

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

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

PETITION FOR REVIEW

Pursuant to 5 U.S.C. § 706, 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, the National Association of Broadcasters (“NAB”),¹ the Multicultural Media, Telecom and

¹ NAB is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission (“Commission” or “FCC”) and other federal

Internet Council (“MMTC”),² and the National Association of Black Owned Broadcasters (“NABOB”)³ hereby petition this Court for review of the Federal Communications Commission’s *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, MB Docket No. 20-299, FCC No. 21-42 (rel. Apr. 22, 2021) (“Order”). A synopsis of this Order was published in the Federal Register on June 17, 2021. *See* 86 Fed. Reg. 32221. A copy of the Order is attached to this Petition as Exhibit A.

This petition is timely filed within 60 days of its publication in the Federal Register. The Order is a final agency action that has significant and immediate adverse consequences for Petitioners and their members and constituents. NAB and NABOB have associational standing because each association’s members would otherwise have standing to sue in their own right; the interests they seek to protect are germane to each organization's purpose; and neither the claim asserted nor the relief requested requires the participation of either organization’s individual

agencies, and the courts. NAB and its members actively participated in the proceedings below.

² MMTC 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. MMTC participated in the proceedings below.

³ NABOB 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. NABOB participated in the proceedings below.

members in the lawsuit. MMTC has standing because its members and constituents, including people of color who own radio and television broadcast stations, prospective station owners of color who rely on leasing arrangements to gain experience programming stations, and radio and television audiences of diverse backgrounds who rely on the programming supplied by such owners and programmers, would be harmed by this action. Venue lies with this Court pursuant to 28 U.S.C. § 2343.

In its Order, the Commission adopted unnecessary and overly burdensome rules that violate the Communications Act, the Administrative Procedure Act, and the First Amendment. The new rules impose on *every broadcaster*—*i.e.*, thousands of stations, some very small, which collectively have many thousands of contracts for the lease of time to air programming—onerous requirements to make specified inquiries of, and conduct independent research on, *all the entities* with whom broadcasters currently or will in the future have lease agreements. The broadcaster must determine (and then announce) whether the sponsor of the programming is a foreign governmental entity or its agent, even if the leased programming (such as an infomercial or local religious broadcast) poses no colorable risk of foreign sponsorship. Broadcasters must conduct those multi-stage inquiries and investigations at the time any lease is initially entered into and repeat them every time that same lease (with the same, already-investigated party) is renewed.

Stations also must memorialize those inquiries and investigations and maintain that documentation. Those regulations are imposed only upon broadcasters, even though the problem that the Commission purports to address—the failure to identify a foreign government entity that is the source of the programming—is almost entirely associated with satellite and cable channels and, above all, with social media and the Internet.

The Order violates Section 317(c) of the Act, 47 U.S.C. § 317(c), which governs sponsorship announcements for paid programming. Section 317(c) plainly limits a licensee’s exercise of reasonable diligence to obtaining “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.* (emphasis added). Nothing in the law affords the Commission the latitude to require broadcasters to conduct research or investigations using any sources of information other than persons with whom broadcasters deal directly, as this Court ruled in *Loveday v. FCC*, 707 F.2d 1443 (D.C. Cir. 1983). Adopting a diligence standard that requires broadcasters to investigate their program suppliers using Department of Justice and Commission websites is beyond the Commission’s statutory authority and contradicts its longstanding approach to sponsorship identification.

The Order is also arbitrary and capricious. The Commission had no legal or rational basis for imposing investigative burdens on every single lease, for any amount of airtime, entered into by thousands of local radio and television stations. The requirements are not necessary to promote the FCC's goal of informing the public of the source of material coming from foreign governmental entities because the Commission imposes these extensive burdens even when there is no reason to believe that the lessee is a foreign government-affiliated entity. Indeed, the FCC's requirements apply even when the entities leasing time to air programming on broadcast stations – which include many local and regional businesses and local organizations and institutions such as churches – are well known to the broadcaster and are clearly not foreign governments purveying propaganda. The record in this proceeding, moreover, identified only a handful of instances where broadcast stations leased airtime to a foreign governmental entity or its agent, and the Commission offered no evidence showing that the broadcaster in those cases mistook the identity of the program supplier; *i.e.*, the record lacks evidence that the compliance burdens imposed by the Commission are needed to prevent broadcasters from unwittingly leasing airtime to foreign government-affiliated entities. The regulations are both overinclusive (applying to a vast number of broadcast leases where there is no risk of foreign governmental sponsorship or misleading of the public) and underinclusive (applying only to broadcasters and

not cable, satellite, or social media companies). For the same reason, the speech compelled by the Order is neither the least restrictive means to serve a substantial (much less compelling) governmental interest, nor narrowly tailored to such interest, and therefore also violates the First Amendment.

