ORAL ARGUMENT NOT YET SCHEDULED

No. 21-1171

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

NATIONAL ASSOCIATION OF BROADCASTERS, *ET AL.*,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

On Petition for Review of an Order of
the Federal Communications Commission

BRIEF FOR RESPONDENTS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

(A) **Parties and Amici.** All parties appearing in this Court are listed in the Brief for Petitioners.

(B) **Rulings Under Review.** The petition for review challenges the following order of the Federal Communications Commission: Report & Order, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, 36 FCC Rcd 7702 (2021), *reprinted at* JA__–__.

(C) **Related Cases.** The order under review has not previously been before this Court or any other court. Respondents are aware of no other related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

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GLOSSARY

Commission or FCC	Federal Communications Commission
Communications Act or Act	The Communications Act of 1934, as amended, 47 U.S.C. § 151, *et seq.*
Order	*Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021) (JA__)

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BRIEF FOR RESPONDENTS

INTRODUCTION

Section 317 of the Communications Act requires broadcast licensees to announce the identity of program sponsors and to use reasonable diligence to obtain the information needed to make that announcement. These requirements rest on the principle that the public has the right to know when broadcast programs have been paid for and by whom. Section 317 also directs the Commission to adopt rules to implement the statute's requirements. In the challenged decision, the Commission concluded that reports of hidden broadcast program sponsorship by

foreign governments or their representatives through the leasing of airtime called for a measured response to protect the public's right to know.

The foreign sponsorship identification rule that the Commission adopted builds incrementally on the foundation of the existing regulatory framework. The rule requires broadcasters to make a specific announcement whenever programming aired pursuant to a lease agreement is sponsored by a foreign governmental entity. To enable broadcasters to determine when an announcement is necessary, the FCC relied on the Foreign Agents Registration Act and the Communications Act to define foreign governmental entities. Broadcasters must determine whether an announcement is required by: 1) asking the prospective lessee if it is a foreign governmental entity; and 2) if the answer is "no," confirming that answer by searching the party's name in the Justice Department's online Foreign Agents Registration Act database and in an online Commission report.

Petitioners do not challenge the preexisting sponsorship identification regulations or dispute the importance of announcing foreign governmental sponsorship of broadcast programming. They instead argue that the new rule's name search provision violates the statutory mandate that a broadcaster "exercise reasonable diligence" to obtain sponsorship information "from . . . persons with whom it deals directly." 47 U.S.C. § 317(c). Petitioners also argue that the new rule

imposes undue speech and administrative burdens on their broadcaster members in violation of the First Amendment and the Administrative Procedure Act.

Petitioners' arguments lack merit. The Commission reasonably interpreted the statute to authorize, as a matter of "reasonable diligence," a simple name search requirement to confirm a lessee's answer that it is not a foreign governmental entity. The rule's speech and online name search requirements also comport with the First Amendment, as any added burden is minimal compared to the strong governmental interest that the rule serves. For similar reasons, the rule also is reasonable as a matter of administrative law. This Court should deny the petition for review.

JURISDICTIONAL STATEMENT

The FCC released the order under review on April 22, 2021. *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021) (JA__) ("*Order*"). The *Order* was published in the Federal Register on June 17, 2021. 86 Fed. Reg. 32221 (JA__). Petitioners timely filed their petition for review on August 13, 2021. The Court has jurisdiction under 47 U.S.C. § 402(a) and 28 U.S.C. § 2342(1).

STATEMENT OF THE ISSUES

1. Whether the Commission reasonably interpreted 47 U.S.C. § 317(c) and (e), which requires a broadcaster to "exercise reasonable diligence" to obtain sponsorship information and authorizes the Commission to "prescribe appropriate

rules and regulations to carry out the provisions of this section," to authorize a rule requiring a simple name search on two government websites for the purpose of confirming that a party who leases airtime is not a foreign governmental entity.

2. Whether the rule complies with the First Amendment.

3. Whether the rule is reasonable and reasonably explained.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are set forth in the statutory addendum bound with this brief.

STATEMENT OF THE CASE

A. Statutory and Regulatory Background

1. Since 1934, Section 317(a) of the Communications Act, as amended ("Act" or "Communications Act"), has provided that if a licensee broadcasts any "matter" for which "any money, service or other valuable consideration" has been "directly or indirectly" given or promised to the licensee by "any person," the licensee must announce that the broadcast was "paid for or furnished … by such person" at the time of the broadcast. Pub. L. No. 73-416, § 317, 48 Stat. 1064, 1089 (1934) (currently codified at 47 U.S.C. § 317(a)). This requirement is founded on "[t]he public's basic right to know by whom it is being informed." *Amendment of the Commission's Sponsorship Identification Rules*, 52 FCC 2d 701, 703 (1975).

Congress amended Section 317 in 1960. *See generally Loveday v. FCC*, 707 F.2d 1443, 1452-54 (D.C. Cir. 1983). Among other things, Congress required the

licensee to "exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section." 47 U.S.C. § 317(c). And in Section 317(e) Congress authorized the Commission to "prescribe appropriate rules and regulations to carry out the provisions of this section." *Id.* § 317(e).

Pursuant to this statutory grant, the Commission for many years has administered broadcast sponsorship identification regulations. 47 C.F.R. § 73.1212; *see, e.g.*, *Amendment of Sections 3.119, 3.289, 3.654 and 3.789 of the Commission's Rules*, 34 FCC 829 (1963) (implementing 1960 amendments to Section 317). The regulations, among other things, require a licensee to "fully and fairly disclose the true identity" of the sponsor where "an agent or other person or entity contracts … with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence … could be known to the station." 47 C.F.R. § 73.1212(e).

