifies as a foreign governmental entity, this is a misrepresentation or misunderstanding of the new rules.[34] Merely imposing a disclosure requirement in the absence of reasonable efforts on the part of licensees to determine whether a foreign governmental entity has sponsored the relevant programming would render section 317(c) of the Act toothless, as such information cannot be readily discerned without the steps outlined in the Commission's order.

11. Section 317(c) requires a licensee to exercise "reasonable diligence" to obtain information to make a sponsorship announcement "from . . . persons with whom [the licensee] deals directly in connection with any program or program matter for broadcast."[35] Relying on language in *Loveday v. F.C.C.*,[36] Petitioners assert that the statute "is satisfied by appropriate inquiries made by the station to the party that pays it for the broadcast."[37] The *Loveday* language does not, however, answer the question of whether there is *ever* any duty to investigate further. In fact, the statute is silent as to whether "reasonable diligence" ever imposes a duty to confirm or investigate the paying party's response to inquiries. In the *Order*, the Commission reasonably concluded that section 317(c) imposes a limited duty to do so in the circumstances covered by the foreign sponsorship identification rules.

12. The ordinary meaning of "reasonable diligence" is "[a] fair degree of reasonable diligence expected from someone of ordinary prudence under circumstances like those at issue."[38] The legislative history indicates that Congress intended to accord the term its ordinary meaning, and, thus, allow the Commission to use its expertise in determining how to apply this standard in given situations.[39] Whether someone of ordinary prudence would investigate sponsorship information depends on the

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[32] *See* Stay Petition at 4 (stating that during the rulemaking Petitioners had urged the Commission to "implement the 'reasonable diligence' requirement in a manner consistent with the sponsorship identification statute by allowing stations to make inquiries of those with whom they 'deal directly' and that are likely to be foreign entities, rather than consulting government lists").

[33] *See supra* para. 6 stating that the lessee must consult the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets report, both of which are publicly accessible.

[34] *See* Stay Petition at 8-12 (asserting that the Commission's foreign sponsorship identification rules somehow constitute an "independent investigation" in contravention of the statute which only requires "appropriate inquiries made by the station to the party that pays it for the broadcast.")

[35] 47 U.S.C. § 317(c).

[36] *Loveday v. F.C.C.*, 707 F.2d 1443 (1983) (*Loveday*).

[37] *See* Petition at 9 (quoting *Loveday*, 707 F.2d at 1449).

[38] Black's Law Dictionary (11th ed. 2019).

[39] Leg. History of the Communications Act Amend. Of 1960: P.L. 86-752; 74 Stat. 889, Sept. 13, 1960, p. 31 (1960) ("the term 'reasonable diligence' has a sufficiently accepted legal meaning so as to permit the Commission to apply this standard in given factual situations," quoting statement of Federal Communications Commission Chairman to the Communications Subcommittee of the Senate Committee on Interstate & Foreign Commerce, Aug. 10, 1960).

circumstances at issue. For example, how credible is the information provided? A licensee cannot rely on information that is "simply not credible."[40] Likewise, the nature of the broadcast may also be a factor. For instance, "[t]he 'reasonable diligence' standard can require a higher duty of care by stations whose formats or other circumstances make them more susceptible to payola."[41] Whether any investigation is appropriate may also depend on the practicability of investigation.

13. Here, the Commission found that lease agreements (*i.e.*, the relevant program format) are "the primary means . . . by which foreign governmental entities are accessing U.S. airwaves."[42] As such, it was appropriate to require more care by stations that lease programming. As the Commission's definition of "foreign governmental entity" is tied to preexisting statutory definitions in the Foreign Agents Registration Act of 1938 and the Communications Act of 1934, assessing the credibility of a lessee's negative response need not depend on the licensee's subjective analysis of the lessee's response. Rather, the names of entities that have been determined to meet the definitions appear in two public sources, enabling licensees to verify a lessee's negative response through a "straightforward and limited search."[43] The Commission's conclusion that, under the circumstances at issue, "reasonable diligence" requires a licensee to consult these two public sources to confirm information provided by a lessee[44] was reasonable and consistent with the statutory language.

14. In claiming that the *Order*'s requirements violate the statutory "reasonable diligence" standard, Petitioners rely exclusively on one case, the *Loveday* case,[45] the facts of which are entirely different from the situation at hand. As a threshold matter, the *Loveday* case does not address the scope of the Commission's authority to promulgate regulations pursuant to section 317 of the Act. Rather, the *Loveday* court focused on whether "the Commission's interpretation of its own regulations *as applied in [that] case* [was] reasonable and consistent with section 317 of the Communications Act."[46] Specifically, the *Loveday* case addressed whether it was reasonable for the Commission to find that licensees had met their reasonable diligence obligation by disclosing as the sponsor the entity that had paid the licensees for the programming.[47] The *Loveday* court's statements about whether the Commission could require anything more related to the circumstances presented in *that* case,[48] and, hence, have no bearing on the instant matter. In that case, the court granted deference to the Commission's interpretation of its reasonable diligence requirement in the context of the sponsorship identification rules as they existed at that time.

15. The U.S. Court of Appeals for the Sixth Circuit recognized in an earlier case, however, that the Commission is not precluded from providing further clarity as to what constitutes reasonable

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[40] *Trumper Communications of Portland, Ltd.*, 11 FCC Rcd 20415, 20418 (MB 1996) (finding stations could not rely on named sponsor's assurances as to real party in interest that were contradicted by evidence from public filings).

[41] *Commission Warns Licensees About Payola and Undisclosed Promotion*, Public Notice, 4 FCC Rcd 7708 (1988).

[42] *Order*, 36 FCC Rcd at 7703-04, para. 3.

[43] *Id.* at 7725-26, para. 45 and 7710-11, para. 17.

[44] *Id*. at 7722-23, paras. 40-41.

[45] *Loveday*, 707 F.2d 1443.

[46] *Id*. at 1459 (emphasis added).

[47] In that case, the petitioners had named another entity as the source of the programming in letters to the licensees, though they provided no documentation or other support for their claims that the real sponsor was someone other than the entity that had paid for the programming. *Loveday*, 707 F.2d at 1448-49.

[48] As the *Loveday* court itself noted in determining the appropriate standard of review: "The ruling challenged here was issued in a specific factual context and resolved only the issues presented by petitioners' application." *Loveday*, 707 F.2d at 1447.

diligence in the context of its sponsorship identification rules.[49] In the *WHAS* case, that court stated: "[W]e are by no means precluding the FCC from adopting a Regulation calculated to require a station to make reasonable efforts to go beyond a named 'sponsor' for a political program in order to ascertain the real party in interest for purposes of announcement."[50] We note that the *Loveday* case, which Petitioners rely on so heavily, does not dispute the Sixth Circuit's determination that the Commission has this authority. Rather, the *Loveday* court merely states that since amending its regulations after the *WHAS* ruling, "the Commission ha[d] never indicated in enforcement proceedings that section 317 or its own regulations require a station to conduct any investigation or to look behind the plausible representations of a sponsor that it is the true party in interest."[51] In this case, however, the Commission *has* adopted clear procedures for a licensee to follow in performing its reasonable diligence to ascertain whether programming has been provided by a foreign governmental entity.[52]

16. As the Commission explained in detail in the *NPRM* and *Order*, the foreign sponsorship identification rules are consistent with legislative history accompanying the statute as well. Petitioners' claim that "the Commission recites but does not analyze the statutory language or history of Section 317(c)"[53] disregards not only the discussion in the *Order* about the statute,[54] but also the extensive discussion about the background of sections 317 and 507[55] in the *NPRM* that established the foundation for the Commission's proposal to require broadcasters to make certain inquiries regarding the status of those providing programming to be aired on broadcast stations.[56] Petitioners' assertion that Congress never intended for the type of queries adopted in the Commission's *Order* is based on highly selective fragments of that legislative history and cannot withstand further examination.

17. Rather than focusing on the impetus for the 1960 amendments, which include the very statutory provision that Petitioners assert has been misconstrued, Petitioners instead discuss what

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[49] *United States of America v. WHAS, Inc.,* 385 F.2d 784 (1967) (*WHAS*).

[50] The *WHAS* case concerned a Commission appeal of a federal district court ruling finding that the Commission's sponsorship identification rules as they existed in the early 1960s left some ambiguity about the level of investigation required to determine the true sponsor of certain programming. *WHAS*, 385 F.2d at 788. In response to this decision, in 1975, the Commission modified its rules to include the "could be known" language contained in the current rule, which holds a licensee responsible for what is known or could be known regarding the source of the programming through reasonable diligence. *See Amendment of the Commission's Sponsorship Identification Rules (Sections 73.119, 73.289, and 76.221)*, Report and Order, 52 FCC 2d 701 (1975). In modifying its rule, the Commission stated:

> Broadcasters are licensed to act as trustees for a valuable public resource and, in view of the public's paramount right to be informed, some administrative burdens must be imposed on the licensee in this area. These burdens simply 'run with the territory.'

Id. at 709, para. 24.; *see also NPRM*, 35 FCC Rcd at 12122-23, nn.127, 134; *Order*, 36 FCC Rcd at 7725-26, n.132.

[51] *Loveday*, 707 F.2d at 1456-57.

[52] As stated in the *Order,* the specific guidance provided in the foreign sponsorship identification rules about what constitutes "reasonable diligence" with regard to foreign government-provided programming (*i.e.*, what inquiry to make of whom, where specifically to look when investigating a lessee's status, and the frequency of such inquiries) obviates the concern raised by the *Loveday* court about licensees having "to guess in every situation what the Commission would later find to be 'reasonable diligence.'" *Order*, 36 FCC Rcd at 7725-26, n. 132.

[53] Stay Petition at 10.

[54] *See, e.g., Order*, 36 FCC Rcd at 7704-06, 7720-21, 7726-27, paras. 5-8, 37-39, 46-47.

[55] 47 U.S.C. §§ 317, 508.

[56] *See NPRM*, 35 FCC Rcd at 12100-06, paras. 4-12 (discussing at length how starting with the Radio Act of 1927, through the Communications Act of 1934, and amendments thereto, as well as the associated legislative history, it has been clear that Congress places paramount importance on broadcast audiences knowing who is trying to persuade them, and on the Commission's implementing regulations that require the necessary disclosures).

Congress may have intended in choosing to include sponsorship identification requirements in the Radio Act of 1927.[57] In their one attempt to reference the legislative history associated with the 1960 amendments, Petitioners assert that "[t]he legislative history of the 1960 Act indicated that the licensee would not be an insurer of the accuracy of the disclosure; in other words, 'a licensee need not go behind the information it receives to guarantee its accuracy.'"[58] This claim relies on a single footnote reference in the *Loveday* case to a Senate Report that accompanied the 1960 amendments. In fact, the Senate Report clearly states that licensees should make an effort to determine who is the true sponsor of the programming and describes the reasonable diligence requirement of subsection (c) as follows:

> "The term "reasonable diligence" would require the licensee to take appropriate steps to secure such information, but it would not place a licensee in the position of being an insurer, nor does this condition permit a licensee to escape responsibility for sponsorship announcements by inactivity on his part."[59]

The reference to "appropriate steps to secure such information" and the statement about not permitting the "licensee to escape responsibility for sponsorship announcements by inactivity on his part" support the Commission's implementation of the "reasonable diligence" standard in the context of foreign government-provided programming by clarifying the appropriate steps to be taken – in this case requiring broadcasters to make certain basic inquiries of their lessees and consult two publicly accessible federal government websites.

18. Given the language of section 317(c) and the accompanying legislative history, as well as the case law, Petitioners' interpretation of section 317(c) is unduly limited. Accordingly, the Bureau finds that the reasonable diligence requirements adopted by the *Order* are wholly consistent with section 317(c) of the Act and Petitioners are unlikely to prevail on that argument.

2. The Commission's Order is Not Arbitrary and Capricious Under the APA

19. Petitioners' allegations that the *Order* is arbitrary and capricious under the APA are likewise unfounded and unlikely to succeed on the merits.[60] Contrary to Petitioners' contentions, the Commission clearly established a predicate for nationwide rulemaking and a proper basis for modifying the sponsorship disclosure rules applicable to broadcast stations. Petitioners' claims that the adopted rules are both over- and under-inclusive do not withstand scrutiny, and largely simply repeat issues raised, considered, and rejected, during the rulemaking proceeding.

20. Contrary to Petitioners' assertion that "the Commission did not establish a problem warranting the nationwide regulation of *all* leased programming at *all* of the 1,324 commercial television stations and 11,288 commercial radio stations across the country,"[61] the *NPRM* and *Order* clearly

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[57] *See* Stay Petition at 9 (quoting from *Loveday*, 707 F.2d at 1451) ("noting that Congress, in enacting the original sponsorship identification requirement in the Radio Act of 1927, 'imposed only a very limited obligation upon broadcasters: to announce that a program had been paid for or furnished to the station by a third-party and to identify that party'"). While the *Loveday* case, which Petitioners cite in support of their assertions, devotes considerable attention to the legislative history associated with the Radio Act of 1927, the Bureau finds that the more relevant legislative history for the purposes of the instant order relates to the 1960 amendments, which adopted both the provision at issue and related provisions seeking disclosure of the individual who has sponsored the programming, even if that individual is not in direct contact with the licensee. *See Loveday*, 707 F.2d at 1449-1452 (discussing the legislative history associated with the Radio Act of 1927).

[58] Stay Petition at 10 (citing *Loveday*, 707 F.2d at 1455, n.18, which in turn quoted Senate Report No. 1857, 86th Cong., 2d Sess. at 6 (Aug. 19, 1960)).

[59] Senate Report No. 1857, 86th Cong., 2d Sess, at 6 (Aug. 19, 1960).

[60] Stay Petition at 12-15.

[61] *Id.* at 12.

articulate the basis for the Commission's action and how it addressed the potential harm identified.[62] Taking the Petitioners' assertion to its logical conclusion would lead to a preposterous outcome with regard to regulatory authority. There is no requirement that the American public suffer some requisite amount of harm before regulatory intervention is justified.[63] Moreover, as described in the *NPRM*, Congress passed sponsorship identification legislation precisely because there is harm to consumers stemming from *undisclosed* influences.[64] The Commission properly identified and articulated its concern, conducted a rulemaking proposing regulations to address that problem rooted in the agency's statutory authority, and adopted rules tailored to the harm supported by the record developed. As such, Petitioners' argument that the rulemaking was arbitrary and capricious cannot withstand scrutiny.