Finally, the Commission's Notice of Proposed Rulemaking did not ask a single question about the broad scope of broadcast station leases, and thus gave no notice that leases were the focus of its proceeding. As a result, the Commission had no information at the time of its Order about the actual impact of its new diligence requirements. The new rules are contrary to statutory provisions on sponsorship identification, as well as unduly onerous and vastly overbroad, unreasonably burdening local stations, including smaller and diverse broadcasters least able to bear those additional costs, while failing to materially advance the FCC's goals.

The Order imposes requirements contrary to the terms of the Act and that unreasonably and unnecessarily burden the operations, resources and programming arrangements of broadcast stations across the country. The Petitioners now seek relief from the Order on the grounds that it: (1) violates federal law, including, but not limited to, the Constitution, the Communications Act of 1934, as amended, and the Administrative Procedure Act; (2) is arbitrary, capricious, and an abuse of discretion under 5 U.S.C. § 706; and (3) is otherwise contrary to law.

Accordingly, Petitioners respectfully request that this Court hold unlawful, vacate, enjoin and set aside the Order and grant such additional relief as may be necessary and appropriate.

August 13, 2021

Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, Petitioners National Association of Broadcasters (“NAB”), Multicultural Media, Telecom and Internet Council (“MMTC”) and National Association of Black Owned Broadcasters (“NABOB”) state as follows:

NAB is a nonprofit, incorporated association of radio and television stations. It has no parent company, and has not issued any shares or debt securities to the public; thus no publicly held company owns ten percent or more of its stock. As a

continuing association of numerous organizations operated for the purpose of promoting the interests of its membership, the coalition is a trade association for purposes of D.C. Circuit Rule 26.1.

MMTC 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. It has no parent company, and has not issued any shares or debt securities to the public; thus no publicly held company owns ten percent or more of its stock.

NABOB 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. It has no parent company and has not issued any shares or debt securities to the public; thus, no publicly held company owns ten percent or more of its stock.

August 13, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 2021, I caused copies of the foregoing Petition for Review and Corporate Disclosure Statement to be served upon the following parties in the manner indicated:

*By First Class Mail and
Electronic Mail*

P. Michele Ellison
Acting General Counsel
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By First Class Mail

Merrick Garland
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

/s/ Rick Kaplan
Rick Kaplan

EXHIBIT A

085°13'59" W; thence to 45°18'45" N, 085°14'33" W; and back to the beginning point of origin.

(b) *Enforcement period.* This section will be enforced from 9:45 p.m. through 10 p.m. on July 23, 2021. The section will be enforced during additional times while in effect with actual notice as-needed to mitigate risks associated with the air show.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within these safety zones are prohibited unless authorized by the Captain of the Port, Sault Sainte Marie or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sault Sainte Marie or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sault Sainte Marie is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sault Sainte Marie to act on his or her behalf. The on-scene representative of the Captain of the Port, Sault Sainte Marie will be aboard a Coast Guard vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sault Sainte Marie or his on-scene representative may be contacted via VHF Channel 16 or telephone at 906-635-3233. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sault Sainte Marie or his on-scene representative.

Dated: June 11, 2021.

A.R. Jones,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2021-12729 Filed 6-16-21; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA-HQ-OW-2020-0595; FRL 10023-18-OW]

RIN 2040-ZA35

State of Michigan Underground Injection Control (UIC) Class II Program; Primacy Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because the U.S. Environmental Protection Agency (EPA) received adverse comments, the agency is withdrawing the direct final rule for State of Michigan Underground Injection Control (UIC) Class II Program; Primacy Approval, published on March 19, 2021.

DATES: As of June 17, 2021, EPA withdraws the direct final rule published at 86 FR 14846, on March 19, 2021.

FOR FURTHER INFORMATION CONTACT: Kyle Carey, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-2322; fax number: (202) 564-3754; email address: carey.kyle@epa.gov, or Anna Miller, UIC Section, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604; telephone number: (312) 886-7060; email address: miller.anna@epa.gov.

SUPPLEMENTARY INFORMATION: Because the U.S. Environmental Protection Agency (EPA) received adverse comment, the agency is withdrawing the direct final rule for State of Michigan Underground Injection Control (UIC) Class II Program; Primacy Approval, published on March 19, 2021. EPA stated in that direct final rule that if the agency received adverse comments by April 19, 2021, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. EPA subsequently received adverse comments on that direct final rule. EPA will address those comments in any subsequent final action, which will be based on the parallel proposed rule also published on March 19, 2021. As stated in the direct final rule and the parallel proposed rule,

EPA will not institute a second comment period on this action.

Michael S. Regan,
Administrator.

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

■ Accordingly, the rule amending 40 CFR part 147, which published on March 19, 2021 (86 FR 14846), is withdrawn as of June 17, 2021.