2. The Foreign Agents Registration Act, 22 U.S.C. §§ 611-21, requires agents of foreign governments, foreign political parties, and other foreign principals engaged in political activities and other statutorily enumerated activities in the United States to file detailed registration statements with the Department of Justice, *id.* § 612, and to include in any materials that they distribute in the United States "a conspicuous statement that the materials are distributed by the agent on

behalf of the foreign principal." *Id.* § 614(b). The statute requires public disclosure by agents of foreign principals "so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their associations and activities." *Meese v. Keene*, 481 U.S. 465, 469 (1987) (internal quotation marks omitted).

B. Proceedings Below

1. In 2020, the Commission initiated a rulemaking in response to reports of undisclosed sponsorship of broadcast programming by representatives of the Chinese and Russian governments. *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, 35 FCC Rcd 12099 (2020) ("*Notice*") (JA__). For example, reports describe "how the Chinese government radio broadcaster, [China Radio International], was able through a subsidiary to lease almost all of the airtime on a Washington, DC area station and broadcast pro-Chinese government programming … without disclosing the linkage to the Chinese government," and "how a Florida-based company, RM Broadcasting LLC, had been acting as a middleman brokering airtime for Russian government-owned Sputnik International" without announcing the Russian government's role. *Id.* ¶¶ 1 n.4 (JA__) (citing Koh Gui Qing and John Shiffman, *Beijing's Covert Radio Network Airs China-friendly News Across Washington, and the World* (Nov. 2, 2015)) (available at https://www.reuters.com/investigates/

special-report/china-radio/), 13 n.42 (JA__) (citing Anna Massoglia and Karl Evers-Histrom, *Russia Paid Radio Broadcaster $1.4 Million to Air Kremlin Propaganda in DC*, OpenSecrets.org (July 1, 2019)) (available at https://www.opensecrets.org/news/ 2019/07/russia-paid-radio-broadcaster-1-4-million-to-air-kremlin-propaganda/); *see id.* ¶ 56 n.159 (JA__).

The Commission reaffirmed the importance of broadcast sponsorship identification and explained that its then-current rules did not specifically "require that a station determine whether the source of the programming is in fact a foreign government or mandate that the connection to a foreign government is disclosed to the public at the time of broadcast." *Id.* ¶ 2 (JA__). It proposed to fill these gaps by adopting a new rule governing "situations where a station broadcasts material that has been sponsored" by a foreign governmental entity, "so that viewers and listeners can better evaluate the value and accuracy of such programming." *Id.* ¶¶ 2, 13 (JA__, __).

To define foreign governmental entities, the Commission proposed to rely on the definitions of foreign governments, foreign political parties, and agents thereof in the Foreign Agents Registration Act, 22 U.S.C. § 611, as well as the Communications Act's definition of United States-based foreign media outlets. 47 U.S.C. § 624(d)(2) (defining such outlets as entities that produce or distribute programming for a multichannel video programming distributor in the U.S. and

that would qualify as agents under the Foreign Agents Registration Act but for an exception);[1] *Notice* ¶¶ 17-29 (JA__-__).

The Commission proposed to require broadcast licensees to inquire of parties who purchase airtime whether they fall into any of the proposed categories. *Id.* ¶¶ 24, 47 (JA__, __). The FCC also proposed to require licensees to review independently the Department of Justice's online Foreign Agents Registration Act database and the FCC's online list of U.S.-based foreign media outlets, reasoning that this requirement "should provide an easy mechanism" to confirm that a party purchasing airtime is not a registered agent for a foreign governmental entity. *Id.* ¶¶ 23, 47 (JA__, __).

2. In April 2021, the Commission adopted its proposal with modifications, concluding that the new rule will "ensure that audiences of broadcast stations are aware when a foreign government, or its representatives, are seeking to persuade the American public." *Order* ¶ 2 (JA__). While the agency's *Notice* had tentatively concluded that the proposed rule "should apply in any circumstances in which a

[1] The Foreign Agents Registration Act exempts from its definition of a foreign agent media outlets with at least 80 percent U.S. beneficial ownership and that meet other criteria. 22 U.S.C. § 611(d). The Communications Act fills in the gap by requiring such media outlets to file periodic reports with the FCC, which in turn reports to Congress on such outlets semi-annually. 47 U.S.C. § 624(b); *see Notice* ¶ 17 n.52 (JA__) (purpose of legislation codified in 47 U.S.C. § 624 is "to provide greater transparency about foreign government programming transmitted by" U.S.-based foreign media outlets).

foreign governmental entity directly or indirectly provides material for broadcast or furnishes material to a station free of charge," the Commission "narrow[ed]" the adopted rule to lease agreements "in which a licensee makes a block of broadcast time on its station available to another party in return for some form of compensation." *Id.* ¶ 24 (JA__). "To date, . . . the reported instances of undisclosed foreign government" sponsorship of broadcast programming "have involved lease agreements." *Id.* ¶ 25 (JA__); *id.* ¶¶ 12, 29 (JA__, __). The Commission found that narrowing the rule's focus to leased broadcast programming sponsored by foreign governmental entities would address its major area of concern while minimizing burdens on licensees. *Id.* ¶¶ 3, 12, 24-25, 29, 45 (JA__, __, __-__, __, __).

The new rule requires the following announcement whenever the preexisting regulations require sponsorship identification and program matter is provided by a foreign governmental entity pursuant to the lease of airtime:

> 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].

47 C.F.R. § 73.1212(j)(1).[2] No announcement is required, however, if the programming contains a "conspicuous statement" pursuant to the Foreign Agents

[2] We cite to the Federal Register version of the rule, 86 Fed. Reg. at 32238-39 (JA__-__), the internal numbering of which differs from the version appended to the *Order*.

Registration Act that also identifies the foreign country associated with the named sponsor. *Id.*[3]

For purposes of the new rule, "foreign governmental entity" means (1) a "'government of a foreign country,'" (2) a "'foreign political party,'" (3) a registered "'agent'" of a "foreign principal" that is a "government of a foreign country" or a "foreign political party" (or is owned, controlled, or financed by such an entity) as defined by the Foreign Agents Registration Act, or (4) a "'United States-based foreign media outlet'" under the Communications Act. *Id.* § 73.1212(j)(2).

