



# PUBLIC NOTICE

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## FCC ANNOUNCES DISCLOSURE REQUIREMENTS FOR UNITED STATES-BASED FOREIGN MEDIA OUTLETS

### Initial Reports Due on October 12, 2018

On August 13, 2018, the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA) was enacted.<sup>1</sup> Section 1085 of the NDAA amends the Communications Act of 1934 (the Communications Act) to add section 722 that requires all “United States-based foreign media outlets” to submit to the Commission a report containing: 1) the name of such outlet; and 2) a description of the relationship of such outlet to the foreign principal of such outlet, including a description of the legal structure of such relationship and any funding that such outlet receives from such principal. The report is to be submitted no later than 60 days after the date of the enactment of the NDAA and no less frequently than every 6 months thereafter.<sup>2</sup> As the NDAA was enacted on August 13, the deadline for outlets to submit their first report to the Commission is **October 12, 2018**.

The Commission has established an e-mail inbox, at [ndaareport@fcc.gov](mailto:ndaareport@fcc.gov), that outlets should use to submit the reports. Respondents should format the reports as Adobe® Acrobat® (PDF) or Microsoft® Word documents and attach them to the e-mail. The e-mail submitting the report should include a subject or caption referring to the NDAA disclosure requirement and the name of the outlet. Respondents are reminded that the contents of the reports are subject to the provisions of the United States Code governing statements or representations made before the Commission.<sup>3</sup>

For purposes of this disclosure requirement, the NDAA provides that the term “United States-based foreign media outlet” means an entity that (A) produces or distributes video programming (as defined in section 602 of the Communications Act) that is transmitted, or intended for transmission, by a multichannel video programming distributor (as defined in such section) to consumers in the United States; and (B) would be an agent of a foreign principal for purposes of the Foreign Agents Registration Act of 1918 (FARA) (22 U.S.C. § 611 et seq.) but

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<sup>1</sup> John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, §1085(a) (2018) (NDAA).

<sup>2</sup> 47 U.S.C. § 722(a).

<sup>3</sup> 18 U.S.C. § 1001.

for section 1(d) of FARA (22 U.S.C. § 611(d)).<sup>4</sup> The Communications Act defines the term “video programming” as “programming provided by, or generally considered comparable to programming provided by, a television broadcast station.”<sup>5</sup> The term “multichannel video programming distributor” means “a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.”<sup>6</sup>

The NDAA provides that the term “foreign principal” has the meaning given such term in Section 1(b)(1) of FARA (22 U.S.C. § 611(b)(1)).<sup>7</sup> Section 1(b)(1) of FARA provides that “a government of a foreign country and a foreign political party” are included in the definition of a “foreign principal.”<sup>8</sup> Section 1(c) of FARA provides that, except “as provided in subsection (d) of this section, the term ‘agent of a foreign principal’ means (1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person--(i) engages within the United States in political activities for or in the interests of such foreign principal; (ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal; (iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and (2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.”<sup>9</sup>

Section 1(d) of FARA states that the “term ‘agent of a foreign principal’ does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611 of Title 39, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of

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<sup>4</sup> 47 U.S.C. § 722(d)(2).

<sup>5</sup> 47 U.S.C. § 522(20).

<sup>6</sup> 47 U.S.C. § 522(13).

<sup>7</sup> 47 U.S.C. § 722(d)(1).

<sup>8</sup> 47 U.S.C. § 722(d)(1); 22 U.S.C. § 611(b)(1). We note that the Department of Justice has adopted regulations implementing the Foreign Agents Registration Act of 1938, including definitions of statutory terms. *See* 5 CFR §§ 5.1, *et seq.*; *id.* § 5.100.

<sup>9</sup> 22 U.S.C. § 611(c).

its policies are determined by any foreign principal defined in subsection (b) of section 611, or by any agent of a foreign principal required to register under this subchapter.”<sup>10</sup>

Consistent with the requirements of the NDAA, the Commission will transmit to Congress a report that summarizes the contents of the reports submitted by United States-based foreign media outlets within 90 days from the date of enactment, on November 11, 2018.<sup>11</sup> In addition, the Commission will make publicly available on its website each report submitted by a United States-based foreign media outlet no later than the earlier of (1) 30 days after the outlet submits its report to the Commission or (2) the date on which the Commission transmits its report to Congress.<sup>12</sup>

For additional information, contact Chad Guo, [Chad.Guo@fcc.gov](mailto:Chad.Guo@fcc.gov), of the Media Bureau, Industry Analysis Division, at (202) 418-0652. Press inquiries should be directed to Janice Wise, [Janice.Wise@fcc.gov](mailto:Janice.Wise@fcc.gov), at (202) 418-8165.

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<sup>10</sup> 22 U.S.C. § 611(d).

<sup>11</sup> NDAA, §1085(b) (codified at 47 U.S.C. § 722(b)).

<sup>12</sup> NDAA, §1085(c) (codified at 47 U.S.C. § 722(c)).