[FR Doc. 2021-12918 Filed 6-16-21; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 20-299; FCC 21-42; FR ID 26887]

Sponsorship Identification Requirements for Foreign Government-Provided Programming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) modifies its rules to adopt specific disclosure requirements for broadcast programming that is sponsored, paid for, or provided by a foreign government or its representative pursuant to leasing agreements.

DATES: Effective July 19, 2021. Compliance with § 73.1212(j) and (k) will not be required until the Commission publishes a document in the **Federal Register** announcing the compliance date.

FOR FURTHER INFORMATION CONTACT: Radhika Karmarkar, Media Bureau, Industry Analysis Division, Radhika.Karmarkar@fcc.gov, (202) 418-1523.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (Order), FCC 21-42, in MB Docket No. 20-299, adopted on April 22, 2021, and released on April 22, 2021. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at https://apps.fcc.gov/edocs_public/ (https://apps.fcc.gov/edocs_public/). To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov (mailto: fcc504@fcc.gov) or call the FCC's

Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

1. *Introduction:* 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. By this Order, the Commission seeks to address circumstances in which a foreign governmental entity, pursuant to a lease of airtime, is responsible for programming, in whole or in part, on a U.S. broadcast station. In this Order, the 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 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. 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. Nor does the Commission prohibit such arrangements going forward. Rather, in such instances, the rules the Commission adopts in this document 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 the Commission adopts 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 notice of proposed rulemaking (*NPRM*), 85 FR 74955, Nov. 24, 2020, and as

detailed further below, the Commission amends § 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. In so doing, the Commission 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, the Commission will also enable interested parties to monitor the extent of such efforts to persuade the American public.

3. The 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. In focusing its disclosure requirement on such situations, the Commission seeks 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, the Commission's approach incorporates existing provisions of and definitions contained in the Foreign Agents Registration Act (*FARA*) (22 U.S.C. 611) and the Communications Act of 1934, as amended, so as to minimize the burden on broadcasters as they determine whether the programming is from a foreign governmental entity. In addition, the Commission discusses 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, the Commission refines its rules to further ensure that the public is fully informed on the source of programming consumed. The Commission finds 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.

5. *Background:* 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. 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. With the creation of the Federal 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. 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.

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. The *NPRM* contained a thorough history of the background of the Commission's sponsorship identification rules. The sponsorship identification rules largely tracked the provisions of section 317 of the Act and make up the current § 73.1212 of the Commission's rules. 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. 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 its statutory mandate, foreign government program

sponsorship over the airwaves is evident to the American public.

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 the Commission refers to as a foreign governmental entity). 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. In other instances, the 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. 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.

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. 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. 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.

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 or DOJ) has identified as requiring disclosure because their activities are potentially intended to influence American public opinion, policy, and law. In addition, the *NPRM* proposed to include "United States-based foreign media outlets," as

defined by the Communications Act. 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 programming, even if the only inducement to air the programming was the provision of the programming itself. 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.

10. The *NPRM* proposed that the disclosure requirements should apply in the context of time brokerage agreements (TBAs) and local marketing agreements (LMAs). Moreover, the *NPRM* proposed to apply the new rules to entities authorized pursuant to section 325(c) to produce programming 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. Also, the *NPRM* proposed that the disclosure requirements would apply equally to any programming transmitted on a radio or television stations' multicast streams. Finally, in addition to specifying the characteristics of the proposed disclosures on television and radio, the *NPRM* proposed that stations place a copy of the announcement in their online public inspection file (OPIF).

11. A total of seven commenters filed comments and reply comments in response to the *NPRM*. The commenters generally support the Commission's goal of identifying foreign sponsorship of programming. Commenters assert, however, that the Commission must address how current regulations are inadequate before adopting new rules, 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.

12. *Discussion:* For the reasons discussed below, the Commission adopts 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 its requirements, the Commission seeks 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. The Commission further notes that such tailoring is in keeping with the First Amendment by focusing its rules narrowly on the area of potential harm.

13. Specifically, as discussed below, the 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, the Commission analyzes 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, the Commission discusses the scope of the foreign sponsorship identification rules, explaining why and how the Commission narrows 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. The Commission then discusses 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, the Commission discusses 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 the Commission makes 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, the Commission concludes that its foreign sponsorship identification rules apply equally to any programming broadcast pursuant to a section 325(c) permit. Finally, the Commission concludes that its foreign sponsorship identification rules satisfy the First Amendment and provide a cost-benefit analysis of those new rules.

14. *Entities or Individuals Whose Involvement in the Provision of Programming Triggers a Disclosure.* The Commission requires 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 (22 U.S.C. 611(e));

(2) A “foreign political party” as defined by FARA (22 U.S.C. 611(f));

(3) An individual or entity registered as an “agent of a foreign principal,” under section 611(c) of FARA (22 U.S.C. 611(c)), 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 (47 U.S.C. 624).