A broadcast licensee must "exercise reasonable diligence" to determine if the new rule requires an announcement when it enters and renews a lease agreement. *Id.* § 73.1212(j)(3). Specifically, the broadcaster must inform the party who leases airtime (the "lessee") of the rule and inquire of the lessee whether it (1) qualifies as a foreign governmental entity as defined by the rule or (2) knows of such an entity involved in producing or distributing the programming to be broadcast who provided an inducement to air the programming. *Id.* § 73.1212(j)(3)(i)-(iii). If the lessee responds "no" to these inquiries, the broadcaster

[3] The Foreign Agents Registration Act does not require identification of the foreign country associated with the entity that provided the programming. *Order* ¶¶ 63-64 & n.176 (JA__-__)(citing 22 U.S.C. § 614(b)).

must confirm that the lessee's name does not appear in the Department of Justice's Foreign Agents Registration Act database or the FCC's report of U.S.-based foreign media outlets. *Id.* § 73.1212(j)(3)(iv). If the name search does not generate any results, the broadcaster has discharged its reasonable diligence obligations under the rule "and no further search is needed." *Order* ¶ 41 (JA__).[4] The new rule also prescribes technical and recordkeeping requirements that conform to the preexisting regulations. 47 C.F.R. § 73.1212(j)(3)(v), (3)-(6); *see Order* ¶¶ 50, 53-55, 58 (JA__, __-__, __).

3. On September 10, 2021, Petitioners requested an administrative stay of the *Order*. The Commission denied that request on December 8, 2021. Order Denying Stay Petition, DA 21-1518 (Media Bur. Dec. 8, 2021) ("*Stay Denial Order*") (JA__). Petitioners subsequently requested a stay from this Court. Motion for Stay Pending Judicial Review, No. 21-1171 (filed Dec. 22, 2021). The Commission opposed Petitioners' request. Opposition to Motion for Stay, No. 21-1171 (filed Jan. 3, 2021). As of the date of the filing of this brief, the motion for stay remains pending.

[4] If the search does generate results, the broadcaster must "exercise reasonable diligence" to ascertain whether an announcement is required. 47 C.F.R. § 73.1212(j)(3). It may investigate further in the Foreign Agents Registration Act database, *see Order* ¶ 41 (JA__), ask the lessee more questions, or take other appropriate steps.

STANDARD OF REVIEW

The FCC's interpretation of the Communications Act is reviewed under the principles set forth in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). If, as here, "the statute is silent or ambiguous with respect to [a] specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843. If so, the Court must "accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation." *Nat'l Cable & Telecomms. Ass'n v. Brand X*, 545 U.S. 967, 980 (2005).

Judicial review of a First Amendment challenge is *de novo*. *Nat'l Assn. of Mfrs. v. SEC*, 800 F.3d 518, 553 (D.C. Cir. 2015). Petitioners' First Amendment challenge is subject to "heightened rational basis" scrutiny because the rule at issue is a content-neutral broadcast regulation. *Ruggiero v. FCC*, 317 F.3d 239, 247 (D.C. Cir. 2003) (*en banc*). Under this standard of review, the rule must be "reasonably tailored to satisfying a substantial government interest." *Id.* at 245. The rule also satisfies the intermediate or exacting scrutiny applicable to non-broadcast disclosure regulations, which require that a rule be "narrowly tailored to further a substantial governmental interest." *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2383 (2021) (plurality) ("While exacting scrutiny does not require that

disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government's asserted interest.").

The Administrative Procedure Act's "arbitrary-and-capricious standard" "requires that agency action be reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021); *see* 5 U.S.C. § 706(2)(A). "Judicial review under that standard is deferential, and a court may not substitute its own policy judgment for that of the agency." *Prometheus*, 141 S. Ct. at 1158. The court "simply ensures that the agency has acted within a zone of reasonableness," including that it "has reasonably considered the relevant issues and reasonably explained the decision." *Id.*

SUMMARY OF THE ARGUMENT

The Commission reasonably interpreted Section 317 to authorize a limited and straightforward name search requirement to verify that a party leasing airtime is not a foreign governmental entity. Broadcasters have long been subject to sponsorship identification rules (which Petitioners do not challenge here), the added burden of the new rule is minimal, and the rule serves a substantial governmental interest. The rule therefore complies with the First Amendment and the Administrative Procedure Act.

I. The Commission has statutory authority to require a simple name search to confirm that a leasing party is not a foreign governmental entity.

A. Section 317(c) of the Act requires a broadcaster to "exercise reasonable diligence" to obtain sponsorship information from "persons with whom it deals directly." 47 U.S.C. § 317(c). The Commission reasonably interpreted the statute to require a broadcaster to confirm that a party leasing airtime is not a "foreign governmental entity" by checking two government websites that list the names of such entities. "[R]easonable diligence" is that expected from someone of ordinary prudence in like circumstances. A reasonably diligent broadcaster would confirm a leasing party's response that it is not a foreign governmental entity when a means of confirming that response is readily available. The Commission's interpretation is not only consistent with the history of the Communications Act's sponsorship identification provisions, but also carries out Section 317(c)'s purpose of enabling a broadcaster "to make the announcement required by this section." *Id.*

Even if a broadcaster's only obligation under Section 317(c) were to seek information from the lessee alone, the name search requirement would represent a valid exercise of the Commission's Section 317(e) authority "to prescribe appropriate rules and regulations to carry out the provisions of this section." *Id.* § 317(e).

B. Petitioners' arguments to the contrary lack merit. Section 317(c) does not speak directly to whether a broadcaster may be required to confirm sponsorship information. And the provision that a broadcaster seek information "from parties

with whom it deals directly" does not compel the counterintuitive conclusion that Congress meant to bar the FCC from imposing a limited duty to investigate. The negative implication that Petitioners advocate cannot supplant the authority to carry out Section 317 that Congress granted the agency.