21. Further, Petitioners' claim that the *Order* is deficient because the Commission offers too few examples of undisclosed foreign government programming is circular in nature.[65] The rulemaking at issue was prompted by evidence of *undisclosed* foreign government programming and the lack of transparency this creates for the American broadcast audience contrary to section 317 of the Act. It is precisely because there has been no disclosure requirement, no standardized guidance about how to identify a foreign governmental entity, and insufficient inquiry by broadcasters as to the source of programming that programming sponsored by a foreign governmental entity has been undetected. Nevertheless, as documented in the *NPRM* and *Order*, the Commission identified a number of such circumstances, as well as mounting evidence that foreign government controlled media outlets are increasingly disseminating material in the United States, often without the audience's awareness of the material's origin.[66]

22. Petitioners' assertion that one of the *Order*'s examples of undisclosed foreign government-provided programming is a Chinese sponsor whose name does not currently appear on either of the two public websites that broadcasters must consult in no way impacts the utility of the Commission's foreign sponsorship identification rules.[67] In establishing disclosure requirements for foreign government-provided programming, the Commission provided a path to greater transparency, while also guarding against unnecessarily inserting itself and broadcasters into complicated determinations about who and what may qualify as a foreign governmental entity.[68] As described in the *NPRM* and *Order*, the Commission reasonably elected to rely on existing statutes and determinations rather than creating a new regulatory paradigm, or providing very general guidance that might have led to unbounded investigations about any possible linkages between entities that provide programming and a foreign government. Furthermore, both the FARA website listings and the U.S.-based foreign media outlet lists are dynamic in nature, and the entities appearing on those lists may change periodically. Accordingly, Petitioners' observation that the specific parties involved in one example discussed in the *Order* were not currently registered on either of the relevant websites does not undercut the validity of the Commission's rulemaking or the reasonable basis for the regulations adopted.

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[62] *See, e.g.*, *NPRM*, 35 FCC Rcd at 12105, 12106, 12119, 12120, n.40-41, para. 13, n.115-16, para. 43; *Order*, 36 FCC Rcd at 7702-03, 7704, nn.1, 9, 10.

[63] *See infra* n. 95 (discussing agency authority to undertake prophylactic responses to perceived risks).

[64] *NPRM*, 35 FCC Rcd at 12100-05, paras. 4-11.

[65] Stay Petition at 12.

[66] *See, e.g., NPRM*, 35 FCC Rcd at 12106, n.42 (describing news article by Anna Massoglia and Karl Evers-Histrom), *Russia Paid Radio Broadcaster $1.4 Million to Air Kremlin Propaganda in DC*, OpenSecrets.org (July 1, 2019), https://www.opensecrets.org/news/2019/07/russia-paid-radio-broadcaster-1-4-million-to-air-kremlin-propaganda/ (describing how a Florida-based company, RM Broadcasting LLC, had been acting as a middleman brokering airtime for Russian government-owned Sputnik International).

[67] *Stay Petition* at 13.

[68] *See NPRM*, 35 FCC Rcd at 12107-10, paras. 17-18; *Order*, 36 FCC Rcd at 7709, para. 15.

23. Further, in contending that the *Order* is "dramatically overinclusive" the Petitioners merely repeat their previously addressed—and rejected—proposals about how to interpret the "reasonable diligence" standard. Referring back to their proposals from the underlying rulemaking, Petitioners claim that the "Commission refused to impose any reasonable limit on the type of leased programming subject to investigation requirements."[69] In making this claim, Petitioners disregard that the *Order* significantly narrowed the application of the foreign sponsorship identification rules from the initial *NPRM* proposal, which would have applied the disclosure requirements to all foreign government-provided programming, irrespective of whether the programming was provided via a leasing arrangement.[70] Based on submissions by the Petitioners and others,[71] the Commission determined that focusing on the airing of programming on U.S. broadcast stations *pursuant to leasing agreements* would address the primary present concern with foreign governmental actors gaining access to American airwaves without disclosing the programming's origin to the public.[72] In this way, the Commission tailored the rules consistent with the developed record to avoid burdening more programming than necessary.

24. While Petitioners had previously urged the Commission, in lieu of adopting specific guidance implementing the statutory "reasonable diligence" standard, to require broadcasters to engage in "reasonable diligence" "only if they have reason to believe that their lessee is affiliated with a foreign governmental entity,"[73] the Commission expressly rejected this proposal to limit the types of leasing arrangements subject to the rules. In the *Order*, the Commission found that the Act does not contain a threshold showing of "reason to believe" before requiring broadcasters to engage in "reasonable diligence."[74] Moreover, the Commission determined that the practical implication of adopting a standard based on broadcasters' subjective beliefs regarding which entities or individuals may have ties to a foreign governmental entity opens the door to arbitrary determinations based on factors such as whether the broadcaster has had a previous long-standing relationship with a lessee and would insert an unnecessary level of ambiguity into whether new entrants are receiving nondiscriminatory treatment.[75]

25. In addition, the Petitioners' preference that the Commission impose a disclosure obligation on cable operators and other media platforms[76] is irrelevant to the Commission's use of its existing authority to adopt appropriate regulations for broadcast stations. As discussed in detail below, the Commission has longstanding statutory authority to adopt sponsorship identification rules as to broadcast stations. Indeed, the Commission's adoption of rules here is consistent with the Commission's prior application of section 317 of the Act as to broadcasters. Whether the Commission can or should impose similar disclosure requirements on other services does not in any way undermine its determination

[69] Stay Petition at 14.

[70] *NPRM*, 35 FCC Rcd at 12115-17, 12123-26, paras. 30-33, 48-51.

[71] *Order*, 36 FCC Rcd at 7736, n.73 (reiterating ex partes by NAB, NPR, and Fox Corp. stating that focusing the application of the disclosure requirement on leasing arrangements would be appropriate).

[72] *Id.* at 7713-14, paras. 24-25.

[73] *Id.* at 7724-25, paras. 44-45.

[74] *Id*. at 7724-25, para. 44.

[75] *Id.* at 7725, n.129. With regard to Petitioners' alleged concerns about the *Order's* potentially requiring disclosures for certain forms of advertising, we note that there is currently a pending Petition for Clarification before the Commission on this issue, and Petitioners have chosen not to participate in that proceeding. *See* Stay Petition at 14-15 and n.3 *supra* (describing Petition for Clarification).

[76] Stay Petition at 13-14 (asserting that the regulations are "underinclusive").

to exercise its authority to implement disclosure obligations on broadcasters consistent with its statutory mandate to do so.[77]

26. For these reasons, we find the Petitioners' contention that the Commission's action in this proceeding was arbitrary and capricious to be without merit and unpersuasive.

3. The *Order*'s Requirements Do Not Violate the First Amendment

27. The foreign sponsorship identification rules do not violate the First Amendment and, consequently, Petitioners' constitutional arguments also are unlikely to succeed on the merits.[78] Petitioners' contention that the rule is subject to "at least exacting scrutiny,"[79] ignores that "of all forms of communication, it is broadcasting that has received the most limited First Amendment protection."[80] "[T]he Supreme Court has described First Amendment review of broadcast regulation as 'less rigorous' than in other contexts based on the spectrum scarcity rationale."[81] The D.C. Circuit declined to apply exacting (also known as "intermediate") scrutiny to a content-neutral broadcast regulation in *Ruggiero v. FCC,* instead applying a "heightened rational basis" standard of review.[82] The Commission's foreign sponsorship identification rules are content-neutral because they require an announcement for leased "programming provided by any foreign government," regardless of content or whether the foreign government's "interests are directly at odds with the United States."[83]

28. The recently adopted rules also impose a less severe burden on speech than the regulation at issue in *Ruggiero*, which made former pirate broadcasters "ineligible to obtain [a low-power FM radio] license - the only type of license practicably available to most individuals."[84] "By compelling some disclosure of information and permitting more,"[85] the disclosure rule adopted by the Commission "promote[s] greater transparency" rather than prohibiting or restricting broadcasters' speech.[86] In all events, the foreign sponsorship identification rules will satisfy exacting scrutiny.[87] As discussed below,

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[77] *See* 47 U.S.C. § 317(e) (stating that the "Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section"); *see also infra* para. 37 (discussing why under First Amendment jurisprudence it was reasonable for the Commission to have limited the scope of its *Order* to broadcasters).

[78] Stay Petition at 15-17.

[79] *Id.* at 15 (internal quotations and citations omitted).

[80] *FCC v. Pacifica Found.*, 438 U.S. 726, 748 (1978).

[81] *See Order*, 36 FCC Rcd at 7734-35, para. 69, n.188 (citing *Turner Broad. Sys. Inc. v. FCC,* 512 U.S. 622, 637 (1984) (*Turner Broad. Sys.*), *FCC v. League of Women Voters,* 468 U.S. 364, 377 (1984), and *Red Lion Broad. Co. v. FCC,* 395 U.S. 367, 388-89 (1969)).

[82] *Ruggiero v. FCC,* 317 F.3d 239, 243-44, 247 (D.C. Cir. 2003) (*Ruggiero*). Although the Commission found that the rule complies with the First Amendment "regardless of the level of scrutiny applied," it did not determine the applicable level of scrutiny. *Order*, 36 FCC Rcd at 7734-35, para. 69.

[83] *Order*, 36 FCC Rcd at 7712-13, para. 23 (internal quotations and citations omitted); *cf. Turner Broad. Sys.*, 512 U.S. at 658 (speaker-based laws are suspect "when they reflect the Government's preference for the substance of what the favored speakers have to say (or aversion to what the disfavored speakers have to say).").

[84] *Ruggiero*, 317 F.3d at 245. Disclosure requirements "may burden the ability to speak, but they … 'do not prevent anyone from speaking.'" *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366 (2010) (*Citizens United*) (quoting *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 201 (2003) (*McConnell*) (subsequent history omitted)).

[85] *Meese v. Keene*, 481 U.S. 465, 480-81 (1987).

[86] *Order*, 36 FCC Rcd at 7735, 7736, paras. 69 n.189. 73.

[87] *Order*, 36 FCC Rcd at 7734-36, 7736-37, paras. 69-70, 73.

the rules are substantially related to a "sufficiently important governmental interest."[88] Moreover, the burden on speech rights is narrowly tailored to the interest that the *Order* furthers.[89]

29. *Governmental interest*. The governmental interest at stake is indisputably important. Indeed, the Commission found that "the government has a compelling interest in ensuring that the public is aware of when a party has sponsored content on a broadcast station."[90] The Commission found the interest to be "even more important" where, as here, "a foreign governmental entity is involved."[91] The importance is further magnified by evidence that "foreign governments increasingly are making use of U.S. airwaves to promote their policies and viewpoints to the American public."[92]

30. Petitioners argue the governmental interest is "not sufficiently important" because "there is no widespread, much less national, problem of foreign propaganda" on broadcast stations.[93] In their view, "a wave of foreign propaganda" evidently would be required before any action was warranted.[94] But, as the U.S. Court of Appeals for the D.C. Circuit has previously stated, "[a]n agency need not suffer the flood before building the levee."[95] The Commission reasonably concluded that the examples it cited represent a larger problem.[96] Moreover, as noted above, the very lack of appropriate disclosure to inform audiences that the programming has been sponsored by a foreign governmental entity or a foreign nation that led to this rule making means that such material could previously have been aired without knowledge of such sponsorship by either the public or the Commission.[97] Petitioners also contend the Commission irrationally adopted a national rule in response to what it considers several "hyper-localized" incidents, but they do not claim that the risks the Commission seeks to address are specific to the areas where examples of "foreign propaganda" have been documented.[98] Nor do they articulate why the Commission's concern with the need for transparency would not also logically apply in other locales and situations involving the lease of time on U.S. broadcast stations besides those mentioned in the *Order*.

31. *Tailoring*. The foreign sponsorship identification rules are reasonably tailored to satisfying the government's interest in ensuring that sponsorship by foreign governmental entities is announced to broadcast audiences.[99] The foreign sponsorship identification rules require disclosure "only for programming aired pursuant to a lease of airtime if directly or indirectly provided by a foreign

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[88] *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373, 2383 (2021) (*Bonta*) (quoting *Buckley v. Valeo*, 424 U.S. 1, 64 (1976)).

[89] *Bonta*, 141 S.Ct. at 2384.

[90] *Order*, 36 FCC Rcd at 7735, para. 69 and n. 185.

[91] *Id.* at 7735, n.186; *id.* at 7714-15, para. 26 (discussing bar on foreign governments holding broadcast licenses under 47 U.S.C. § 310(a)).

[92] *Id.* at 7735, para. 69, n. 186.

[93] Stay Petition at 12-13, 16.

[94] *Id.* at 13.

[95] *Stilwell v. Off. of Thrift Supervision*, 569 F.3d 514, 519 (D.C. Cir. 2009); *Chamber of Commerce of U.S. v. SEC*, 412 F.3d 133, 141 (D.C. Cir. 2005) (agencies have authority for "'precautionary or prophylactic responses to perceived risks'" based on "documented abuses") (quoting *Certified Color Mfrs. Assn. v. Mathews*, 543 F.2d 284, 296 (D.C. Cir. 1976)).

[96] *Order*, 36 FCC Rcd at 7704, 7713-14, paras. 4, 25. The Commission was not alone in perceiving a problem that calls for action. *See id.* at 7704, para. 4, n. 9 (citing Congressional expressions of concern).

[97] *See supra* at para. 22.

[98] Stay Petition at 12-13.