The 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 the disclosure requirement, the Commission relies 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, the Commission finds 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 *NPRM*, 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. The Commission notes that no commenters object to its 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 its foreign sponsorship

identification rules. Accordingly, the Commission finds that including “government of a foreign country” and “foreign political party,” as defined by *FARA*, within the group of entities and individuals that trigger its foreign sponsorship identification rules is appropriate given its primary goal of ensuring that foreign *government*-provided programming is properly disclosed to the public. Rather than seeking to craft its own definitions, the Commission finds 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 furthers the Commission’s goal of increasing transparency when such agents may be seeking to persuade the audiences of broadcast stations.

17. The Commission notes that *FARA* generally requires an “agent of foreign principal” 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. Section 611(b)(1) of *FARA* states that the term “foreign principal” includes the “government of a foreign country” and a “foreign political party” (22 U.S.C. 611(b)(1)). For purposes of its foreign sponsorship identification rules, the Commission includes *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 (22 U.S.C. 611(e), (f)). 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. The Commission also clarifies, 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. 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 government of a foreign country or foreign political party. This information is readily ascertainable by those who examine the *FARA* database.

18. The Commission recognizes 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.” The Commission emphasizes, however, that its 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.

19. *U.S.-Based Foreign Media Outlet*. In addition to drawing on *FARA*-based definitions and registrations and consistent with the *NPRM*, the Commission concludes that its 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. 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*. The Commission notes 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.” The Commission incorporates this limitation from section 722 of the Act into its foreign sponsorship identification rules to include both a “government of a foreign country” and “foreign political party,” as those terms are defined by *FARA*, within its definition of “foreign governmental entity.” Although the

Commission could clarify—as the Commission has 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, the Commission notes that such a clarification would accomplish nothing as, pursuant to the National Defense Authorization Act (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.

20. The Commission recognizes 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 the Commission notes 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, the Commission believes it is appropriate to include “U.S.-based foreign media outlets” within the ambit of its 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, within the Commission’s definition of foreign governmental entities that trigger foreign sponsorship identification, commenters have persuaded us otherwise. In particular, American Public Television Stations (APTS) and the Public Broadcasting Service (PBS) (referenced collectively herein as 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. The Commission agrees 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.

22. In addition, the Commission notes that, as discussed in the *NPRM*, most “foreign missions” are foreign embassies and consular offices. 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. 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. Based on the concerns raised by APTS and its own further review of the intent behind the statute, the Commission finds reliance on the Foreign Missions Act to be inappropriate and unnecessary for its intended purpose.

23. *Other Potential Sources*. In addition, the Commission declines 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. sanctions. 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. The Commission declines 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, the Commission finds the basis for compiling the OFAC list to be inconsistent with its purposes here. The Commission’s 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, the Commission seeks 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, the Commission finds 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.

24. *Scope of Foreign Programming that Requires a Disclosure*. While the Commission tentatively concluded in the *NPRM* that its 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, the Commission now narrows its 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, the Commission 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. While the Commission focuses in this Order on the identification of programming sponsored by foreign governmental entities aired through a lease of time, the Commission reiterates that its existing sponsorship identification rules, of course, continue to apply even outside the specific context described herein. As explained below, leasing agreements potentially subject to the 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, the Commission agrees with National Public Radio 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. To date, it appears that the reported instances of undisclosed foreign government programming aired on broadcast stations have involved lease agreements between a licensee and

other entities. The record indicates that such contractual arrangements present the most prevalent instances of undisclosed foreign government programming to date. 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. Accordingly, the Commission believes that the foreign governmental source of this programming should be disclosed in such circumstances.

26. Moreover, the Commission's 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. 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. 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, 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. Despite these longstanding restrictions, and particularly the 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*. 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 the Commission adopts in this document apply to leasing agreements, regardless of what those agreements are called, how they are styled, and whether they are reduced to writing. The Commission recognizes that leasing agreements within the broadcast industry may be known by different designations. The terms time brokerage agreement (TBA) and local marketing agreement (LMA) 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 p.m. to 6 p.m.) 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. 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.

28. For the purposes of applying the 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 the 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. In describing a lease of time, however, the Commission does not mean to suggest that traditional, short-form advertising time constitutes a lease of airtime for these purposes. The Commission notes 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 § 73.1212(f) and must contain a clear indication of the sponsor of the advertisement. The Commission's action in this document is focused on agreements by which a third party controls and programs a discrete block of time on a broadcast station. Ultimately, the Commission believes 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. The Commission finds that its 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. In addition, given limitations on the ability of noncommercial educational (NCE) stations to engage in leasing arrangements, the Commission expects that NCE stations will rarely, if ever, face the need to address the foreign sponsorship disclosure rules, largely assuaging the concerns of NCE commenters. Therefore, the Commission finds that limiting the application of its 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.

30. *Programming Aired in Exchange for Consideration Under 317(a)(1) of the Act*. As discussed in the *NPRM*, 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 indirectly in exchange for the broadcast of programming. 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. Thus, consistent with the statute and current sponsorship identification rules, the foreign sponsorship identification rules the Commission adopts in this document 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.