This Court's *Loveday* decision likewise cannot bear the weight that Petitioners place on it. The issue presented here – whether Section 317(c) forbids the Commission from interpreting "reasonable diligence" to require a limited investigation of sponsorship information obtained from a paying party in particular circumstances – was neither raised in *Loveday* nor addressed by the Court. And as the FCC explained, the concerns that the Court expressed about the FCC's power to require broadcasters to conduct wide-ranging inquiries have no application to the limited name search at issue here.

II. The foreign governmental sponsorship identification rule does not violate the First Amendment. Petitioners do not challenge the underlying disclosure obligation, the added burden of the new rule is minimal, and the rule serves a substantial governmental interest.

A. First Amendment review of broadcast regulation is less rigorous than in other contexts. Courts also apply less demanding scrutiny to disclosure requirements that do not prevent anyone from speaking and to content-neutral regulation of broadcasters. The rule must therefore be upheld, at a minimum, if it is

reasonably tailored to satisfying a substantial governmental interest.

B. The government has a compelling interest in ensuring that the public is aware when a foreign government or its agent sponsors broadcast programming. The new rule is appropriately tailored to satisfying that interest. The Commission avoided unnecessarily burdening broadcasters by, among other things, limiting the rule's application to the leasing of airtime, making it easy to identify foreign governmental entities, establishing straightforward "reasonable diligence" obligations, and conforming the new rule closely to the preexisting sponsorship identification regulations.

C. Petitioners' contrary arguments lack merit. The FCC reasonably concluded that the rule is needed to address documented abuse of the preexisting regulations by foreign governments or their representatives. The rule is not underinclusive because it does not apply to cable, satellite, or the Internet. The statute only applies to broadcasters, and broader regulation would restrict more speech. Nor is the rule overinclusive because it applies to leases of all types of broadcast programming. The Commission explained that a uniform rule would be more effective, and less open to discriminatory application, than one based on a broadcaster's evaluation of the risk of foreign governmental sponsorship. There is also no record basis for Petitioners' assumption that leases involving certain types of program content pose no risk of hidden foreign governmental sponsorship.

Further, the Commission reasonably explained why Petitioners' proffered alternatives would be less effective. A standard relying on broadcaster's subjective belief regarding the risk of foreign governmental sponsorship would be ineffectual and unenforceable. A standard limited to programming on matters of public controversy would be too narrow to serve the Commission's purpose, and would raise more First Amendment issues than it avoids. And a rule applicable only to the lessees themselves would be inconsistent with the statute, which applies independent sponsorship identification obligations to broadcasters, as well as likely ineffective.

III. The rule also is reasonable and reasonably explained. Petitioners' contention that the rule will accomplish nothing because foreign governmental entities are unlikely to conceal their status ignores the value of reminding lessees of the sponsorship identification regulations, as well as the independent value of the rule's other requirements in promoting transparency of program sponsorship by foreign governmental entities. And importantly, the rule ensures the credibility of sponsorship information that broadcasters obtain from lessees.

ARGUMENT

I. THE COMMISSION HAS AUTHORITY TO REQUIRE A NAME SEARCH TO CONFIRM THAT A LESSEE IS NOT A FOREIGN GOVERNMENTAL ENTITY.

Petitioners argue that the requirement to confirm that a party who leases airtime is not a foreign governmental entity by searching the party's name on two

government websites violates Section 317(c) of the Act, as interpreted in *Loveday*, 707 F.2d at 1443. Br. at 24-36.[5] Specifically, they argue that the rule impermissibly requires a broadcaster to look behind the statements made to it by one leasing its airtime. This argument lacks merit. The Commission reasonably interpreted the statute to require a broadcaster, in the exercise of "reasonable diligence," 47 U.S.C. § 317(c), to conduct a "straightforward and limited" name search to confirm the sponsorship information provided by a lessee. *Order* ¶ 45 (JA__). And even if Section 317(c) requires a broadcaster only to seek sponsorship information from the lessee, the name search obligation represents a valid exercise of the FCC's Section 317(e) authority to implement that section.

A. The Commission Reasonably Interpreted the Statute To Authorize a Name Search In the Circumstances Here.

1. Section 317(c) of the Communications Act requires a broadcast licensee to "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" the licensee to make the sponsorship announcement required by the Act. 47 U.S.C. § 317(c). Here, the Commission determined that "reasonable diligence" requires a broadcaster to confirm a lessee's

[5] Petitioners do not challenge the agency's statutory authority for the rule's other requirements, which operate independently and are severable from the name search requirement.

response to broadcaster inquiries that the lessee is not a foreign governmental entity "by consulting the Department of Justice's Foreign Agents Registration Act website and the Commission's semi-annual U.S.-based foreign media outlet reports for the lessee's name." 47 C.F.R. § 73.1212(j)(3)(iv); *Order* ¶ 35 (JA__).

The name search requirement does not violate the statutory mandate that a licensee "exercise reasonable diligence" to obtain sponsorship information "from … persons with whom [the licensee] deals directly." 47 U.S.C. § 317(c). Reasonable diligence is that "expected from someone of ordinary prudence under circumstances like those at issue." *Stay Denial Order* ¶ 12 (JA__) (quoting *Diligence*, BLACK'S LAW DICTIONARY (11th ed. 2019)); *see* AMERICAN HERITAGE DICT. OF THE ENGLISH LANGUAGE 507 (5th ed. 2011) (diligence means "persistent application to an undertaking"). The Commission sensibly found that a reasonably diligent broadcaster cannot take at face value a lessee's response that it is not a foreign governmental entity when ready evidence is available to "confirm[]" that response. 47 C.F.R. § 73.1212(j)(3)(iv); *see Order* ¶¶ 40-41, 45 (JA__-__, __).