[99] *See Americans for Prosperity*, 141 S. Ct. at 2384 (exacting scrutiny "require[s] a fit that is not necessarily perfect, but reasonable") (quoting *McCutcheon v. Fed. Elec. Comm'n*, 572 U.S. 185, 218 (2014)).

governmental entity."[100] The Commission "significantly narrowed the scope of the programming covered by" the rule from its initial proposal to minimize the speech burden.[101]

32. Petitioners argue the *Order* is overinclusive because its "reasonable diligence" requirements cover all leased programming.[102] The *Order* compels disclosure, however, only where leased programming is sponsored by a foreign governmental entity.[103] Accordingly, the burden on speech rights is narrowly tailored to the interest the *Order* serves.[104] The speech burden also is coextensive with the underlying sponsorship identification requirements, which petitioners do not purport to challenge.[105]

33. Further, the *Order*'s requirements are neither burdensome nor excessive. As described above, the foreign sponsorship identification rules require a licensee to inform the lessee of the disclosure rule, ask whether the lessee qualifies as a foreign governmental entity or is aware of such an entity in the program production chain, confirm a negative response by consulting Department of Justice and Commission websites, and maintain a record of its compliance.[106] Asking two questions of the lessee is a minimal burden.[107] The same goes for verifying that the lessee's name does not appear on two public lists.[108] And "broadcaster recordkeeping requirements simply run with the territory."[109]

34. In addition, narrower alternatives to the disclosure rule are inadequate.[110] The Commission explained that proposals to narrow the rule to situations where broadcasters "have reason to believe that their lessee is affiliated with a foreign governmental entity" would make the rule "virtually ineffectual and unenforceable" and might "favor existing lessees at the expense of new and diverse entrants."[111]

35. Petitioners also contend the Commission could have achieved its goal by "requiring the sponsor itself to provide the desired information for the licensee to include when airing the leased programming."[112] There is no reason to believe this alternative would be effective when lessees' existing statutory obligation "to communicate information to the licensee relevant to determining whether a

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[100] *Order*, 36 FCC Rcd at 7735-36, para. 70.

[101] *Id. See supra* at para. 24.

[102] Stay Petition at 14-15, 16.

[103] *See Order*, 36 FCC Rcd at 7739-41, Appendix A.

[104] *Order*, 36 FCC Rcd at 7734-35, paras. 69-70.

[105] *See* 47 U.S.C. §§ 317(a)-(e) and 47 CFR §§ 73.1212(a)-(i); and *Order at* paras. 28 and 30.

[106] *See Order*, 36 FCC Rcd at 7739-41, Appendix A.

[107] *See* 47 U.S.C. § 317(c) (requiring licensees to exercise "reasonable diligence" to obtain the information required for a sponsorship announcement). In this regard, we note that the Commission's pre-existing sponsorship identification rules state that "[w]here an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, . . . , could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of the agent." 47 CFR § 73.1212(e).

[108] *Order*, 36 FCC Rcd at 7725-26, para. 45; *see id.* at 7723, para. 43 n.123 (declining to require "a general Internet search" based on concerns expressed by petitioner NAB and others).

[109] *McConnell*, 540 U.S. at 236 (internal quotations and citations omitted).

[110] *See John Doe No. 1 v. Reed*, 561 U.S. 186, 198-99 (2010) (disclosure requirement was "substantially related to the important interest of preserving the integrity of the election process" where, *inter alia*, proposed alternatives were less effective).

[111] *See Order*, 36 FCC Rcd at 7724-25, para. 44 (internal quotations and citations omitted); *see also supra* para. 25.

[112] Stay Petition at 17.

disclosure is needed,"[113] violation of which is subject to a $10,000 fine or imprisonment,[114] has not prevented abuses. Petitioners' alternative also is inconsistent with the statute, which requires licensees to exercise reasonable diligence to obtain information for announcements.[115] Consistent with the statute, the foreign sponsorship identification rules apply to "*broadcast licensees*" rather than to lessees.[116]

36. Petitioners argue the *Order* is fatally underinclusive because it does not apply to cable and satellite television, social media and the Internet.[117] The Supreme Court has rejected like arguments under exacting scrutiny.[118] A regulation "'is not fatally underinclusive simply because an alternative regulation, which would restrict more speech or the speech of more people, could be more effective.'"[119] The *Order* is justified by evidence of undisclosed sponsorship of leased broadcast programming by foreign governmental entities.[120] The Commission proposed the foreign sponsorship identification rules in response to that problem, as well as congressional expressions of concern regarding the problem and the historical regulatory concern with foreign influence in broadcasting.[121] Cable and satellite television programming were beyond the scope of the proposed rules, and the Commission was not required to expand the rulemaking in response to arguments that it also should address cable and satellite programming.[122] Although Petitioners contend that "the primary problems of disinformation or propaganda sponsored by foreign governments . . . have occurred over social media and the Internet,"[123] they do not contend the Commission has regulatory authority over social media and other Internet content under section 317 or explain how an announcement requirement might work in that context.

37. Finally, petitioners argue the administrative burden the *Order* imposes may chill speech by discouraging broadcasters from entering lease arrangements and impeding the ability of prospective lessees "to disseminate their content."[124] Petitioners' argument is speculative given the minimal burden the *Order* imposes.[125]

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[113] *Order*, 36 FCC Rcd at 7726, para. 46; 47 U.S.C. § 508(b) and (c).

[114] 47 U.S.C. § 508(g).

[115] 47 U.S.C. § 317(c).

[116] *Order*, 36 FCC Rcd at 7732-33, para. 63 (emphasis in original).

[117] Stay Petition at 13-14, 16.

[118] *Citizens United*, 558 U.S. at 368 (adhering to *McConnell*, 540 U.S. at 230-31, in rejecting challenge to Bipartisan Campaign Reform Act of 2002 provision "because it requires disclaimers for broadcast advertisements but not for print or Internet advertising.").

[119] *See Trans Union Corp. v. F.T.C.,* 245 F.3d 809, 819 (D.C. Cir. 2001) (quoting *Blount v. SEC,* 61 F.3d 938, 946 (D.C. Cir. 1995)).

[120] *Order*, 36 FCC Rcd at 7713-14, para. 25; *see McConnell*, 558 U.S. at 207 (finding that corporations and unions used soft money to finance televised election-related advertising before elections justified applying segregated-fund requirement to broadcasting but not print media and the Internet).

[121] *See Order*, 36 FCC Rcd at 7702, 7704, 7713-15, paras. 1, 4, nn.9, 25-26; *NPRM*, 35 FCC Rcd at 12107-08, para. 17 n.52.

[122] *See U.S. v. Edge B'casting Co.*, 509 U.S. 418, 434 (1993) ("Nor do we require that the Government make progress on every front before it can make progress on any front."); *NTCH, Inc. v. FCC*, 950 F.3d 871, 881 (D.C. Cir. 2020) (rejecting argument that FCC should have expanded rulemaking to consider a broader solution to the problem before it).

[123] Stay Petition at 13.

[124] *Id.* at 16-17.

[125] *See infra* at Section III.B.

B. Petitioners Have Failed to Show that Broadcast Licensees Will Suffer Irreparable Harm

38. Petitioners have failed to establish that broadcast licensees will suffer irreparable harm. To establish irreparable harm, a moving party must show that it will suffer injury that is "'both certain and great,' 'actual and not theoretical,' 'beyond remediation,' and 'of such imminence that there is a present need for equitable relief to prevent irreparable harm.'"[126] The harm that Petitioners allege is conjectural, consists of economic injuries that are not severe enough to be cognizable as irreparable harm, and is not imminent. Accordingly, Petitioners have not met their burden.

39. The Petitioners' alleged harms are neither certain nor great and appear to be largely conjectural. Petitioners' assert that, absent a stay, broadcasters will be required to expend substantial resources to bring their leasing arrangements into compliance with the *Order*'s requirements and estimate compliance costs as cumulatively amounting to "hundreds of thousands of dollars in employee time and legal fees."[127] As stated in the *Order*,[128] broadcast licensees have longstanding obligations both with regards to sponsorship identification and the filing of lease agreements in their public files. We find that the requirements adopted in the *Order* are a reasonable extension of licensees' existing obligations and should not require an overhaul in how licensees operate nor impose undue costs.[129]

40. While the adopted rules rely on statutory terms and definitions that have not previously been part of the Commission's broadcast regulations,[130] petitioners exaggerate and mischaracterize the level of knowledge or expertise they are required to have of these statutes. Familiarity with FARA terms and definitions is not required for licensees to be able to navigate the FARA website.[131] Only those entities that may have a separate legal obligation to register as a foreign agent under FARA need be as intimately familiar with the statutes as Petitioners suggest.[132] A licensee's employees need only be able to navigate to the relevant public websites and compare the names of the licensee's lessees with those listed on the websites.[133] Such a check would be less extensive or time consuming than a credit check or background check, which are common practices for most businesses when entering into contractual agreements with others. We question Petitioners' suggestion that hours of training will be required for employees to perform such searches on public websites.[134]

41. Petitioners have not identified any harms justifying a stay and rather present largely theoretical claims of economic injury. Petitioners attach six attestations in which broadcast licensees

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[126] *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (internal citations omitted); *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006).

[127] Stay Petition at 18. *But see Order*, 36 FCC Rcd at 7721, 7727, n.111, para. 48 (specifically stating that licensees are not required to implement their responsibilities through contractual provisions and giving licensees 6 months to ensure that programming aired pursuant to existing lease agreements complies with the new rules).

[128] *Order*, 36 FCC Rcd at 7720, para. 37.

[129] *See id.*

[130] *Id.* at 7722, para. 40. The terms and definitions have long been used by the Department of Justice, and reliance on these established rules enables the Commission to provide greater clarity about the newly adopted requirements. *See id.* at 7709-12, paras. 15-20.

[131] *See id.* at 7722-23, para. 41.

[132] *See id.*; Stay Petition at 18.

[133] *Order*, 36 FCC Rcd at 7722-23, para. 41.

[134] We note that the Commission refined and narrowed the search requirement from what was originally proposed in response to NAB's *ex parte* request. *See* Letter from Rick Kaplan, General Counsel and Executive Vice President, NAB, to Marlene Dortch, Secretary, FCC, MB Docket No. 20-299, at 7-9 (filed Apr. 13, 2021). In particular, the Commission eliminated the requirement to conduct a less defined Internet search as proposed in the draft circulated to the Commissioners for review prior to being adopted.

attest to having large numbers of leasing agreements for which they would need to satisfy the diligence requirements.[135] On closer review, however, many of the harms Petitioners allege do not withstand analysis. Petitioners assert that they would have to expend extensive time and resources to alter their lease agreements so as to obtain certifications from lessees regarding their status.[136] In fact, Petitioners may choose to memorialize their reasonable diligence efforts in whatever manner they choose. It was at the behest of one of the Petitioners that the Commission stated that licensees may implement the requirements through contractual provisions between the licensee and lessee, should they so choose.[137] In this regard, the Bureau notes that many such lease agreements already contain provisions regarding compliance with the Commission's existing sponsorship identification requirements,[138] and that consequently modifications to such contractual provisions seem unlikely to be overly burdensome to the parties.[139]

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[135] Stay Petition at Exhibits 1-6.

[136] Stay Petition at 18. We note that in this regard the number of leasing agreements is not necessarily the relevant number for consideration. Rather, the relevant number may actually be the number of individual *lessees*. This is because, once a licensee makes an inquiry of a lessee, this inquiry satisfies the diligence requirements for all of the leasing agreements between the licensee and that lessee. While in some cases the broadcasters claim a large number of leases, nowhere in the declarations does any licensee attest to having agreements with a large number of unique lessees. Thus the form letter attestations attached by Petitioners citing numerous leasing agreements are of limited utility in determining the magnitude of the obligation. Furthermore, the attestations themselves contain misleading information about how many stations will actually be impacted by the foreign sponsorship identification rules. For example, the attestation from Karen Wishart of Urban One, Inc. includes an exhibit listing all of Urban One's radio stations, both FM and AM. Stay Petition at Exhibit 5. Review of the on-line public inspection files (OPIFs) of these stations, however, reveals that the overwhelming majority of leasing agreements are found in connection with Urban One's AM stations and that almost none of the Urban One FM stations have any leasing agreements. Thus, the total number of stations operated by Urban One appears not to be representative of the burden it may face under the rules adopted. Furthermore, a review of the OPIFs for the stations listed in the declaration of Elizabeth Neuhoff of Neuhoff Communications do not show any leases on file. On the assumption that Neuhoff Communications is in compliance with the Commission's section 73.3526(e)(14) requirement to file all leases in a licensee's public file, the lack of such filings suggests that the compliance burden associated with the foreign sponsorship identification rules for Neuhoff Communications is either non-existent or purely conjectural at this time.

[137] *Order*, 36 FCC Rcd at 7721, n.111.

[138] For example, Sinclair Broadcast Group, one of the largest television broadcasters, appears already to include in its lease agreements a standard provision covering compliance with both sections 317 and 507 of the Act. The provision states:

> In order to enable Owner to fulfill its obligations under Section 317 of the Act, Programmer, in compliance with Section 507 of the Act, will, in advance of any scheduled broadcast by the Station, disclose to Owner any information of which Programmer has knowledge or which has been disclosed to Programmer as to any money, service, or other valuable consideration that any person has paid or accepted, or has agreed to pay or to accept, for the inclusion of any matter as a part of the programming or commercial matter to be supplied to Owner pursuant to this agreement. Programmer will cooperate with Owner as necessary to ensure compliance with this provision. Commercial matter with obvious sponsorship identifications shall not require disclosure in addition to that contained in the commercial copy.

See Programming Services Agreement Between Chesapeake Television, Inc. ("Programmer") and Baltimore (WNUV-TV) (filed Sept. 27, 2013), https://publicfiles.fcc.gov/api/manager/download/3a37f52b-753a-98bb-bb56-f2fb238d2c81/a7897418-f785-6fe2-95d6-9de26cb57362.pdf.

[139] Upon examination of the online public inspection files of stations cited in the Stay Petition's attestations, we note that many stations use the same template and identical boilerplate contractual language for all of their leasing agreements. *See, e.g.,* WWIN, Time Brokerage Agreements, https://publicfiles.fcc.gov/am-profile/wwin/time-brokerage-agreements/e3f75c5a-95b4-49ef-8415-08ecbf81a3a2/ (last visited Oct. 7, 2021). Thus modifying the boilerplate language just once could modify all of the station's contracts going forward, greatly reducing the time and resources that Petitioners claim will be necessary for such modifications. We emphasize that modifying

(continued….)

42. We note that some of the affiants have expressed dismay at having to reduce their leasing arrangements to writing, which they characterize as a result of the foreign sponsorship identification rules.[140] All licensees, however, have a pre-existing requirement to file copies of their lease agreements in their public files.[141] Given that requirement, the lease arrangements should already be memorialized in writing. To the extent that the declarants cite to their existing failure to comply with the Commission's rules as the basis for arguing that the new requirement would impose undue burdens, their argument fails.