31. While the Commission expects that such consideration received by the station directly will be apparent from the terms and exercise of any lease agreement, as discussed below, the Commission notes 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. Thus, as detailed further below, the Commission requires 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. The Commission discusses what this obligation means for the licensee and lessee below.

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. As stated above, the Commission believes 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 the discussion in the *NPRM*, the Commission finds it is equally important that the 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. 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.

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, the Commission declines to expand the definition of political program in this context. Rather, consistent with the approach in this Order to narrow the scope of the rules to target more appropriately the reported instances of undisclosed foreign governmental programming, the Commission believes it is unnecessary to expand the interpretation of “political program” and elect to apply the existing interpretation of that term at this time. Similarly, for purposes of the foreign sponsorship identification rules the Commission will continue to interpret “any program involving the discussion of any controversial issue” under section 317(a)(2) in a manner consistent with precedent. The Commission finds 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 programming that inadvertently might be swept into the ambit the new foreign sponsorship identification rules. The Commission also clarifies that its 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.

34. Additionally, similar to the analysis above, the Commission finds that section 507 of the Act applies in this context as well. Specifically, the Commission believes 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. 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, the Commission finds 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. The Commission discusses what this obligation means for the licensee and lessee below.

35. *Reasonable Diligence*. The Commission adopts its 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. Accordingly, the Commission finds that a broadcast station licensee must exercise “reasonable diligence” 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 the foreign sponsorship identification rules. As explained below, the Commission concludes 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;

(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, the Commission clarifies 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 the 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 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. This statutory provision is categorical 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*, 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. While this responsibility adheres in every instance, the Commission finds 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, the Commission expects the licensee to convey clearly to the prospective lessee that there is a Commission disclosure requirement regarding foreign government-provided programming. In this regard, the Commission finds that "reasonable diligence" also includes inquiring of the potential lessee whether

it qualifies under the definition of a "foreign governmental entity." Given that the licensee is entering into a contractual agreement that allows the lessee to program airtime or provide programming on the station, the Commission finds it reasonable to expect that the licensee make these basic inquiries of the lessee to ascertain whether the programming to be aired will require a disclosure under the rules the Commission adopt herein. The Commission notes that broadcasters may choose to implement these requirements through contractual provisions between the licensee and lessee though they are not required to do so.

39. The Commission also expects 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. Such an inquiry is consistent with sections 507(b) and (c) 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. The Commission finds 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.

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, then the licensee needs to ensure that the programming contains the appropriate disclosure. 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. 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, the Commission requires 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, or a "foreign political party," as defined by FARA. 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.

41. 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.

42. In this regard, the Commission notes that the FARA database is simple to use and allows for a search by terms. Consequently, the Commission anticipates 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. 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 needed of these sites. Finally, the Commission requires that the

licensee memorialize its inquiries to track compliance and create a record in the event of any future Commission inquiry.

43. The Commission requires 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. 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 the 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 the rules after the licensee independently verifies that this is the case.

44. The Commission requires reasonable diligence to be conducted not only at the time of the agreement is entered into, but also at renewal time. The Commission recognizes the lessee's status may change, particularly if the duration of the lease agreement is for a term of years. 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, 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, the Commission requires 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.

45. In addition, the Commission strongly encourages 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 the foreign sponsorship identification rules. The

Commission expects that inclusion of such a provision will impress upon the lessee the importance of its 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. The Act does not, however, contain a threshold showing of "reason to believe" in advance of requiring that broadcasters engage in "reasonable diligence." 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. The practical implication of linking the "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.

46. Some commenters suggest that the requirement to check the FARA list is unduly burdensome. The Commission finds that limiting the application of its 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. 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. Thus, the Commission finds that these reasonable diligence 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.

47. *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, the Commission adopts the tentative conclusion contained in the *NPRM* 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 such as to trigger a disclosure. No party commented on the Commission's 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. 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. Congress added this provision in recognition that individuals other than the licensee were increasingly involved in programming decisions. Thus, consistent with the statute, the Commission concludes 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.

48. The Commission emphasizes 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. Likewise, section 317(b) of the Act imposes a parallel requirement on licensees to 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.

49. *Reasonable Diligence Requirements to Apply on a Prospective Basis.* Some commenters have asked that any new rules only apply on a going forward basis. Recognizing that some lease agreements may last for several years, the Commission declines to delay application of its rules to only new lease agreements. Rather, the Commission believes that the public interest is best served if audiences are notified of foreign sponsorship as soon as reasonably possible. Thus, in addition to applying the rules to new lease agreements and renewals of existing agreements, the Commission requires 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 the Commission seeks to achieve can be accomplished in a way that does not unduly burden licensees.