In that regard, the name search requirement is akin to "credit checks or other background checks … that one would reasonably expect any responsible business owner to conduct before entering into a contractual relationship with someone." *Id.* ¶ 41 n.121 (JA__). The preexisting sponsorship identification regulations – which Petitioners do not challenge – "envision situations [in which] the licensee may

have to take account of the principals of those entities/individuals with whom it is dealing directly." *Id.* (citing 47 C.F.R. § 73.1212(e)); *see Trumper Communications of Portland, Ltd.*, 11 FCC Rcd 20415, 20418 (Media Bur. 1996) (finding that licensees could not rely on paying party's assurances as to real party in interest that were contradicted by evidence from public filings).[6]

Further, the broadcaster is required to confirm the credibility of the lessee's response that it is not a foreign governmental entity simply by means of a "straightforward and limited" name search of the Department of Justice's online Foreign Agents Registration Act database and the FCC's online report on U.S.-based foreign media outlets. *Order* ¶ 45 (JA__); *id.* ¶ 15 (JA__); *Stay Denial Order* ¶ 13 (JA__). The Commission reasonably interpreted "reasonable diligence" to require such targeted confirmation.

The Commission's conclusion that "reasonable diligence" requires a simple name search to confirm a lessee's response that it is not a foreign governmental entity is consistent with the purpose of the statute. Section 317(c) requires a broadcaster to "exercise reasonable diligence" for the purpose of enabling the broadcaster "to make the announcement required by this section." 47 U.S.C.

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[6] The *Trumper* decision belies Petitioners' contention that "the Commission has never required a station to consult third-party sources to reveal the 'true identity' of a sponsor." Br. at 34-35.

§ 317(c). It would make little sense for Congress to impose this obligation on broadcasters while permitting them to turn a blind eye to ready evidence "verify[ing]" the information's credibility. *Order* ¶ 40 (JA__). And if the meaning of Section 317(c) were less clear, the FCC's reasonable reading would still be entitled to deference. *Brand X*, 545 U.S. at 980.

2. Even if the Court were to conclude that Section 317(c) does not provide a basis for the rule's name search requirement, Section 317(e) provides an independent basis for that requirement. 47 U.S.C. § 317(e); *Order* ¶ 72 & n.194 (JA__). The agency "has repeatedly used" its Section 317(e) authority "to address evolving concerns about undisclosed program sponsorship as they arise." *Id*.

Section 317(e) directs the Commission to "prescribe appropriate rules and regulations to carry out the provisions of this section." 47 U.S.C. § 317(e). The name search requirement does exactly that. Its purpose and effect is "to enable [the] licensee to make the announcement required by this section" by confirming the credibility of sponsorship information that the broadcaster obtains from "persons with whom it deals directly," *i.e.*, lessees. *Id.* § 317(c). The name search requirement represents a sensible means of implementing the broadcaster's general obligation to employ reasonable diligence to obtain the sponsorship identification information required by the statute and the Commission's rules.

B. Petitioners' Contrary Arguments Lack Merit.

1. Petitioners argue that the Commission "has no power to require independent investigations beyond what the statute requires." Br. at 24. This is "an overly narrow reading of the statute." *Order* ¶ 41 n.121 (JA__).

Petitioners assume that, by specifying that a broadcast licensee must obtain sponsorship information from its employees and persons with whom it deals directly, Congress implicitly forbade the FCC from imposing an obligation to confirm the information that the broadcaster obtains from those sources. Br. at 24-26. This is, in substance, a call to the *expressio unius est exclusio alterius* canon of statutory construction. But that canon is "an especially feeble helper in an administrative setting, where Congress is presumed to have left to reasonable agency discretion questions that it has not directly resolved." *Cheney R.R. Co., Inc. v. ICC*, 902 F.2d 66, 69 (D.C. Cir. 1990). The negative implication that Petitioners advocate "cannot carry the day over the text and structure of the statute, which confers specific and broad regulatory authority" on the FCC. *Farrell v. Blinken*, 4 F.4th 124, 136 (D.C. Cir. 2021) (express statutory requirement of an in-person appearance before the agency "does not mean that the Secretary lacks discretion to impose this procedural requirement in other contexts."); *Doe, 1 v. FEC*, 920 F.3d

866, 871 (D.C. Cir. 2019) ("This regulation … requires more disclosure than the governing statute, but that is no reason for rejecting it.").[7]

Petitioners (Br. at 25) cite *Colorado River Indian Tribes v. National Indian Gaming Commission*, 466 F.3d 134, 139 (D.C. Cir. 2006), for the proposition that "'[a]gencies are … bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes." But that case reinforces the FCC's authority here. The Court held that the National Indian Gaming Commission lacked audit authority over class III gaming operations based on its general power to promulgate regulations to implement the provisions of its enabling statute. *Id.* at 139. The statute expressly granted the Commission audit authority over class II gaming operations but did not extend that authority to class III gaming, instead affirmatively leaving regulation of class III gaming to the tribes and the states and granting the Commission "oversight" authority only. *Id.* at 138 (citing, *inter alia*, 25 U.S.C. § 2710 (d)(5)). On the basis of a number of statutory and other "indications that Congress intended to leave . . . class III gaming to the tribes and

[7] In *Doe, 1*, the Court affirmed the added disclosure based on empowering provisions similar to Section 317(e). 920 F.3d at 870 ("FECA empowers the Commission to 'prescribe[ ] forms and to make, amend, and repeal such rules ... as are necessary to carry out the provisions of this Act,' and to 'formulate policy with respect to' the Act") (quoting 52 U.S.C. §§ 30106(b)(1), 30107(a)(8)).

the states," *id*., the Court concluded that Congress did not intend to empower the Commission to regulate class III gaming. *Id.* at 140. Here, in contrast, Section 317 mandates that a broadcaster "exercise reasonable diligence" to obtain sponsorship information from "persons with whom it deals directly," and does not prohibit the FCC from imposing a limited duty to confirm the information that the broadcaster obtains. Moreover, the statute expressly grants the FCC authority to promulgate regulations "to carry out the provisions of this section." 47 U.S.C. § 317(e).