43. Petitioners also posit that broadcasters may lose sponsored programming because there are other media platforms on which such sponsorship identification inquiries are not required and because the diligence requirements may sow an element of distrust in their relationships with longstanding programming partners.[142] As stated above and in the *Order*, broadcast licensees have existing obligations -- unique to broadcasting -- that require broadcasters to exercise reasonable diligence to obtain the information required to make sponsorship announcements.[143] Petitioners have not identified any instances where a licensee has actually lost sponsors as a result of its existing obligations, and offer only unsupported speculation about potential losses in the future. We note that licensees are to inform their lessees of the adopted rules, and informing them that the rules apply industrywide should aid in fostering understanding that no one lessee or entity is being targeted for scrutiny.[144]

44. We also find that the costs of compliance to broadcast licensees are not severe enough to be cognizable as irreparable harm. Petitioners assert that "where economic loss will be unrecoverable, such as in a case against a Government defendant where sovereign immunity will bar recovery, economic

language in existing and future contracts is but one method by which licensees could memorialize their inquiries to satisfy the reasonable diligence standard, which takes into account a licensee's facts and circumstances in making reasonableness determinations. *Order*, 36 FCC Rcd at 7721, n.111 For example, it may be reasonable for a licensee to send a foreign sponsorship inquiry to a longstanding lessee via email and then simply print out the response to comply with the memorialization requirement of reasonable diligence.

[140] *See* Stay Petition, Exhibit 4, Declaration of Elizabeth Neuhoff (stating that "many of our sponsored programming arrangements are made over the phone or other informal means and are not necessarily reduced to writing. We will incur increased compliance costs and burdens and potential disruptions to our business because we must now obtain certifications in writing."). Additionally, Urban One's declaration contains nearly identical language indicating that some of their sponsored programming arrangements are informal or oral in nature, and, like Neuhoff's, apparently have not been reduced to writing. *See* Stay Petition, Exhibit 5, Declaration of Karen Wishart, Urban One, Inc. ("Some of our sponsored programming arrangements are made over the phone or other informal means and are not necessarily reduced to writing. We will incur increased compliance costs and burdens and potential disruptions to our business because we must now obtain certifications in writing."); WWIN, Time Brokerage Agreements, https://publicfiles.fcc.gov/am-profile/wwin/time-brokerage-agreements/e3f75c5a-95b4-49ef-8415-08ecbf81a3a2/ (last visited Oct. 7, 2021).

[141] *See* 47 CFR § 73.3526(e)(14) (requiring licensees to place copies of every agreement or contract involving a time brokerage (*i.e.*, a lease of airtime on a station) in the station's public file).

[142] Stay Petition at 18-19.

[143] *See supra* para. 40; *Order*, 36 FCC Rcd at 7720, para. 37.

[144] Stay Petition at Exhibit 6, Declaration of Amador S. Bustos (asserting that some programmers "may feel insulted if I start to question their sponsorship and programming practices). With regard to the statement in Mr. Bustos's Declaration that some of his lessees may perceive the *Order*'s requirements as "ethnic profiling, simply because the radio programming is in a language other than English," we emphasize that the foreign sponsorship identification rules apply to all leasing arrangements and are in no way tied to the content of the programming or the language in which it is broadcast. *See* Stay Petition at Exhibit 6, Declaration of Amador S. Bustos at para. 7. In fact, leaving it to an individual licensee to ask only if it has a subjective reason to believe there may be a foreign governmental connection, as Petitioners recommend, is more likely to result in some lessees feeling that they have been singled out, rather than having a standard requirement that applies in the case of all leases.

loss can be irreparable."[145] However, the economic injuries must also be severe.[146] None of the supporting affidavits alleges that the costs of compliance are so great relative to the broadcaster's overall budget as to "significantly damage its business above and beyond a simple diminution in profits."[147]

45. Finally, petitioners do not establish the immediacy of any harm. Although the *Order* became effective after publication in the Federal Register, compliance with the operative rule portions will not be required until after the information collection components have been reviewed by the Office of Management and Budget (OMB).[148] The OMB review process requires a sixty-day notice and comment period followed by another thirty-day notice and comment period, after which OMB review may take up to sixty additional days.[149] Therefore, the harms asserted by Petitioners are not imminent.

46. For the foregoing reasons, we conclude that the Stay Petition has failed to demonstrate any actual, imminent irreparable harm resulting from the Commission's *Order*.

C. A Stay Would Harm Other Parties and Be Contrary to the Public Interest

47. As described above, consistent with the requirements of section 317 of the Act, the Commission adopted its foreign sponsorship identification rules to ensure that the American public can better assess the origins of programming carried on broadcast stations and identify instances where foreign governmental entities are involved in the provision of broadcast programming. Any delay in the implementation of the Commission's *Order* will only further hamper the American audience's ability to properly gauge the source of programming broadcast on the public airwaves and thus is contrary to the public interest. As the Commission articulated in the *Order*, the evolution of the statutory sponsorship identification requirements in section 317 of the Act and the Commission's implementing regulations demonstrate the vital importance that both Congress and the Commission place on ensuring that broadcast audiences know who is trying to persuade them, specifically when airtime has been purchased, or programming furnished for free, by someone other than the broadcast station airing the programming. Section 317 and its implementing regulations strive to create the transparency essential to a well-functioning marketplace of ideas, a level of transparency for which the need is particularly acute when programming from foreign governments is involved.[150] Accordingly, any delay in the effectiveness of the Commission's rules would be harmful to the public and contrary to the public interest.

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[145] Stay Petition at 17-18.

[146] We note that the *existing* burden calculations for the costs of the current sponsorship identification and current online public inspection file information collection requirements exceed $6 million and $44 million, respectively. We expect the additional information collection requirements related to the newly adopted foreign sponsorship identification rules will be minimal increases in comparison to the already approved collections associated with the existing sections 73.1212, 73.3526, and 73.3527 of the Commission's rules. *See* Office of Information and Regulatory Affairs, Office of Management and Budget, *Supporting Statement for OMB 3060-0174* (Mar. 8, 2021), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202103-3060-005; Office of Information and Regulatory Affairs, Office of Management and Budget, *Supporting Statement for OMB 3060-0214* (Aug. 20, 2020), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202008-3060-012.

[147] *Mylan Pharms., Inc. v. Shalala*, 81 F.Supp.2d 30, 43 (D.D.C. 2000).

[148] *See* 47 CFR § 73.1212(l).

[149] *See* 44 U.S.C. §§ 3506(c)(2)(A), 3507(b) (establishing the 60- and 30-day comment cycles); *see also* Federal Communications Commission, Information Collections Being Reviewed by the Federal Communications Commission, 86 Fed. Reg. 38482 (July 21, 2021) (initiating the 60-day comment cycle and announcing that comments should be submitted on or before September 20, 2021).

[150] *See, e.g., Order*, 36 FCC Rcd at 7708-09, n.40 (describing attempts by the Russian government to spread disinformation).

IV. ORDERING CLAUSES

48. Accordingly, **IT IS ORDERED THAT**, pursuant to the authority contained in sections 4(i) , 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), and 303(r) and the authority delegated in sections 0.61 and 0.283 of the Commission's rules, 47 CFR §§ 0.61 and 0.283, this Order Denying Stay Petition in MB Docket No. 20-299 **IS ADOPTED**.

49. It is **FURTHER ORDERED** that the Petition for Stay pending judicial review of the Order in this proceeding, filed by the Petitioners, **IS DENIED**.

50. It is **FURTHER ORDERED** that this Order Denying Stay Petition **SHALL BE EFFECTIVE** upon its release.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

Exhibit 3

Declaration of DuJuan McCoy,

Circle City Broadcasting, LLC

DECLARATION OF DUJUAN MCCOY

I, DuJuan McCoy, declare as follows:

1. My business address is 1950 North Meridian Street, Indianapolis, IN 46202. I am the President and Chief Executive Officer of Circle City Broadcasting, LLC ("Circle City"), licensee of Stations WISH-TV, Indianapolis, IN and WNDY-TV, Marion, IN. I have over 30 years of experience in the broadcast industry. This Declaration is based upon my personal knowledge and experience.

2. I have reviewed the FCC's revised rules concerning sponsorship identification disclosures for foreign government-sponsored programming. *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021). For the reasons set forth below, I support the foregoing motion for a stay of implementation of the diligence standards associated with the rules.

3. Circle City's programming partnerships enable us to provide a wide range of content for our local viewers. Sponsored programming includes retail product sales, religious programing, seasonal long form programing, financial planning/wealth management content, and healthcare programs.

4. In a typical calendar year, Circle City's stations enter into approximately 45 initial leasing arrangements. Circle City is presently involved in 45 such agreements.

5. Absent injunctive relief, Circle City will have to expend significant resources to comply with the diligence obligations being challenged in court.

6. The Circle City personnel who work with program sponsors have no experience with the Foreign Agents Registration Act (FARA), the Department of Justice (DOJ) FARA website, or the FCC's list of U.S.-based foreign media outlets. Circle City expects to devote significant time and resources to developing and implementing training and education for

our employees to understand the relevant terms and definitions and become familiar with the required research tools.

7. If the Commission's new Foreign Sponsorship ID rules took effect today, we would have to either amend each of our existing agreements or obtain separate certifications with respect to each agreement.

8. It is difficult to estimate the costs of compliance because Circle City has no experience under the new rules. Nonetheless, I estimate that the initial compliance effort may require approximately 15 hours of employee time at an average cost of $30.10 hour per employee for training and education concerning the new regulations, including the relevant terms and definitions under FARA and the research tools available on the DOJ FARA website and the FCC's list of U.S.-based foreign media outlets. I estimate that Circle City would need to train and educate a minimum of 10 employees for this purpose, which brings our expense estimate for training and education alone to $4,515.

9. I further estimate that bringing our existing agreements into compliance, which must be completed within just six months of the effective date of the new rules, would require five employee hours per agreement to obtain certifications or amendments, conduct research in FARA and FCC databases, and document the results of that research. Assuming Circle City has 45 leasing agreements in place at the time the FCC's rules take effect, I anticipate that it will require a total of 225 employee hours at an average hourly rate of $27.35 or $6,153.75 of employee time, to bringing the existing agreements into compliance with the new rules. Additionally, I anticipate approximately $15,000 in outside legal fees and expenses associated with obtaining the advice of counsel on compliance, developing amendments and/or certifications for each of our agreements, negotiations with our programming partners, and obtaining the advice of counsel on questions that arise during

diligence research. Our total estimated costs of bringing our existing agreements into compliance with the new rules would be $21,153.75.

10. I further estimate that our annual compliance costs and burdens to comply with the diligence standards with respect to new agreements and renewals of existing arrangements may require approximately 225 hours of employee time at an average cost of $27.35 per hour, plus approximately $15,000 in outside legal fees and other expenses, for a total estimated annual compliance burden of $21,153.75.

11. In addition to the specific costs and burdens of compliance with the new rules, the new diligence obligations create significant uncertainty. First, amending Circle City's lease agreements may open the door to negotiations about other agreement terms, including the prices, terms and conditions of our leases. Second, making the required inquiries introduces an element of distrust into our longstanding relationships with our programming partners. I am concerned that our stations may lose sponsors to other platforms where such inquiries are not mandated.

* * *

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DuJuan McCoy
President and Chief Executive Officer
Circle City, LLC.

September 7, 2021

Exhibit 4

Declaration of David Santrella,

Salem Media Group, Inc.

DECLARATION OF DAVID SANTRELLA

I, David Santrella, declare as follows:

1. My business address is 4880 Santa Rosa Road Camarillo, CA 93012. I am the President, Broadcast Media of Salem Media Group, Inc. (Salem). In this role, I am responsible for the day-to-day management of all of Salem's local radio stations, including oversight of administration, sales, engineering, programing, human resources, and technology. I have over 37 years of experience in the radio industry, including 20 years of experience at Salem. This Declaration is based upon my personal knowledge and experience.

2. Through its subsidiaries, Salem is the licensee of nearly 100 full power radio stations (66 AM stations and 33 FM stations). Salem's stations are primarily located in the 25 largest radio markets in the United States.

3. I have reviewed the FCC's revised rules concerning sponsorship identification disclosures for foreign government-sponsored programming. *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021). For the reasons set forth below, I support the foregoing motion for a stay of implementation of the diligence standards associated with the rules.

4. Salem's local stations engage in leasing agreements with a variety of local businesses and organizations. This includes local businesses that use long-form programming for marketing purposes, local and national ministries, infomercials, and other such clients that use long-form programming for strategic outreach and/or marketing purposes.

5. In a typical calendar year, Salem stations have approximately 6,000 long-form program lease agreements. In 2019, for example, Salem had 4,368 separate long-form program leasing agreements and an additional 1,758 bonus long-form program leasing agreements.

6. As of August 1, 2021, Salem had approximately 2,915 separate active agreements for leased programming.

7. Absent injunctive relief, Salem Media Group will have to expend significant resources to comply with the diligence obligations being challenged in court.

8. Salem Media Group personnel who work with program sponsors have no experience with the Foreign Agents Registration Act (FARA), the Department of Justice (DOJ) FARA website, or the FCC's list of U.S.-based foreign media outlets. Salem expects to devote significant time and resources to developing and implementing training and education for our employees to understand the relevant terms and definitions and become familiar with the required research tools.

9. If the Commission's new Foreign Sponsorship ID rules took effect today, Salem would have to either amend each of its 2,915 existing agreements or obtain separate certifications with respect to each agreement.

10. It is difficult to estimate the costs of compliance because Salem has no experience operating under the new rules. Nonetheless, I estimate that the initial compliance effort, which must be completed within just six months of the effective date of the new rules, may require approximately 15 hours of employee time at an average cost of $25.00 hour, per employee for training and education concerning the new regulations, including the relevant terms and definitions under FARA and the research tools available on the DOJ FARA website and the FCC's list of U.S.-based foreign media outlets. I estimate that

Salem would need to train and educate a minimum of 8 employees for this purpose, which brings our expense estimate for training and education alone to $3000.