50. *Contents and Frequency of Required Disclosure of Foreign Sponsorship.* Consistent with the *NPRM*, the Commission adopts 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, the Commission adopts the disclosure language proposed in the *NPRM* with two modifications, one to provide greater flexibility in the language used and the other to harmonize its labeling requirements with those imposed pursuant to FARA. In addition, the Commission adopts 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.

51. *Labeling Requirement.* First, as requested by NAB, the Commission allows 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. The Commission notes that the language proposed by the National Association of Broadcasters (NAB) is consistent with existing sponsorship identification requirements. To the extent that the foreign sponsorship identification rules comport with existing rules and with how broadcast station personnel are accustomed to operating, the Commission finds that such allowances should facilitate compliance by licensees and minimize the burden on them. Hence, at the time a station broadcasts programming that was provided by a foreign governmental entity, the Commission requires 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].

52. In establishing this disclosure language, the Commission recognizes that FARA also has a labelling requirement and clarify that the programming need not have two separate labels—both the FARA label and the Commission’s full disclosure. Rather, for those entities that are subject to FARA, the Commission accepts 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. As discussed further below, the Commission notes 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. Thus, for those entities not registered under FARA, the Commission requires the disclosure language the Commission adopts in this document. Moreover, the Commission finds that its 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 the Commission adopts in this document 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.

53. In the interest of ensuring transparency for the intended viewers and listeners of foreign government-provided programming, the Commission also 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. Although the *NPRM* sought comment on this issue, no commenters addressed this point. 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.

54. With regard to the format of the disclosure, for televised programming, the Commission requires the disclosure to 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. The *NPRM* sought comment on this format, but no commenters addressed this point. As this format convention replicates the existing format rule for a televised political advertisement concerning a candidate for public office, the Commission anticipates minimal compliance burden on licensees. For radio broadcasts, the Commission incorporates into the rules the Department of Justice guidance provided to FARA registrants that the disclosure shall be audible. Once again,

although the *NPRM* sought comment on this issue, no commenters addressed this point.

55. With regard to the frequency of the disclosure, consistent with the *NPRM* and the existing rules for political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance, the Commission requires 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 its existing rules for political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance, the Commission requires 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.

56. The Commission deviates from its existing sponsorship identification rules in one respect. The Commission adopts its 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 60 minutes. Sponsorship announcements at regular intervals are not explicitly required under the current rules. While NAB urges the Commission not to deviate from the existing timing and frequency rules, the Commission believes that this one additional requirement is necessary given the importance of disclosure related to foreign government-provided programming. 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, the Commission believes that NCE stations will rarely, if ever, fall within the ambit of the new rules. To the extent an issue does arise, the Commission will address such situations on a case-by-case basis through either its waiver process or the means that appear appropriate at that time. As discussed in the *NPRM*, the Commission 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. No commenter objected to the Commission's reasoning for this finding nor commented on the

burden of recurring announcements. The Commission notes 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—the current rules require a sponsorship identification both at the beginning and conclusion of any such broadcast of greater than 5 minutes. Similarly, here the Commission believes 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. The Commission notes 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 typically purchase in connection with leasing arrangements.

57. Finally, consistent with the proposal in the *NPRM*, the Commission finds that its standardized disclosure requirements apply equally to any programming transmitted on a broadcast station's multicast streams. The Commission received no objections to this proposal, and consequently finds no reason to exclude multicast streams. As such, multicast streams are subject to all the disclosure requirements pertaining to foreign government-provided programming that the Commission adopts in this document.

58. *Public File*. Consistent with the *NPRM*, the Commission adopts 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, 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, the Commission recommends such stations retain a record of their disclosures in their station files consistent with previous Commission guidance. The Commission does not, however, require licensees to submit additional information to their OPIFs concerning the list of persons operating the foreign governmental entity providing programming.

59. Specifically, the Commission finds 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, the Commission aligns this requirement with its 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 Commission also establishes 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.

60. The Commission does not adopt the "as soon as possible" disclosure standard contained in § 73.1943 of its rules or require posting to occur "within twenty-four hours of the material being broadcast" as proposed in the *NPRM*. The Commission is persuaded by NAB's comments that the "as soon as possible" standard contained in § 73.1943(c) of the rules need not apply to disclosures associated with foreign governmental entities. 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. The Commission finds no corresponding need to respond within an expedited timeframe in the case of foreign government-provided programming.

61. The Commission concludes 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. The Commission clarifies 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. The Commission is 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. However, the Commission determines 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.

62. Finally, the Commission adopts 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.

63. *Concerns About Overlap with Other Statutory or Regulatory Requirements.* The Commission rejects any suggestion that its foreign sponsorship identification rules are either duplicative of requirements imposed under FARA or unnecessary given the Commission's current sponsorship identification rules. Rather, as discussed above and consistent with the admonitions of commenters, the Commission adopts disclosure requirements that further the its statutory mandate to provide transparency to audiences of broadcast stations regarding the source of sponsored programming, while avoiding unnecessary duplication with the FARA requirements.