Nothing in the statute's history suggests that Congress intended to divest the FCC of the power to require such confirmation in appropriate circumstances. *See Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) ("We do not read the enumeration of one case to exclude another unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it."); *see also United States v. WHAS, Inc.*, 385 F.2d 784, 788 (6th Cir. 1967) (FCC not precluded "from adopting a [r]egulation calculated to require a station to make reasonable efforts to go beyond a named 'sponsor' for a political program in order to ascertain the real party in interest for purposes of announcement."). To the contrary, that history indicates that Congress intended to accord the term "reasonable diligence" its ordinary meaning. *Stay Denial Order* ¶ 12 (JA__) (citing Leg. History of the Commc'ns Act Amend. of 1960: P.L. 86-752: 74 Stat. 889: Sept. 13, 1960, pg. 31) ("'reasonable diligence' has a sufficiently accepted legal meaning so as to permit

the Commission to apply this standard in given factual situations.") (statement of FCC Chairman to the Communications Subcommittee of the Senate Committee on Interstate & Foreign Commerce, Aug. 10, 1960); S. Rep. No. 1857, 86th Cong., 2d Sess. 5, 6 (1960) (reasonable diligence "would require the licensee to take appropriate steps to secure" the information required to announce sponsorship).

Petitioners highlight the Senate Report's statement that "'reasonable diligence'" "'would not place a licensee in the position of being an insurer …'" Br. at 29 (quoting S. Rep. No. 1857 at 6). But that statement says nothing about whether reasonable diligence may in some circumstances impose a licensee duty to investigate. It simply means that the licensee does not guarantee the accuracy of sponsorship information on which the licensee relies in good faith.[8]

Petitioners contend that "'the language of section 317, of itself,' does not 'impose any burden of independent investigation upon licensees.'" Br. at 26 (citing 707 F.2d at 1454). Again, however, the question is not whether the statutory language itself imposes a duty of independent investigation, but whether that language forbids the Commission from interpreting "reasonable diligence" to

[8] The Department of Justice's statement to Congress that under Section 317(c) a broadcaster could provide a sponsorship identification announcement in good faith reliance on the information provided to it, *see* Br. at 29-30, also is consistent with the FCC's statutory interpretation, as the new rule's requirement to confirm the credibility of sponsorship information provided by the lessee ensures good faith reliance on that information by the broadcaster.

require a limited investigation in particular circumstances. Indeed, elsewhere the Senate Report recognizes that a licensee cannot "escape responsibility for sponsorship announcements by inactivity on his part," S. Rep. No. 1857 at 6 – language that this Court has interpreted to "establish[] that a licensee cannot discharge its duty by passively ignoring sponsorship information it might easily obtain." *Loveday*, 707 F.2d at 1455 n.18.

2. Petitioners rely on *Loveday*, Br. at 26-30, but that case is distinguishable on its facts. *Stay Denial Order* ¶ 14 (JA__). The Court in that case *upheld* the Commission's determination that the licensees "adequately discharged their obligation" under then-governing sponsorship identification rules. *Loveday*, 707 F.2d at 1445. At that time, the FCC had "never indicated in enforcement proceedings that section 317 or its own regulations require a station to conduct any investigation or to look behind the plausible representations of a sponsor that it is the true party in interest." *Id.* at 1456-57. Here, in contrast, the Commission has so indicated by adopting the name search requirement. *Stay Denial Order* ¶ 15 (JA__).[9] The issue presented in this case – whether, in light of instances of

[9] Petitioners' argument that the FCC "does not even acknowledge its own prior contrary interpretation of the statute," Br. at 30-31, lacks merit because there was no such interpretation. *See Loveday*, 707 F.2d at 1447 ("'The ruling challenged here was issued in a specific factual context and resolved only the issues presented by petitioners' application.'").

undisclosed foreign governmental sponsorship of broadcast programming, the FCC has the power to adopt a rule imposing a limited duty to name check two government websites – was neither raised nor addressed by the Court in *Loveday*.

To be sure, the Court in *Loveday* did express concerns about whether Congress vested the Commission with the power to impose an obligation on broadcasters to perform a "searching" investigation of sponsorship information. *Loveday*, 707 F.2d at 1457 ("Section 317 can hardly have been designed to turn broadcasters into private detectives."). But no such investigation is required here. *Order* ¶ 45 & n.132 (JA__). The rule merely requires the broadcaster to confirm that the lessee is not a foreign governmental entity by means of a simple name search on two government websites. *See* 47 C.F.R. § 73.1212(j)(3)(iv).[10] "[I]n most cases a licensee will need to do no more than merely run a search of the lessee's name … If the search does not generate any results, the licensee can safely assume that the lessee is not" a foreign governmental entity "and no further search is needed." *Order* ¶ 41 (JA__).

[10] The Court's statement that the Senate Report "indicates that a licensee need not go behind the information it receives to guarantee its accuracy," 707 F.2d at 1455 n.18 (quoted in Br. at 29), was made in the context of its concern with "a duty of wide-ranging investigation," *id.* at 1455, not the issue here of a far more limited obligation to perform a simple name search.

If the name search does generate results, the broadcaster's duty is to "exercise reasonable diligence" to ascertain whether the lessee is subject to a disclosure requirement – precisely what Section 317(c) requires. 47 C.F.R. § 73.1212(j)(3); 47 U.S.C. § 317(c). To fulfill that duty, the broadcaster may investigate further, *see Order* ¶ 41 (JA__), or take other "appropriate steps." S. Rep. No. 1857 at 6. In the unlikely event that the lessee is a registered agent with numerous foreign principals, or the lessee's registration statements do not "disclose the relevant information," Br. at 10; *id.* at 9-11, 36, the broadcaster may make further inquiries of the lessee.[11] And contrary to Petitioners' contentions, broadcasters need not investigate "whether someone … in the chain of production or distribution qualifies as a foreign governmental entity." *Stay Denial Order* ¶ 10 (JA__); *see* Br. at 9-10, 36. The name search only entails "confirming the lessee's status" as a non-foreign governmental entity. 47 C.F.R. § 73.1212(j)(3)(iv). The name search is thus by no stretch of the imagination "a wild goose chase." Br. at 36.