11. I further estimate that bringing our existing agreements into compliance would require five employee hours per agreement to obtain certifications or amendments, conduct research in FARA and FCC databases, and document the results of that research. Assuming Salem has 3000 leasing agreements in place at the time the FCC's rules take effect, I anticipate that it will require a total of 15,000 employee hours, or $375,000 worth of employee time, to bringing the existing agreements into compliance with the new rules. Additionally, I anticipate approximately $100,000 in outside legal fees and expenses associated with obtaining the advice of counsel on compliance, developing amendments and/or certifications for each of our agreements, negotiations with our programming partners, and obtaining the advice of counsel on questions that arise during diligence research. Our total estimated costs of bringing our existing agreements into compliance with the new rules would be $478,000.

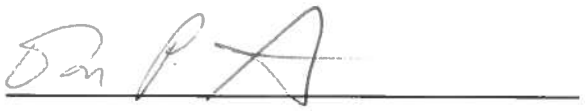
12. I further estimate that Salem's annual compliance costs and burdens to comply with the diligence standards with respect to new agreements and renewals of existing arrangements may require approximately five hours of employee time per contract at an average cost of $25.00 per hour. Based on our usual 6,000 contracts per year, this is about $750,000 in additional annual expenses, plus approximately $100,000 in outside legal fees and expenses, for a total of $850,000 per year.

13. In addition to the specific costs and burdens of compliance with the new rules, the new diligence obligations introduce significant uncertainty into our business model, existing agreements, and relationships with programming partners. First, amending our lease agreements may open the door to negotiations about other agreement terms,

including the prices, terms and conditions of our leases. Some of our programming partners are savvy businesses who painstakingly review every agreement and amendment. These programmers might view the amendments required under the new foreign sponsorship identification rules as an opportunity to inquire whether any facts or circumstances have changed since the original agreement was signed, and whether that justifies a change in rates. Second, making the required inquiries introduces an element of distrust into our longstanding relationships with our programming partners. Salem has many leasing arrangements with ministries, for example, that have been continuous for up to four decades. Often, the only term that changes when these agreements are renewed is a small change in the rates. Inquiring whether our longtime, well-respected partners are actually acting as an instrument of a foreign governmental entity introduces suspicion into an otherwise strong and mutually beneficial relationships with our programming partners. I am also are concerned that Salem may lose some of its programming to other platforms (e.g., subscription video or audio services such as cable, satellite TV/radio or digital outlets) where such inquiries are not mandated.

* * *

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.



David Santrella
President, Broadcast Media
Salem Media Group, Inc.
September 7, 2021

Exhibit 5

Declaration of John Zimmer,

Zimmer Midwest Communications, Inc.

DECLARATION OF JOHN ZIMMER

I, John Zimmer, hereby declare as follows:

1. My business address is 3000 E Chestnut Expwy., Springfield, MO 65802. I am President of Zimmer Midwest Communications, Inc. (ZMCI), licensee of Stations KWTO-AM, KWTO-FM, KTXR-FM, KBFL all of Springfield, MO and KBFL-FM of Buffalo, MO. This Declaration is based upon my personal knowledge and experience.

2. I have reviewed the FCC's revised rules concerning sponsorship identification disclosures for foreign government-sponsored programming. *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021). For the reasons set forth below, I support the foregoing motion for a stay of implementation of the diligence standards associated with the rules.

3. ZMCI's five local radio stations engage in leasing agreements with a variety of local businesses and organizations. Currently, we air financial programs, a health and wellness program, and a community outreach/religious program. We also air four lifestyle and sports programs: a local fishing program that promotes fishing and tourism in our state, a local trivia show, a local golf show promoting recreation and tourism in the Springfield/Branson regions, and show entitled, "A Coach's Perspective" hosted by Jeni Hopkins of Springfield, MO, which promotes a positive lifestyle for athletes and coaches.

4. In a typical calendar year, ZMCI's stations may enter approximately 2-4 initial leasing arrangements and 8-10 agreement renewals. ZMCI is presently involved in approximately 8 such agreements.

5. Absent injunctive relief, ZMCI will have to expend significant resources to comply with the diligence obligations being challenged in court.

6. The ZMCI personnel who work with program sponsors have no experience with the Foreign Agents Registration Act (FARA), the Department of Justice (DOJ) FARA website, or the FCC's list of U.S.-based foreign media outlets. We expect to devote significant time and resources to developing and implementing training and education for our employees to understand the relevant terms and definitions and become familiar with the required research tools.

7. If the Commission's new Foreign Sponsorship ID rules took effect today, we would have to either amend each of our lease agreements or obtain separate certifications with respect to each agreement.

8. It is difficult to estimate the costs of compliance because we have no experience under the new rules. Nonetheless, we estimate that the initial compliance effort, which must be completed within just six months of the effective date of the new rules, may require approximately 55 hours of employee time at an average cost of $25 hour, plus approximately $10,000 in outside legal fees and expenses, for an estimated total of $11,375 in initial compliance costs.

9. We further estimate that our annual compliance costs and burdens to comply with the diligence standards with respect to new agreements and renewals of existing arrangements may require approximately 40 hours of employee time at an average cost of $25 hour, plus approximately $5,000 in outside legal fees and expenses, for an estimated total of $6,000 in annual compliance costs.

10. In addition to the specific costs and burdens of compliance with the new rules, the new diligence obligations create other challenges. First, amending our lease agreements may open the door to negotiations about other agreement terms, including the prices, terms and conditions of our leases. Second, making the required inquiries introduces

an element of distrust into our longstanding relationships with our programming partners. I am concerned that ZMCI may lose sponsors to other platforms where such inquiries are not mandated

* * *

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

John Zimmer
President
Zimmer Midwest Communications, Inc.

September 8, 2021

Exhibit 6

Declaration of Elizabeth Neuhoff,

Neuhoff Communications

DECLARATION OF ELIZABETH NEUHOFF

I, Elizabeth Neuhoff, declare as follows:

1. My business address is P.O. Box 418 Jupiter FL 33468. I am the Chief Executive Officer of Neuhoff Communications, which owns and operates stations in small and medium-sized markets in Illinois and Indiana.[1] This Declaration is based upon my personal knowledge and experience.

2. I have reviewed the FCC's revised rules concerning sponsorship identification disclosures for foreign government-sponsored programming. *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021). For the reasons set forth below, I support the foregoing motion for a stay of implementation of the diligence standards associated with the rules.

3. Neuhoff Communications' local stations engage in leasing agreements with a variety of local businesses and organizations including local churches for Sunday programming, local businesses providing shows on business or specialized programming.

4. In a typical calendar year, Neuhoff Communications' stations enter into approximately 15-20 initial leasing arrangements including agreement renewals. Neuhoff Communications is presently involved in approximately 20 such agreements.

5. Absent injunctive relief, Neuhoff Communications will have to expend significant resources to comply with the diligence obligations being challenged in court.

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[1] Neuhoff Communications, through its subsidiaries, is the licensee of Stations WBBE-FM, Hayworth, IL; WWHX-FM, Normal, IL; WIHN-FM, Normal, IL ; WDAN-AM, Danville, IL ; WDNL-FM, Danville, IL ; WRHK-FM, Danville, IL ; WCZQ-FM, Monticello, IL; WDZ-AM, Decatur, IL; WDZQ-FM, Decatur, IL; WSOY-AM, Decatur, IL; WSOY-FM, Decatur, IL ; WASK-AM, Lafayette IN; WASK-FM, Battle Ground, IN; WHKY-FM, Lafayette, IN; WXXB-FM, Delphi, IN; WKOA-FM, Lafayette, IN; WCVS-FM, Virden, IL; WFMB-AM, Springfield, IL; WFMB-FM, Springfield, IL; WXAJ-FM, Hillsboro, IL.

6. The Neuhoff Communications personnel who work with program sponsors have no experience with the Foreign Agents Registration Act (FARA), the Department of Justice (DOJ) FARA website, or the FCC's list of U.S.-based foreign media outlets. We expect to devote significant time and resources to developing and implementing training and education for our employees to understand the relevant terms and definitions and become familiar with the required research tools.

7. If the Commission's new Foreign Sponsorship ID rules took effect today, we would have to either all of our agreements with third parties or obtain separate certifications with respect to each agreement. Moreover, many of our sponsored programming arrangements are made over the phone or other informal means and are not necessarily reduced to writing. We will incur increased compliance costs and burdens and potential disruptions to our business because we must now obtain certifications in writing.

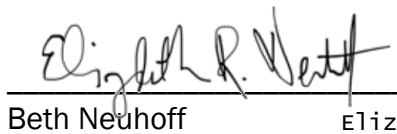
8. It is difficult to estimate the costs of compliance because we have no experience under the new rules. Nonetheless, I estimate that the initial compliance effort, which must be completed within just six months of the effective date of the new rules, may require approximately 100 hours of employee time at an average cost of $20 hour, plus approximately $5000 in outside legal fees and expenses, for a total initial compliance cost of $7000.

9. I further estimate that our annual compliance costs and burdens to comply with the diligence standards with respect to new agreements and renewals of existing arrangements may require approximately 100 hours of employee time at an average cost of $20 hour, plus approximately $5000 in outside legal fees and other expenses, for a total annual compliance cost of $7000.

10. In addition to the specific costs and burdens of compliance with the new rules, the new diligence obligations create significant uncertainty. First, amending our lease agreements may open the door to negotiations about other agreement terms, including the prices, terms and conditions of our leases. Second, making the required inquiries introduces an element of distrust into our longstanding relationships with our programming partners. I am also concerned that we may lose sponsors to other platforms where such inquiries are not mandated.

* * *

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.



Beth Neuhoff Elizabeth R. Neuhoff

August __, 2021 9/4/2021

Exhibit 7

Declaration of Karen Wishart,

Urban One, Inc.

DECLARATION OF KAREN WISHART

I, Karen Wishart, declare as follows:

1. My business address is 1010 Wayne Ave 14th Floor, Silver Spring, MD 20910. I am the Chief Administrative Officer of Urban One, Inc. ("Urban One"), licensee of the Stations identified on Exhibit A attached hereto. This Declaration is based upon my personal knowledge and experience.

2. I have reviewed the FCC's revised rules concerning sponsorship identification disclosures for foreign government-sponsored programming. *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021). For the reasons set forth below, I support the foregoing motion for a stay of implementation of the diligence standards associated with the rules.

3. Urban One's local stations engage in leasing agreements with a variety of local businesses and organizations. The lessees in these arrangements range from churches and ministries to ethnic programmers to local business groups and provide programming on topics ranging from spirituality to community and business issues to local community events and interests. Our leasing arrangements significantly enhance the quality, quantity and diversity of programming available to our listeners.

4. In a typical calendar year, Urban One's stations enter into approximately 50 initial leasing arrangements, as well as a similar number of agreement renewals. Urban One is presently involved in over 225 such agreements.

5. Absent injunctive relief, Urban One will have to expend significant resources to comply with the diligence obligations being challenged in court.

6. The Urban One personnel who work with program sponsors have no experience with the Foreign Agents Registration Act (FARA), the Department of Justice (DOJ)

FARA website, or the FCC's list of U.S.-based foreign media outlets. We expect to devote significant time and resources to developing and implementing training and education for our employees to understand the relevant terms and definitions and become familiar with the required research tools.

7. If the Commission's new Foreign Sponsorship ID rules took effect today, we would have to either amend each of our existing agreements or obtain separate certifications with respect to each agreement.

8. It is difficult to estimate the costs of compliance because we have no experience under this rule. Nonetheless, we estimate that the initial compliance effort, which must be completed within just six months of the effective date of the new rules, may require over 1,350 hours of employee time at an average cost of $21.11 per hour, plus approximately $50,000 in outside legal fees and other expenses, for a total estimated initial compliance burden of $78,498.50.

9. We further estimate that our annual compliance costs and burdens to comply with the diligence standards with respect to new agreements and renewals of existing arrangements may require approximately 1,125 hours of employee time at an average cost of $21.11 per hour, plus approximately $20,000 in outside legal fees and other expenses, for a total estimated annual compliance burden of $43,748.75.

10. Indeed, given these costs, the disruption it would cause to existing compliance efforts, particularly in political years and to provide for continuity of knowledge and efforts, we may need to hire another full-time employee simply to comply with the diligence requirements for foreign government-sponsored programming. We recently hired a full-time person with respect to compliance for political broadcasting.

11. In addition to the specific costs and burdens of compliance with the new rules, the new diligence obligations create significant uncertainty. First, amending our lease agreements may open the door to negotiations about other agreement terms, including the prices, terms and conditions of our leases. Second, making the required inquiries introduces an element of distrust into our longstanding relationships with our programming partners (e.g., a station employee asking a house of worship whether they represent a foreign government; inquiring of a business the station has been working with for 20 years; inquiring of any foreign language programmer). We are concerned that our radio operations may lose sponsors to other platforms where such inquiries are not mandated.

12. Some of our sponsored programming arrangements are made over the phone or other informal means and are not necessarily reduced to writing. We will incur increased compliance costs and burdens and potential disruptions to our business because we must now obtain certifications in writing.

* * *

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Karen Wishart
EVP and Chief Administrative Officer
Urban One, Inc.