64. As a preliminary matter, the Commission emphasizes 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. 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. Accordingly, unless the licensee of a broadcast station itself is a registered agent under FARA, the label required by FARA may not appear. 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 the need for greater action to ensure transparency. 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.

65. Further, as noted above, the rules the Commission adopts in this document 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. Rather, FARA requires identification of only the *foreign principal*, whose name may not identify its connection to a foreign country. 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. In contrast, the foreign sponsorship identification rules the Commission adopts in this document 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.

66. Given the key differences between the FARA requirements and those the Commission adopts in this document, the Commission rejects NPR's assertion that enforcement of § 73.1212(e) of the Commission's rules could achieve the Commission's goals in this proceeding. As REC Networks 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.

67. *Section 325(c) Permits.* The Commission adopts 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 foreign station with a sufficient transmission power or from a geographic location that enables the material to be received consistently in the United States.

68. The Commission finds 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 the Commission adopts 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. The Commission finds 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 the regulatory framework with respect to the identification of foreign government-provided programming.

69. 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. The Commission therefore finds no reason to depart from its 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. The Commission notes, 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.

70. *First Amendment Considerations.* Consistent with the *NPRM*, the Commission finds that the foreign sponsorship identification rules the Commission adopts in this document 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. The Commission finds that interest is even more important when a foreign governmental entity is 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. Having narrowed the rules even further than initially proposed, the Commission finds the final rules to be "narrowly tailored" to fulfill a "compelling" government interest using the "least restrictive means" to serve that goal. That being said, consistent with the *NPRM's* further tentative conclusion, the Commission believes the disclosure requirement the Commission adopts in this document 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. 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—the Commission believes that the rules comply with the First Amendment as they are narrowly tailored to achieve a substantial

Government interest. Thus, the Commission finds that, regardless of the level of scrutiny applied, its foreign sponsorship identification rules satisfy the First Amendment.

71. In addition, the Commission has significantly narrowed the scope of the programming covered by this 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. As discussed above, the disclosure will now be required only for programming aired pursuant to a lease of airtime if directly or indirectly provided by a foreign governmental entity. By focusing the foreign sponsorship identification rules on leased programming, the Commission excludes 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.

72. Additionally, based on comments in the record, the Commission has 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, the Commission has adopted the commenters' suggestion that if the programming already contains an appropriate disclosure pursuant to FARA that conveys the same information required by the Commission's rules and that is aired with at least the same frequency, then the station need not apply an additional disclosure.

73. Ultimately, the rules the Commission adopts in this document are a minimal extension of the long-standing sponsorship identification rules required by § 73.1212 of its rules and well within the authority granted under section 317 of the Act. Similarly, the Commission believes its rules are consistent with, and not duplicative of, the equally long-standing labeling requirement contained in FARA. As such, the Commission finds that the modification of the sponsorship identification rules the Commission adopts herein is entirely consistent with the existing statutes and precedent in this area and complies with the First Amendment.

74. Broadcasters have stated that focusing the 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. Fox similarly states that the rules should apply to longer programming provided by a FARA registrant and aired pursuant to a lease agreement. 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. As the Commission has discussed above, its 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 the Commission adopts herein promote greater transparency by requiring identification of the specific foreign government attempting to influence American viewers rather than referring viewers to a Government website to review. For these reasons, the Commission concludes that its modified foreign sponsorship identification rules comply with the First Amendment.

75. *Cost-Benefit Analysis.* The *NPRM* sought comment on the benefits and costs associated with adopting foreign sponsorship identification rules. 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, the Commission finds 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. 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. The public filing requirement will provide data on the extent of foreign government sponsored programming airing on broadcast stations. Therefore, the Commission finds that the costs associated with adopting the foreign sponsorship identification rules, as modified herein, do not outweigh the public benefits the Commission has identified regarding transparency of the

source of programming heard or viewed by the American public.

76. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Certification was incorporated into the *NPRM*. Pursuant to the RFA, the Commission has prepared a Final Regulatory Flexibility Certification relating to this Report and Order.

77. *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 will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

78. *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).

79. *Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in this proceeding. 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.

80. *Need for, and Objectives of, the Proposed Rules.* 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 the Commission adopts in this document update its 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).

81. 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, the Commission anticipates that most, and possibly all, NCE station programming arrangements will fall outside the ambit of the rules given limitations on the ability of NCE stations to engage in leasing agreements. 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 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.

82. 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) and the Communications Act. The definition adopted in the R&O includes:

(1) A “government of a foreign country” as defined by FARA;

(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.

83. 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 the Commission adopts in this R&O excludes “foreign missions.”

84. 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 below. 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.

85. 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 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.

86. 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.

87. 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. 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,” 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. 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.

88. 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. 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 the programming. 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. 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 § 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, the Commission recommends 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.

89. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed in response to the IRFA.

90. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* 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. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

91. *Description and Estimate of the Number of Small Entities to Which the Rules Apply.* 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. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act (SBA). 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. Below, the Commission provides a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

92. *Television Broadcasting.* This U.S. Economic Census category comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. 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. 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. Based on these data, the Commission estimates that the majority of commercial television broadcast stations are small entities under the applicable size standard.

93. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,374. 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. 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. There

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

94. *Radio Stations.* This U.S. Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. 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. Economic Census data for 2012 show that 2,849 firms in this category operated in that year. 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. Based on these data, the Commission estimates that the majority of commercial radio broadcast stations were small under the applicable SBA size standard.

95. 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. 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. 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.

96. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission’s estimate, therefore, likely overstates the number of small entities that might be affected by its 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. The Commission is 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.

97. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* 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 inducement to air by a “foreign governmental entity.” As described above, the term “foreign governmental entity” is defined by reference to existing definitions in the Foreign Agents Registration Act of 1938 as amended (FARA) and Section 722 of the Communications Act of 1934, as amended (the Act). 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.

98. 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 above, 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, also holds an independent obligation to communicate information to the licensee relevant to determining whether a disclosure is needed.

99. 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. As this requirement tracks existing rules for televised political advertisements, television licensees are familiar with this format, minimizing their compliance burdens. 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," 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 100% of a station's airtime. 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.

100. 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. 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 § 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.

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

102. 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 arrangements will fall outside the ambit of the 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, 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 them from the definition.

103. 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 the 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 the 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, the Commission matches 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.

104. 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. 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. 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.

105. *Report to Congress.* 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. 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**.

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

107. *Ordering Clauses.* 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**.

108. *It is further ordered* that part 73 of the Commission’s rules *is amended* as set forth in the Final Rules. The rule changes to § 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 § 73.1212 to be revised accordingly.

109. *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.

110. *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).

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.
Marlene Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 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. Amend § 73.1212 by adding paragraphs (j) through (l) to read as follows:

§ 73.1212 Sponsorship identification; list retention; related requirements.

* * * * *

(j)(1)(i) Where the material broadcast consistent with paragraph (a) or (d) of this section 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].

(ii) If the material broadcast contains a “conspicuous statement” pursuant to the Foreign Agents Registration Act of 1938 (FARA) (22 U.S.C. 614(b)), such conspicuous statement will suffice for purposes of this paragraph (j)(1) 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.

(2) 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 in paragraphs (j)(2)(i) and (ii) of this section, 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)).

(3) The licensee of each broadcast station shall exercise reasonable diligence to ascertain whether the

foreign sponsorship disclosure requirements in paragraph (j)(1) of this section 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 paragraph (j)(1) of this section;
 - (ii) Inquiring of the lessee whether the lessee falls into any of the categories in paragraph (j)(2) of this section 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 inquiries in paragraphs (j)(3)(i) through (iv) of this section 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.
- (4) 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.
- (5) At a minimum, the announcement required by paragraph (j)(1) of this section 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.
- (6) 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.

(7) A station shall place copies of the disclosures required by this 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. Amend § 73.3526 by adding paragraph (e)(19) to read as follows:

§ 73.3526 Online public inspection file of commercial stations.

* * * * *

(e) * * *

(19) *Foreign sponsorship disclosures.* Documentation sufficient to demonstrate that the station is continuing to meet the requirements set forth at § 73.1212(j)(7).

* * * * *

■ 4. Amend § 73.3527 by adding paragraph (e)(15) to read as follows:

§ 73.3527 Online public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(15) *Foreign sponsorship disclosures.* Documentation sufficient to demonstrate that the station is continuing to meet the requirements set forth at § 73.1212(j)(7).

* * * * *

[FR Doc. 2021-12207 Filed 6-16-21; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[RTID 0648-XB172]

Pacific Island Fisheries; 2021 Northwestern Hawaiian Islands Lobster Harvest Guideline

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of lobster harvest guideline.

SUMMARY: NMFS establishes the annual harvest guideline for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) for calendar year 2021 at zero lobsters.

DATES: June 17, 2021.

FOR FURTHER INFORMATION CONTACT: Mark R. Fox, NMFS PIR Sustainable Fisheries, tel 808-725-5171.

SUPPLEMENTARY INFORMATION: NMFS manages the NWHI commercial lobster fishery under the Fishery Ecosystem Plan for the Hawaiian Archipelago. The regulations at 50 CFR 665.252(b) require NMFS to publish an annual harvest guideline for lobster Permit Area 1, comprised of Federal waters around the NWHI.

Regulations governing the Papahānaumokuākea Marine National Monument in the NWHI prohibit the unpermitted removal of monument resources (50 CFR 404.7), and establish a zero annual harvest guideline for lobsters (50 CFR 404.10(a)). Accordingly, NMFS establishes the