3. Petitioners complain that the *Order* "does not analyze the language or history of Section 317(c)" and "addresses *Loveday* only in a single footnote." Br. at

[11] Petitioners argue elsewhere that "there is no reason to think that a [Foreign Agents Registration Act] registrant or FCC-disclosed foreign media outlet would not divulge the correct information." Br. at 53.

30. This complaint "disregards not only the discussion in the *Order* about the statute, but also the extensive discussion … in the [*Notice*] that established the foundation for the Commission's proposal." *Stay Denial Order* ¶ 16 (JA__) (citing *Order* ¶¶ 5-8, 37-39, 46-47) (JA__-__, __-__, __-__); *see Order* ¶ 41 n.121 (JA__) (considering and rejecting Petitioners' "assertion that the phrase 'deals directly' in section 317(c) bars" the name search requirement).

Although the *Order* did discuss *Loveday* in a single footnote, the Commission explained there that *Loveday* "addressed a situation where a licensee confronted with undocumented allegations was being asked by the petitioner to question the apparent sponsor's representations," "potentially opening the door to wide-ranging investigatory responsibilities on the licensee's part," whereas the name search "requires no guesswork, but rather the … review of lists of already identified foreign governmental actors." *Order* ¶ 45 n.132 (JA__).[12]

II. THE FOREIGN GOVERNMENTAL SPONSORSHIP RULE COMPLIES WITH THE FIRST AMENDMENT.

Petitioners next argue that the Commission's new rule violates the First Amendment. Br. at 36-53. This argument too lacks merit. The rule is reasonably tailored to ensure that audiences are informed when foreign governmental entities

[12] Petitioners also argue that the Court should interpret the statute narrowly to avoid First Amendment concerns, Br. at 39-40, but as discussed below, there are no such concerns; the name search serves a substantial governmental interest and imposes a minimal burden.

sponsor broadcasts. Petitioners do not challenge the underlying disclosure obligation, the added burden of the new rule is minimal, and the rule serves a substantial governmental interest.

A. The Rule Imposes Content-Neutral Broadcast Disclosure Requirements and, Therefore, Must Be Upheld If Reasonably Tailored To Satisfying a Substantial Government Interest.

1. Consistent with "the First Amendment goal of producing an informed public," *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 392 (1969), broadcast licensees are public trustees with "special responsibilities … concerning the material they broadcast." *Trustees of the Univ. of Penn.*, 69 FCC 2d 1394, 1397-98 (1978) (citing *Nat'l Broad. Co., Inc. v. FCC*, 319 U.S. 190, 206-07 (1943)). "Although a licensee may delegate certain functions to an agent or employee on a day-to-day basis, ultimate responsibility for" broadcast programming "is nondelegable." *In Re Solar Broad. Co., Inc.*, 17 FCC Rcd 5467, 5486 (2002). And while the First Amendment applies to broadcasting, "of all forms of communication, it is broadcasting that has received the most limited First Amendment protection." *FCC v. Pacifica Found.*, 438 U.S. 726, 748 (1978); *accord Turner Broad. Sys. Inc. v. FCC*, 512 U.S. 622, 637 (1994) ("less rigorous standard of First Amendment scrutiny to broadcast regulation").

In addition, and generally, "the First Amendment interests implicated by disclosure requirements are substantially weaker than those at stake when speech is

actually suppressed." *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 652 n.14 (1985); *Citizens United v. FEC*, 558 U.S. 310, 366 (2010) (disclosure requirements "may burden the ability to speak, but they … do not prevent anyone from speaking.") (cleaned up); *see* Br. at 38 (conceding that "the courts apply less demanding scrutiny to disclosure obligations."). By requiring disclosure of foreign governmental sponsorship, the rule "promote[s] greater transparency" without suppressing any speech. *Order* ¶ 73 (JA__); *Notice* ¶ 58 (JA__).

2. Thus, this Court has applied "heightened rational basis" scrutiny to content-neutral broadcast regulation. *Ruggiero*, 317 F.3d at 247. There the Court applied this level of scrutiny in affirming a prohibition on granting a low-power FM radio license to anyone who has operated an unlicensed radio station in *Ruggiero*. *Id.* In doing so, the Court emphasized that the prohibition at issue applied "equally to all unlicensed broadcasters regardless of the motivation for, or the message disseminated by, their illegal broadcasting." *Id.* at 244.

The rule at issue here likewise is content-neutral – it applies to broadcast programming "provided by *any* foreign government," regardless of the nature of the programming or whether the government's "interests are directly at odds with the United States." *Order* ¶ 23 (JA__) (emphasis added) (internal quotation marks omitted); *cf. Turner Broad. Sys.*, 512 U.S. at 658 (speaker-based laws are suspect "when they reflect the Government's preference for the substance of what the

favored speakers have to say (or aversion to what the disfavored speakers have to say).”). “[T]he government’s concern is not the content of the speech but providing transparency about the true identity of the speaker.” *Order* ¶ 23 (JA__) (internal quotation marks omitted).

Accordingly, the rule must be upheld so long as it is “reasonably tailored to satisfying a substantial government interest.” *Ruggiero*, 317 F.3d at 245. This standard represents a middle ground “between … minimal scrutiny … and … intermediate scrutiny.” *Id.* at 242. But even if the rule were subject to exacting scrutiny, the rule would pass muster because it is “narrowly tailored” to a “sufficiently important” government interest. *See Americans for Prosperity Found.*, 141 S. Ct. at 2383; *Order* ¶ 69 (JA__) (finding that the rule satisfies the First Amendment “regardless of the level of scrutiny applied”).