September 7, 2021

Exhibit A
Urban One Stations

Station ID	Call Letters	City Of License
9627	KBFB-FM	Dallas, TX
11969	KBXX-FM	Houston, TX
11971	KMJQ-FM	Houston, TX
35565	KROI-FM	Seabrook, TX
6386	KZMJ-FM	Gainesville, TX
31872	WAMJ-FM	Roswell, GA
63949	WBMO-FM	London, OH
60473	WCDX-FM	Mechanicsville, VA
27645	WCKX-FM	Columbus, OH
10139	WDBZ-AM	Cincinnati, OH
43277	WDCJ-FM	Prince Frederick, MD
2685	WENZ-FM	Cleveland, OH
74472	WERE-AM	Cleveland, OH
68827	WERQ-FM	Baltimore, MD
30830	WBT(AM)	Charlotte, NC
36952	WFXC-FM	Durham, NC
24931	WFXK-FM	Bunn, NC
10764	WBT-FM	Chester, SC
52548	WHTA-FM	Hampton, GA
5893	WIZF-FM	Erlanger, OH
41389	WJMO-AM	Cleveland, OH
64717	WJYD-FM	Circleville, OH
60207	WHHH-FM	Indianapolis, IN
60477	WKJM-FM	Petersburg, VA
3725	WKJS-FM	Richmond, VA
73200	WKYS-FM	Washington, DC
54712	WMMJ-FM	Bethesda, MD
9728	WNNL-FM	Fuquay-Varina, NC
F6420	WNOW-FM	Speedway, IN
54713	WOL-AM	Washington, DC
54711	WOLB-AM	Baltimore, MD

23006	WOSF-FM	Gaffney, SC
57353	WOSL-FM	Norwood, OH
53974	WFNZ(AM)	Charlotte, NC
12211	WPPZ-FM	Pennsauken, NJ
74212	WPRS-FM	Waldorf, MD
24562	WPZE-FM	Mableton, GA
52553	WPZS-FM	Indian Trail, NC
321	WPZZ-FM	Crewe, VA
28898	WQNC-FM	Harrisburg, NC
69559	WQOK-FM	Carrboro, PA
25079	WRNB-FM	Media, PA
30834	WLNK(FM)	Charlotte, NC
51433	WTLC-AM	Indianapolis, IN
25071	WTLC-FM	Greenwood, IN
60474	WTPS-AM	Petersburg, VA
3105	WUMJ-FM	Roswell, GA
54709	WWIN-AM	Baltimore, MD
54710	WWIN-FM	Glen Burnie, MD
72311	WXMG-FM	Lancaster, OH
7038	WYCB-AM	Washington, DC
74465	WZAK-FM	Cleveland, OH
74207	WXGI-AM	Richmond, VA

Exhibit 8

Declaration of Amador Bustos,

Bustos Media Holdings, LLC

DECLARATION OF AMADOR S. BUSTOS

I, Amador S. Bustos, declare as follows:

1. My business address is 5110 SE Stark Street, Portland, OR 97215. I am the President and CEO of Bustos Media Holdings, LLC, (Bustos Media), licensee of more than 25 radio stations primarily in Western and Southwestern states, including Stations KREH, Pecan Grove, TX; KZSJ, San Martin, CA; and KQRR, Oregon City, OR. This Declaration is based upon my personal knowledge and experience.

2. I have reviewed the FCC's revised rules concerning sponsorship identification disclosures for foreign government-sponsored programming. *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021). For the reasons set forth below, I support the foregoing motion for a stay of implementation of the diligence standards associated with the rules.

3. Leasing arrangements have enabled several Bustos Media stations to provide programming that reflects the unique diversity of the population in several of our markets. Through these arrangements, we are able to offer in-language news, public affairs and entertainment programming relevant to the needs and interests of particular ethnic/racial groups within our communities of license that would otherwise be unmet. Investigating our programming partners after years of working together would jeopardize those relationships.

4. For example, Bustos Media has leased time on Station KREH 900AM, to Radio Saigon Houston/Mass Media, Inc. for more than twenty years. Station KREH primarily serves the Vietnamese community living in the greater Houston metro area. The President of Radio Saigon Houston is Thuy Thanh Vu, an accomplished journalist and author who provides an invaluable service to the Vietnamese community with local, national and international news. Ms. Vu, her husband and child were among the thousands of people who fled Vietnam upon

the fall of Saigon. They were stranded for weeks in the South China Sea. They have an unmeasurable love for this country, their culture, and their language. They have provided vital information to their audience during emergencies and raised hundreds of thousands of dollars for victims of hurricane and other natural disasters.

5. Bustos Media also has leased time on Station KZSJ 1020AM, to Dai Phat Thanh Que Huong Inc for more than twenty years. KZSJ is licensed to San Martin, California. It has served the Vietnamese community in the greater San Jose, California metro area. Mr. Nguyen Khoi has been the operations manager and program director of Que Huong Radio during all these years. Mr. Khoi has diligently served the Vietnamese speaking community with culturally relevant entertainment plus local, national and international news. KZSJ has also, supported dozens of local businesses and non-profit organizations. In January 2014 Que Huong Radio began sharing the air-time (6:00A to 12:00P) with Korean American Radio, LLC directed by Mr. Chin Pae Kim. Mr. Kim and Mr. Khoi are dedicated to providing entertainment, information and service to their respective Asian communities in Santa Clara County.

6. Since 2015, Bustos Media has leased time on Station KQRR 1520 AM to Portland Christian Radio (PCR). PCR is an Oregon domestic nonprofit organization of approximately fourteen Russian language Christian ministries. Mr. Sergey Michalchuk is the president of PCR. Their programing is a combination of bible reading, music and information. For the last year and a half, during the COVID-19 pandemic, PCR has provided a valuable service, keeping approximately two hundred thousand Russian speaking residents of Northern Oregon and Southwest Washington, informed of the continuous local health directives.

7. Absent injunctive relief, Bustos Media will have to expend significant resources to attempt to comply with the proposed diligence obligations. Furthermore, I believe we would be treading into sensitive territory which may be perceived by our programmers as ethnic profiling, simply because the radio programming is in a language other than English.

8. Neither I, nor any of my company's personnel, are familiar with the Foreign Agents Registration Act (FARA), the Department of Justice (DOJ) FARA website, or the FCC's list of U.S.-based foreign media outlets. We would need to spend significant time and resources learning about FARA and the FCC and DOJ websites. We would need legal advice and training to understand the relevant terms and definitions to meet our obligations as licensees.

9. If the Commission's Foreign Sponsorship ID rules took effect today, we would have to either amend each of those long-existing agreements or obtain separate certifications from our programmers. In either case, our programming partners would also have to spend time and resources to determine what it means to be compliant.

10. It is difficult to estimate the total financial and legal costs of compliance because we have no experience with the new rules. Some programmers may simply decide the hassle is not worth the effort and stop buying the time. Others may feel insulted if I start to question their sponsorship and programming practices.

11. All our foreign language leasing arrangements are on AM stations. Our ability to ensure that these stations remain financially viable depends on our ability to serve niche audiences by securing programming religious and/or foreign language content. I am very concerned we will lose clients from our AM broadcast platform, digging an even deeper hole for our struggling AM stations. It will be very easy for our programming partners to simply

migrate to other platforms such as subscription video or audio services—or digital outlets like social media—where such inquiries are not mandated.

* * *

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Amador S. Bustos

September 7, 2021

Exhibit 9

Letter from Rick Kaplan, NAB to Marlene Dortch, FCC, MB Docket No. 20-299 (Apr. 13, 2021)

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April 13, 2021

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: Notice of *Ex Parte* Communication, MB Docket No. 20-299

Dear Ms. Dortch:

On Friday, April 9, representatives of the National Association of Broadcasters (NAB) spoke with FCC Media Bureau staff about proposed modifications to the Commission's sponsorship identification rules for foreign government-supplied content.[1] A list of meeting participants is attached. On the same day, Rick Kaplan of NAB spoke separately with Media Bureau Chief Michelle Carey regarding the same subject. On Monday, April 12, Jerianne Timmerman, Erin Dozier and the undersigned spoke with Holly Saurer of the Office of Acting Chairwoman Rosenworcel.

Through this proceeding, the Commission has an opportunity to implement smart, narrowly-tailored rules to help the public understand when it is viewing or listening to content sponsored by foreign government actors on broadcast radio and television stations. Specifically, the Commission could make a meaningful impact by guiding broadcasters to government-maintained lists of foreign actors and requiring uniform disclosures where broadcasters have reason to believe that a potential lessee is a foreign government actor. While the proposed rules would still not address the vast majority of foreign government-

[1] *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, MB Docket No. 20-299, FCC No. 20-146 (rel. Oct. 26, 2020) (Notice); *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, MB Docket No. 20-299, FCC-CIRC2104-06 (rel. Apr. 2, 2021) (Draft Order).

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sponsored content – nearly all of which appears on pay TV channels[2] and the internet[3] – broadcasters nonetheless recognize that developing reasonable rules could aid the public interest.

Unfortunately, as currently conceived in the Draft Order, the Commission's proposed approach is far overbroad, requiring efforts well beyond what the record supports. Specifically, the proposed "reasonable diligence" standard[4] appears to sweep in thousands of leasing

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[2] Paul Mozur, *Live From America's Capital, a TV Station Run by China's Communist Party*, New York Times (Feb. 28, 2019) (NYT CGTN Article), available at: https://www.nytimes.com/2019/02/28/business/cctv-china-usa-propaganda.html ("CGTN America . . . broadcasts seven hours of programming a day through cable and satellite providers like AT&T and Comcast."). *See also* DISH Channel Guide, *available at* https://www.dish.com/downloads/channel-lineup/channellineup.pdf (indicating that DISH carries CGTN on channels 279 and 884); DIRECTV Guide, *available at* https://www.directv.com/guide (noting channels 2053 and 2119 as carrying CGTN); FIOS TV Listings, *available* at https://www.verizon.com/content/dam/verizon/personal/learn-images/info-pages/channel-lineup/pdf/12181-3_VER_CVAA_DEC_2020_CLU_Guide_v2r3_ONLINE_A.pdf (noting channel 257 as carrying CGTN).

[3] *See* NYT CGTN Article ("Official Chinese media spend heavily to advertise on social media platforms like Facebook and Twitter that are banned within China."). The article also notes that, "*China Daily*, an English-language, state-controlled newspaper, buys advertising inserts in American newspapers, including *The New York Times*." *Id.* Further, anyone can watch CGTN America live on the internet, free of any indication that the government of China sponsors the programming. *See, e.g.,* CGTN America, available at: https://america.cgtn.com/; CGTN America YouTube Channel, available at: https://www.youtube.com/user/CCTVAmerica1.

[4] Draft Order at ¶ 35 and Appendix A. The Draft Order "concludes that such diligence requires that the licensee must, at a minimum: (1) Inform the lessee of the foreign sponsorship disclosure requirement; (2) Inquire of the lessee whether it falls into any of the categories that qualify it as a "foreign governmental entity"; (3) Inquire of the lessee whether it knows if anyone further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming; (4) Independently confirm the lessee's status, by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports, as well as using internet search engines to conduct searches of the lessee's name. This need only be done if the lessee has not already disclosed that it falls into one of the covered categories and that there is no separate need for a disclosure because no one further back in the chain of producing/transmitting the programming falls into one of the covered categories and has provided some form of service or consideration as an inducement to broadcast the programming; (5) Memorialize the above-listed inquiries and investigations to track

agreements, forcing broadcasters who never have and never will contract to air foreign government-sponsored content to expend a great deal of time, energy and expense repeatedly (and needlessly) confirming that their program suppliers do not have foreign governmental affiliations. NAB anticipates that the proposed diligence standard will disproportionately impact smaller broadcast groups, including minority- and female-owned broadcasters, without any reasonable and lawful justification.

Fortunately, NAB believes that the Commission can make minor (but critically important) modifications to the Draft Order that will bring its new rules into compliance with the First Amendment, the Communications Act of 1934, as amended (Communications Act), the Administrative Procedure Act (APA) and applicable FCC and court precedent.[5] NAB urges the Commission to make the following modifications to the reasonable diligence standard for purposes of compliance with its new foreign sponsorship identification rules:

- First and most importantly, the Commission must establish a rational threshold for its specific reasonable diligence requirements to be triggered. If not, the Commission will impose undue burdens across the industry only to yield a handful of examples of foreign government-sponsored content being broadcast over-the-air, as indicated by the record. As currently constructed, the Commission is requiring *all* broadcasters that engage in leasing arrangements to conduct time-consuming inquiries and independent research every six months that, in nearly all cases, will have proven to be a waste of time and money. The Commission should require broadcasters to take the reasonable diligence steps listed in the Draft Order only if they have *reason to believe* that their lessee is affiliated with a foreign governmental entity.

- Even if the Commission does not adopt a threshold standard for the application of its diligence steps, it should modify the requirement that a broadcaster run through its compliance process every six months. Instead, the standard should require stations to undertake the diligence steps when an agreement is executed and at renewal.

- The Commission should clarify that it will apply a standard of reasonableness in the context of evaluating efforts by broadcasters to comply with the foreign sponsorship identification rules.

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compliance in the event documentation is required to respond to any future Commission inquiry on the issue; and (6) Continue to make the above-listed inquiries of the lessee, and independently verify if necessary, at a minimum of regular six- month intervals thereafter."

[5] *See* Comments of NAB, MB Docket No. 20-299 (Dec. 28, 2020) at 10-14 (NAB Comments); Reply Comments of NAB, MB Docket No. 20-299 (Jan. 25, 2021) at 7-9 (NAB Reply Comments); Comments of National Public Radio, MB Docket No. 20-299 (Dec. 28, 2021) at 8-9; Comments of America's Public Television Stations and the Public Broadcasting Service, MB Docket No 20-299 (Dec. 23, 2020) at 17-18.

- The Commission should eliminate the requirement to independently research and confirm the lessee's status by using unbounded internet search engines to conduct searches of the licensee's name.

We provide additional details on these proposals below.

I. Focus the Diligence Standard on Foreign-Supplied Content

Even with the Draft Order focusing the disclosure requirements on program leasing arrangements, the reasonable diligence standard remains strikingly overbroad. This is problematic because the First Amendment does not allow the "belt and suspenders" regulatory approach taken by the Draft Order for regulations impacting speech. For the Commission's additional rules to satisfy even intermediate First Amendment scrutiny, they must be narrowly tailored to avoid burdening more speech than necessary.[6]

Although the reasonable diligence standard for the Commission's sponsorship identification rules has been in place for decades, the Commission has never previously mandated a similar multi-step process to be undertaken every six months as a "minimum" standard for such diligence. The Commission also has never previously interpreted this standard to require inquiries of anyone other than the sponsor of the programming or others with whom a licensee deals "directly" in connection with acquiring content.[7] Furthermore, the requirement to undertake independent research is contrary to FCC precedent.

Specifically, in 2019, the Commission clarified Section 315(e)(2)(G) of the Communications Act and Section 73.1212(e) of its rules, which require broadcasters to maintain a record that identifies all of the chief executive officers, executive committee members or board members of any entity seeking to purchase political advertising time under Section 315(e)(1)(B) of the Act.[8] The Commission made clear that under its interpretation of the statute and rule provision, broadcast "licensees need not conduct independent research to identify all of the officials of a sponsoring entity."[9] Rather, the Commission required that, *if* a licensee has a reasonable basis for believing that the information about the officials of an entity sponsoring a political ad was incomplete (e.g., the name of only one official was supplied), then – and only then – a licensee was obligated to make a single inquiry to either the organization sponsoring the ad or the third-party buyer of advertising time acting on the organization's behalf. And in cases where a licensee makes this single inquiry yet is not provided with additional information, the licensee has no further obligation to make another inquiry, let alone to conduct its own internet research in an attempt to discover the names of any

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[6] NAB Comments at 6-7, *citing Packingham v. North Carolina*, 137 S. Ct. 1730, 1736 (2017).

[7] *See* 47 U.S.C. § 317(c).

[8] *Complaints Involving the Political Files of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC, et al.,* Memorandum Opinion and Order, 34 FCC Rcd 10048 ¶¶ 21-26 (2019).

[9] *Id*. at ¶ 25.

additional officials of the sponsoring entity.[10] The Commission should follow its own precedent, as well as relevant court precedent,[11] and remove the arbitrary and unlawful requirement for licensees to conduct independent research about the identity and status of lessees.

Although NAB does not have data concerning all the arrangements that would fall within the scope of the new requirement, we estimate that thousands of relationships between broadcasters and program suppliers will be affected. A majority of radio and television stations ranging from small owners to large station groups in markets of all sizes have programming agreements that would be termed "leases" under the standard in the Draft Order. Consider television broadcast multicast channels, for example. Many secondary DTV channels are programmed pursuant to agreements where the licensee obtains some form of compensation from the program supplier.[12] The most recent data on multicasting estimates the total number of channels aired by full power, Class A and low power television stations at over 7000.[13] Two other common broadcast industry agreements, local marketing (LMA) and time brokerage agreements (TBA), also would fall within the scope of the rule. According to BIA, there are 558 such agreements in the radio industry, and 555 in the television industry.[14] As evident from the mere handful of examples of broadcasters airing foreign government-sponsored programming in the Notice and Draft Order, only an infinitesimal

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[10] *Id*. at ¶¶ 23, 25-26.

[11] *Loveday v. FCC,* 707 F.2d 1443 (D.C. Cir.), *cert. denied*, 464 U.S. 1008 (1983) (*Loveday*). In *Loveday*, the Commission determined that broadcast stations did not fail to exercise "reasonable diligence" by identifying a group as the sponsor of advertising opposing a ballot initiative concerning smoking, even though the group's funds came from tobacco companies. The court agreed, holding that "a licensee confronted with undocumented allegations and an undocumented rebuttal may safely accept the apparent sponsor's representations that he is the real party in interest." *Loveday*, 707 F.2d at 1449. The court reached its decision in part because of "grave doubts that the Commission could, in circumstances like these, require more of the licensees than it did in this case." *Id*.

[12] *See, e.g.,* John S. Sanders and Jacob B. Lourim, *The Little Networks that Could*, The Financial Manager (Nov./Dec. 2019) ("In many instances, the diginets pay stations with fixed fees based upon household coverage . . . Stations also get a certain number of ad availabilities on the diginets to sell themselves.").

[13] See Peter Leitzinger, S&P Global Market Intelligence, *Kagan: TV station multiplatform analysis 2021: New stations crowd* airwaves (Apr. 6, 2021), available at: https://platform.marketintelligence.spglobal.com/web/client?auth=inherit#news/article?id=63318425&KeyProductLinkType=24 (this estimate includes both primary and secondary channels).

[14] NAB analysis of BIA Media Access Pro data as of April 6, 2021 (includes agreements involving both full power and low power stations and multicast channels).

percentage of leasing arrangements will involve foreign governmental entities.[15] If the diligence standard in the Draft Order is intended to be met by all broadcasters who have leasing arrangements, it will burden thousands of licensees and lessees that have no connection to any foreign governmental entities. Indeed, it will subject many stations that have leases with churches for airing religious services to unduly burdensome new requirements. And it is of no moment to suggest that, despite the rules, broadcasters do not really have to comply in situations where they have an established business relationship with a lessee they know. If this is the case, that standard should be written into the rule.

While the new rule discussed in the Draft Order will affect fewer arrangements than the Commission's original proposal, stations would still collectively and repeatedly be searching for the foreign government entity "needle" in the "haystack" of thousands of agreements.[16] Accordingly, the Commission should modify the reasonable diligence standard by clarifying that broadcasters need only undertake the requisite notification, inquiries, and independent online research if they have *reason to believe* that a lessee is affiliated with a foreign governmental entity.[17]

II. Where Specific Reasonable Diligence Steps Are Warranted, They Should Be Required Upon Agreement Execution and Renewal, Rather Than Every Six Months

Whether or not the Commission narrows the scope of agreements that would be subject to the multiple diligence steps in the Draft Order, as NAB proposes above, the Commission should modify the timeframe for undertaking its specific reasonable diligence steps. Informing lessees of the foreign sponsorship identification rules, making inquiries of the lessee, and researching the specified Department of Justice (DOJ) and FCC websites (i.e.,

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[15] Although the Notice and Draft Order express concerns about whether the public is aware of the source of foreign government-sponsored content, the items do not identify programming that is being aired without sponsorship identification as required by current rules, thus raising the question whether the Commission has identified a problem warranting regulation. Certainly the Commission has not identified a problem warranting all the due diligence requirements set forth in the Draft Order. A "regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist." *Home Box Office, Inc.* v. FCC, 567 F.2d 9, 36 (D.C. Cir. 1977). Indeed, NAB staff listened to two local stations that air programming supplied by foreign governmental entities and both stations aired hourly sponsorship identification disclosures.

[16] The Draft Order states that independent verification of a lessee's status "need only be done if the lessee states that it does not fall into one of the covered categories . . ." Because the overwhelming majority of leasing arrangements have nothing to do with foreign entities, most broadcasters will be required to conduct such independent analysis.

[17] NAB Comments at 16 (urging FCC to clarify that the reasonable diligence steps are not required where a licensee has a reasonable basis for believing that the lessee has no foreign governmental affiliation).

steps 1-4 of the reasonable diligence standard) is more appropriately done at the time an agreement is executed and at renewal, when parties are more likely to undertake other types of due diligence. There is no evidence in the record that a lessee's status is likely to change during a license term or that checking the lessee's status every six months is necessary to achieve the Commission's disclosure goals. Licensees would still be required to exercise their own judgement regarding a lessee's status. Unless a licensee has a reason to believe the lessee's ownership or operations have changed, specific diligence steps should be connected to agreement execution or renewal.

III. Apply a Standard of Reasonableness to Compliance

The Commission should clarify that it will apply a standard of reasonableness in the context of evaluating efforts by broadcasters to comply with the foreign sponsorship identification rules. As the Commission previously held with respect to compliance with its political broadcasting regulations, "[d]eference by the Commission to the reasonable, good faith determinations of licensees is evident throughout the political programming regulatory scheme," including sponsorship identification.[18] The Commission also should delete all references suggesting that its multi-pronged, multi-faceted diligence standard represents the "minimum" a licensee must do to comply.[19] It should make clear that once a licensee has taken the multiple steps described in the Draft Order (with the revisions proposed herein), the licensee has met the standard.

IV. Eliminate Open-Ended Internet Research from the Due Diligence Standard

The Draft Order also contains an entirely new requirement never mentioned in the Notice or by any commenter. Under the fourth prong of the reasonable diligence standard, stations involved in leasing arrangements must "[i]ndependently confirm the lessee's status" using not only the specified DOJ and FCC sites, but also by "using internet search engines to conduct searches of the lessee's name."[20] Apart from this kind of search not being required in any other context by the Commission, it is entirely unclear to NAB what a successful or unsuccessful search would involve. Such searches would raise far more questions than answers, and would place broadcast station personnel in the position of having to ascertain the status of lessees without the knowledge or expertise required to make such determinations. This work is typically done by national security experts at the National

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[18] *Complaints Involving the Political Files of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC, et al.,* Order on Reconsideration, 35 FCC Rcd 3846, 3849-50 ¶¶ 7-10 (2020), *citing Codification of the Commission's Political Programming Policies*, Report and Order, 7 FCC Rcd 678, para. 4 (1991) (the Commission will "[c]ontinue to defer to licensees' reasonable, good faith judgment in determining whether sufficient sponsorship identifications have been provided in political programming and advertising.").

[19] Draft Order at ¶¶ 35, 40.

[20] Draft Order at ¶ 35.

Security Division at the Department of Justice. It is patently unreasonable to expect station personnel to apply the relevant statutory definitions as the Draft Order apparently requires.

Take for example a licensee that must search for a potential lessee called Global Media. An Internet search reveals a news article stating that a member of Congress wrote to DOJ urging the agency to require Global Media to register as an agent pursuant to FARA. NAB questions whether a broadcast station employee would know what to do with that information. NAB believes that station personnel could misinterpret that story as requiring foreign sponsorship identification disclosures. What if the news story said that DOJ had issued an order requiring Global Media to register as a FARA agent, but it has not yet done so? Does that entity need to be treated as a foreign governmental entity for purposes of the FCC's rules? What if one website says that Global Media receives foreign government funding, but has editorial independence from that government, while another states that Global Media is run by the government? Some might assume that such questions can easily be answered by a station's counsel (who also are not national security experts), but most broadcast stations do not employ in-house counsel, and those that do might still need to retain outside lawyers with FARA expertise to determine next steps, since most broadcast stations do not routinely require FARA-related legal advice. Moreover, imposing this expense on stations – especially the thousands owned in aggregate by smaller operators – is not fair nor reasonable given the paucity of evidence in the record concerning these arrangements.

The information a broadcaster finds on the internet may also be incorrect.[21] Stations should not be in a position of being subjected to potential enforcement inquiries or actions because they chose the wrong search engine, relied on the wrong website for information or misunderstood conflicting online information.[22] Nor should stations be opting out of leasing

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[21] *See, e.g.*, *Disinformation Nation: Social Media's Role in Promoting Extremism and Misinformation*, House Energy and Commerce Committee Hearing (Mar. 25, 2021), available at: https://energycommerce.house.gov/committee-activity/hearings/hearing-on-disinformation-nation-social-medias-role-in-promoting; *Misinformation, Conspiracy Theories, and 'Infodemics': Stopping the Spread Online*, House Permanent Select Subcommittee on Intelligence Hearing (Oct. 15, 2020), available at: https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=111087.

[22] Subjecting broadcasters to penalties in such situations also could raise due process questions, especially given that the internet-search diligence requirement does not make clear what broadcasters are supposed to do with any unclear, inconsistent and/or potentially incorrect information they find online. It is well established that FCC "proceedings must satisfy the 'pertinent demands of due process.'" *L.B. Wilson, Inc. v. FCC*, 170 F.2d 793, 802 (D.C. Cir. 1948), *quoting Fed. Radio Comm'n v. Nelson Bros. Bond & Mortgage Co.*, 289 U.S. 266, 276 (1933). Thus, if an FCC (or other agency's) "regulation is not sufficiently clear to warn a party about what is expected of it," then that "agency may not deprive a party of property by imposing civil or criminal liability" for violating the regulation. *Trinity Broad. of Fla., Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000) (citations omitted).

arrangements or placing disclosures on air and in their public files based on inaccurate or confusing information found online. NAB can identify no other Commission rule or standard that mandates the use of internet searches to determine compliance with a rule, and the record is devoid of any information to suggest that such a search would be necessary or even relevant to a determination of whether an entity falls within the scope of the FCC's definition of foreign governmental entities. To avoid the First Amendment and APA issues that would result, the research required for the diligence standard should be limited to the specified FCC and DOJ sites. The unbounded, undefined "internet search" required by the Draft Order should be excised from the reasonable diligence standard.

Finally, NAB also inquired in our meetings about practical implementation issues concerning the requirement in the Draft Order to disclose the officers and directors of the lessee where programming supplied by a foreign governmental entity addresses political matters or controversial issues of public importance.[23] We observed that in the issue advertising context, this requirement allows the public to learn who is ultimately responsible for sponsoring an advertisement. NAB is uncertain of the rationale for such a disclosure in the context of the Commission's new foreign sponsorship identification rules because the ultimate sponsor (i.e., the foreign country) is already being disclosed both on air and in a station's online public file.[24]

* * *

NAB appreciates the Commission's continued efforts to ensure that its new foreign sponsorship identification rules appropriately balance the need to ensure public awareness of the sources of sponsored content with the First Amendment, APA, statutory and practical considerations raised by broadcasters. Please do not hesitate to contact us with any questions.

Respectfully submitted,

Rick Kaplan
General Counsel and Executive Vice President
Legal and Regulatory Affairs

cc: Holly Saurer, Diane Holland, Benjamin Arden, Adam Cassady, Michelle Carey, Sarah Whitesell, Brendan Holland, Radhika Karmarkar, Julie Saulnier, Chad Guo

[23] Draft Order at ¶ 59.

[24] NAB Comments at 18.

Meeting Participants

FCC
Sarah Whitesell
Brendan Holland
Radhika Karmarkar
Julie Saulnier
Chad Guo

NAB
Rick Kaplan
Erin Dozier
Jerianne Timmerman

Exhibit 10

Letter from Rick Kaplan, NAB to Marlene Dortch, FCC, MB Docket No. 20-299 (Apr. 15, 2021)

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April 15, 2021

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: Notice of *Ex Parte* Communication, MB Docket No. 20-299

Dear Ms. Dortch:

On Tuesday, April 14, Emily Gomes, Jerianne Timmerman, Erin Dozier and the undersigned of the National Association of Broadcasters (NAB), along with Amador Bustos, President of Bustos Media Holdings, LLC, spoke with Diane Holland and Jeffrey Boxer of the Office of Commissioner Starks about proposed modifications to the Commission's sponsorship identification rules for foreign government-supplied content.[1] On the same day, the same NAB representatives also had separate telephone calls with Adam Cassady of the Office of Commissioner Simington and Benjamin Arden of the Office of Commissioner Carr regarding the same subject.

During these meetings, NAB reiterated its support for smart, narrowly-tailored rules to help the public understand when it is viewing or listening to content sponsored by foreign government actors on broadcast radio and television stations. NAB urged the Commission to revise the "reasonable diligence" standard set forth in the Draft Order as NAB has outlined in earlier filings to avoid sweeping in thousands of leasing agreements, and forcing broadcasters who never have and never will contract to air foreign government-sponsored content to expend a great deal of time, energy and expense repeatedly (and needlessly) reconfirming that their program suppliers do not have foreign governmental affiliations.[2]

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[1] *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, MB Docket No. 20-299, FCC No. 20-146 (rel. Oct. 26, 2020) (Notice); *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, MB Docket No. 20-299, FCC-CIRC2104-06 (rel. Apr. 2, 2021) (Draft Order).

[2] *See* Notice of *Ex Parte* Communication from Rick Kaplan, NAB, to Marlene Dortch, FCC, MB Docket No. 20-299, at 4-9 (Apr. 13, 2021).

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Mr. Bustos described how the proposed diligence standard would disproportionately impact smaller broadcast groups and undermine the ability of broadcasters to serve minority communities. For example, Bustos Media Holdings, LLC has leasing arrangements with programmers for its AM stations in San Jose, California and Houston, Texas that serve the local Vietnamese- and Korean-American communities. Mr. Bustos explained that his business relationships with the suppliers of such programming date back decades in some cases, and he has no reason to believe that these suppliers have any relationship with a foreign government. Yet, under the terms of the Draft Order, Mr. Bustos will be forced to undertake burdensome, time-consuming and costly efforts to repeatedly inquire every six months whether the providers of the programming have become affiliated with a foreign governmental source and independently confirm their status, including through undefined online research.

Mr. Bustos additionally expressed concern that the new FCC requirements will undermine his ability to continue these leasing arrangements and thereby serve these local minority communities. Not only will the costs of complying with the Commission's proposed diligence standard significantly reduce the value of the leasing arrangements, but the repeated inquiries also could be viewed as prejudicial and harassing to the programming suppliers, some of whom fled their countries of origin and came to the United States as refugees because they did not share the views of their government.[3]

Not only will the Commission's proposal impede the ability of broadcasters like Mr. Bustos to serve the needs of often underserved communities, contrary to the FCC's goals of promoting localism and diverse programming and ownership, but it also has no connection to the problem identified in the Notice. The Notice seeks to address situations in which a sponsorship identification under the current rules may not include or make clear the relationship of the sponsor to a foreign government. Specifically, the Notice identifies a need to make that linkage explicit so that the *American public* can know "the true source of such programming so as to make an informed judgment about these assertions."[4] Nowhere does the Commission suggest that the handful of broadcasters airing the foreign government-sponsored content cited in the Notice did not already know, or at least have reason to believe, that their programming was coming from a foreign governmental source, such that the proposed diligence would have helped inform the public of the true source of the programming. Because the Commission has not demonstrated that any broadcaster has been unable to ascertain the true source of foreign governmental programming in the absence of

[3] For example, Station KREH, Houston, TX is operated by a company founded by two Vietnamese journalists that escaped as political prisoners and fled their home country of South Vietnam aboard a small fishing boat after it fell under Communist control. The station's programming has been developed to address the local Vietnamese population's concerns and issues and to assist the community in assimilating to a different culture.

[4] Notice at ¶ 13.

the proposed diligence requirements, those requirements would be arbitrary and capricious and unnecessarily burdensome.

The Commission can help broadcasters like Mr. Bustos continue to serve local communities and ensure that its proposal comports with the requirements of the APA if it makes the minor (but critically important) modifications to the Draft Order that NAB has suggested, including: (i) requiring broadcasters to take the reasonable diligence steps listed in the Draft Order only if they have *reason to believe* that their lessee is affiliated with a foreign governmental entity; (ii) modifying the requirement that a broadcaster run through its compliance process every six months and instead require stations to undertake the diligence steps only when an agreement is executed and at renewal; (iii) clarifying that it will apply a standard of reasonableness in the context of evaluating efforts by broadcasters to comply with the foreign sponsorship identification rules; and (iv) eliminating the requirement to independently research and confirm the lessee's status by using unbounded internet search engines to conduct searches of the lessee's name.

NAB appreciates the Commission's continued efforts to ensure that its new foreign sponsorship identification rules appropriately balance the need to ensure public awareness of the sources of sponsored content with the First Amendment, APA, statutory and practical considerations raised by broadcasters. Please do not hesitate to contact us with any questions.

Respectfully submitted,

Rick Kaplan
General Counsel and Executive Vice President
Legal and Regulatory Affairs

cc: Diane Holland, Benjamin Arden, Adam Cassady, Jeffrey Boxer

Exhibit 11

Letter from James Winston, NABOB to Marlene Dortch, FCC, MB Docket No. 20-299 (Apr. 15, 2021)

NABOB | National Association of Black Owned Broadcasters

April 14, 2021

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
45 L Street, NE
Washington DC 20554

Re: *Ex Parte* Communication, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, MB Docket No. 20-299

Dear Ms. Dortch:

The National Association of Black Owned Broadcasters, Inc. ("NABOB") appreciates the Commission's efforts in this proceeding to ensure that content distributed by foreign governments and their agents via broadcast stations are properly labeled as such.[1] However, the Commission's Draft Order does not narrowly target the small handful of stations that air the type of foreign propaganda cited in the record.[2] Instead, it would require the thousands of stations that have any leasing arrangement (including a TBA or LMA) to conduct extensive and costly due diligence at the time the agreement is executed and every six months thereafter, even when the leasing arrangement is with a party known to the broadcaster for many years. At the very least, this overbroad requirement will unnecessarily burden broadcasters, especially smaller ones with limited resources. NABOB proposes that the Commission further tailor its proposal to those situations where there is reason to believe the programming may be coming from a foreign governmental source. NABOB is concerned that the regulatory burden imposed by the

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[1] *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, MB Docket No. 20-299, FCC No. 20-146 (rel. Oct. 26, 2020) (Notice).

[2] *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, MB Docket No. 20-299, FCC-CIRC2104-06 (rel. Apr. 2, 2021) (Draft Order).

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Commission's proposal will unnecessarily make it more difficult for small entities and new entrants to successfully own and operate broadcast stations.

The Commission's proposal will have an especially harmful impact on minority and women-owned broadcasters, many of which start their business by programming another station pursuant to an LMA for a few years before purchasing the station.[3] Under the Commission's proposal, station owners who enter into LMAs will be required to engage in repeated time-consuming and costly efforts to inquire about and independently confirm the lessee's status, even when there is no reason whatsoever to believe that the lessee is connected with a foreign governmental entity.[4] Undoubtedly, the unnecessary additional costs imposed by this complex regulatory regime will deter station owners from entering into these types of arrangements and thereby make it more difficult for minorities and other new entrants to pursue this path to programming a station and/or ownership. It could also impair station owners' abilities to offer diverse content obtained from minority-owned programming suppliers – even when they have worked with the suppliers for years and have no reason to believe the content comes from a foreign governmental sources.

Given the very few instances of the harm the Commission seeks to address cited in the record, any benefit of the proposed diligence requirements will be far outweighed by the

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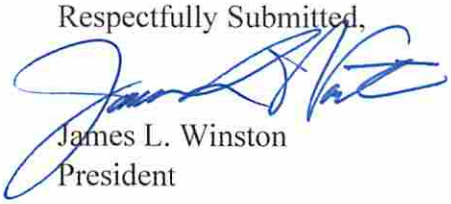
[3] *See* Letter from James Z. Hardman of Hardman Broadcasting, Inc. to Marlene Dortch, MB Docket No. 17-289 (May 10, 2018) (discussing Mr. Hardman's acquisition of Station WMBH(AM), Joplin, MO following a TBA); Letter from Carolyn Becker, President of Riverfront Broadcasting, LLC to Marlene Dortch, MB Docket No. 17-289 (May 15, 2018) (describing how LMAs paved the path to ownership of several radio stations for a woman-owned broadcaster as "[d]eveloping expertise by working in the industry and building relationships with owners of stations [she] was interested in was critical to [her] success.").

[4] The Draft Order requires licensees to "(1) Inform the lessee of the foreign sponsorship disclosure requirement; (2) Inquire of the lessee whether it falls into any of the categories that qualify it as a "foreign governmental entity"; (3) Inquire of the lessee whether it knows if anyone further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming; (4) Independently confirm the lessee's status, by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports, as well as using internet search engines to conduct searches of the lessee's name. This need only be done if the lessee has not already disclosed that it falls into one of the covered categories and that there is no separate need for a disclosure because no one further back in the chain of producing/transmitting the programming falls into one of the covered categories and has provided some form of service or consideration as an inducement to broadcast the programming; (5) Memorialize the above-listed inquiries and investigations to track compliance in the event documentation is required to respond to any future Commission inquiry on the issue; and (6) Continue to make the above-listed inquiries of the lessee, and independently verify if necessary, at a minimum of regular six- month intervals thereafter."

deleterious effects on the ability of diverse owners to secure content and stay afloat financially through leasing arrangements. And it will impair the ability to enter the industry of diverse programmers, who cannot yet afford to purchase stations, to gain experience and build a track record through an LMA or TBA. The Commission should avoid these unintended consequences by further tailoring the due diligence standards it has proposed to those situations in which there is reason to believe that programming may be coming from a foreign governmental source.

Respectfully Submitted,



James L. Winston
President

Exhibit 12

Letter from Maurita Coley, MMTC to Marlene Dortch, FCC, MB Docket No. 20-299 (Apr. 15, 2021)

April 15, 2021

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
45 L Street NE
Washington DC 20554

Dear Ms. Dortch:

Re: *Ex Parte* Communication, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, MB Docket No. 20-299

The Multicultural Media, Telecom and Internet Council ("MMTC") supports the purpose of this proceeding to ensure that the public is properly informed in the very limited number of cases when broadcast stations air programming sponsored by foreign governments and their agents.[1] Unfortunately, the FCC's Draft Order is not narrowly focused on the miniscule number of stations airing the type of foreign propaganda that raised the FCC's concern.[2] Rather, the Draft Order would subject the thousands of radio and television stations with leasing arrangements (including time brokerage agreements ("TBAs") or local marketing agreements ("LMAs") to overbroad and unduly burdensome due diligence requirements at the time the lease agreement is executed and every six months thereafter. And these multi-step due diligence requirements would apply even when the broadcaster has a leasing arrangement with a long-term business partner, a party known to the broadcaster for years, or a local party who is obviously not a foreign government. Indeed, the Draft Order would obligate a broadcaster to undertake costly and expensive due diligence for leasing agreements with another FCC-licensed broadcaster or even local churches for the airing of religious services.

The Draft Order's unnecessarily broad mandates will disproportionately burden small broadcasters with limited personnel and financial resources. For this reason alone, MMTC urges the Commission to more narrowly tailor its approach so that any due diligence requirements apply in those circumstances where the broadcaster has reason to believe the programming may be coming from a foreign governmental source. But beyond the disproportionate impact on small stations, MMTC also is concerned that the regulatory burdens imposed by the Draft Order will make it more difficult for small entities and new entrants to the broadcast industry to enter into LMAs to facilitate the training and incubation that often form the pathway to new and diverse ownership.

The terms of the Draft Order likely will have a particularly negative effect on minority and women-owned broadcasters, many of whom begin in the industry by programming another station via an LMA before

[1] *See Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, MB Docket No. 20-299, FCC No. 20-146 (rel. Oct. 26, 2020) (Notice).

[2] *See Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, MB Docket No. 20-299, FCC-CIRC2104-06 (rel. Apr. 2, 2021) (Draft Order).

eventually acquiring the station. MMTC can attest to the importance of this pathway into the broadcast business.[3] Unfortunately under the Draft Order, station owners who enter into LMAs will be forced to undertake repetitive, time-consuming and costly efforts to inquire into, and attempt to independently confirm, the lessee's status, even without any reason whatsoever to believe that the lessee may be a foreign governmental entity.[4] The unnecessary additional burdens imposed by this new, multi-step regulatory regime will discourage station owners from entering into LMAs, TBAs or similar arrangements, ultimately making it more difficult for minorities, women and other new entrants to pursue this path toward programming and/or owning a station. The rules also would place new burdens on station owners' efforts to provide diverse content from minority-owned programming suppliers, even in cases where they have worked with the suppliers for years and the programming does not come from foreign governmental sources.

For all these reasons, MMTC believes that the harms imposed by the Draft Order's diligence requirements far outweigh their benefit, particularly given the extremely limited scope of the identified problem. The Commission should tailor its diligence requirements to those cases where the broadcaster has reason to believe that a foreign governmental entity is the source of the programming in question. The FCC can achieve its goal of informing the public of foreign government-sponsored programming on broadcast stations without unduly burdening small broadcasters, discouraging leasing arrangements, and impeding the ability of minorities, women and other new entrants to gain valuable experience in broadcasting by programming stations via LMAs and TBAs.

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[3] MMTC helps new entrants, minorities, and women enter media ownership by working with buyers of donated stations "to consider applications for [LMAs]" where participants run the operations and "then later purchase the properties." MMTC also assists "buyers to find incubation and LMA arrangements with other owners." Radio Ownership | Multicultural Media, Telecom and Internet Council (mmtconline.org). Specifically, for over a decade, MMTC has worked with media organizations that have donated stations to MMTC's broadcast company, MMTC Broadcasting LLC, which uses the donated stations to promote diverse ownership, incubation and LMA and training opportunities for minority, women and new entrants. *See*, *e.g.*, https://mmtconline.org/media-brokerage/

[4] The Draft Order requires licensees to "(1) Inform the lessee of the foreign sponsorship disclosure requirement; (2) Inquire of the lessee whether it falls into any of the categories that qualify it as a "foreign governmental entity"; (3) Inquire of the lessee whether it knows if anyone further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming; (4) Independently confirm the lessee's status, by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports, as well as using internet search engines to conduct searches of the lessee's name. This need only be done if the lessee has not already disclosed that it falls into one of the covered categories and that there is no separate need for a disclosure because no one further back in the chain of producing/transmitting the programming falls into one of the covered categories and has provided some form of service or consideration as an inducement to broadcast the programming; (5) Memorialize the above-listed inquiries and investigations to track compliance in the event documentation is required to respond to any future Commission inquiry on the issue; and (6) Continue to make the above-listed inquiries of the lessee, and independently verify if necessary, at a minimum of regular six- month intervals thereafter."

Respectfully submitted,

Maurita Coley

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