B. The Rule Is Reasonably Tailored To Serve a Substantial Governmental Interest.

1. As the Commission found (noting the long and settled history of sponsorship identification rules for broadcasters), “the government has a compelling interest in ensuring that the public is aware of when a party has sponsored content on a broadcast station.” *Order* ¶ 69 & n.185 (JA__). The Commission also found that this interest is magnified when the sponsoring party is a foreign government “making use of U.S. airwaves to promote [its] policies and viewpoints to the American public.” *Id.* ¶ 26 (JA__); *id.* ¶ 69 & n.186 (JA__); *cf.*

Meese v. Keene, 481 U.S. at 469. And the Commission found that lease agreements are "the primary means … by which foreign governmental entities are accessing U.S. airwaves." *Order* ¶ 3 (JA__). We do not understand Petitioners to dispute these findings.

2. The new rule is also "reasonably" – and indeed "narrowly" – tailored to the government's strong interest because it focuses precisely on the problem that the Commission confronted: the leased use of the nation's airwaves by foreign governmental entities without adequate disclosure. *Id.* ¶ 69 (JA__); *see id.* ¶¶ 3, 69-71 (JA__, __-__); *Stay Denial* ¶ 31 (JA__). Requiring disclosure unquestionably advances the government's interest in ensuring that the public is aware of foreign governmental sponsorship.

Further, the rule "avoid[s] unnecessary abridgement of First Amendment rights." *See McCutcheon v. FEC*, 572 U.S. 185, 199 (2014) (internal quotation marks omitted). By confining the rule to lease agreements, the Commission excluded from the rule's coverage the many "broadcast stations that do not engage in such leasing agreements and virtually all non-commercial, educational broadcasters, which rarely lease time to third parties." *Order* ¶ 70 (JA__).[13] The FCC also modified the proposed rule in numerous other ways in response to

[13] There were 6,138 non-commercial, educational broadcast stations in the U.S. in 2020. 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3070, 3089 ¶¶ 202, 247 (2020).

concerns raised by broadcasters. *See Order* ¶¶ 21-22 (JA__) (declining to treat foreign missions as foreign governmental entities), 33 (JA__) (not expanding the "political program" definition), 41 n.123 (JA__) (not requiring a general Internet search of the lessee's name), 42 n.124 (JA__) (declining to require periodic inquiries regarding lessees), 49 (JA__) (not requiring announcements that duplicate Foreign Agents Registration Act disclosures), 50 & n.140-41 (JA__) (granting broadcasters flexibility to use different terms in announcements), 59 & n.166-67 (JA__) (declining to adopt "as soon as possible" disclosure standard).

The Commission also incorporated existing statutory definitions of foreign governmental entities into the rule "to minimize the burden on broadcasters." *Id.* ¶ 3 (JA__). Relying on these definitions confines the rule to entities "whose activities have been identified by the [Department of Justice] as requiring disclosure because their activities are potentially intended to influence American public opinion, policy, and law," *Notice* ¶ 19 (JA__), and "avoids involving … the broadcaster[] in subjective determinations regarding who qualifies as a foreign governmental entity." *Order* ¶ 15 (JA__); *see id.* ¶¶ 16-17 (JA__-__).

In addition, the steps to determine whether an announcement is required are minimally burdensome. *See id.* ¶¶ 37-45 (JA__). A broadcaster who leases airtime must inform the lessee of the rule and ask if the lessee falls into one of the rule's established categories of foreign governmental entity or is aware of any such entity

in the chain of program production and supply. 47 C.F.R. § 73.1212(j)(3)(i)-(iii). If the answer is no, the broadcaster must double-check that the lessee is not a foreign governmental entity by consulting two government websites. *Id.* § 73.1212(j)(3)(iv). "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." *Order* ¶ 41 (JA__). These "straightforward and limited" requirements "minimize the burden on broadcasters and are necessary to ensure that the public is adequately informed about" foreign governmental sponsorship. *Id.* ¶ 45 (JA__).

Further, the rule's format, recordkeeping, and other requirements for announcements track the preexisting sponsorship identification regulations for administrative ease. *Id.* ¶¶ 50, 53-55, 58 (JA__, __-__, __); *see McConnell v. FEC*, 540 U.S. 93, 236 (2003) (subsequent history omitted) (broadcaster recordkeeping requirements "simply run with the territory.") (cleaned up). In sum, the rule imposes minimal speech and administrative burdens that are outweighed by the substantial governmental interest that the rule serves.[14]

C. Petitioners' Contrary Arguments Lack Merit.

1. Petitioners disclaim any challenge to the importance of the government's interest "in the abstract," but contend that the Commission "has not established a

[14] Petitioners' argument that the rule may discourage broadcasters from entering lease arrangements and impede the ability of prospective lessees "to disseminate their content" is baseless given the slight burden the rule imposes. Br. at 48-49.

sufficiently important problem warranting the nationwide regulation of *all* leased programming." Br. at 42; *id.* at 42-43. This contention lacks merit.

While petitioners fault the Commission for identifying only three instances of undisclosed foreign governmental sponsorship, their argument misses the point that almost by definition when foreign governmental sponsorship is undisclosed the Commission (and the American public) is not going to know about it. "It is precisely because there has been no disclosure requirement, no standardized guidance about how to identify a foreign governmental entity, and insufficient inquiry by broadcasters … that programming sponsored by a foreign governmental entity has been undetected." *Stay Denial Order* ¶ 21 (JA__).

In addition, "a wave of foreign propaganda on radio and television stations" is not a prerequisite to Commission action. Br. at 43. "An agency need not suffer the flood before building the levee." *Stilwell v. Off. of Thrift Supervision*, 569 F.3d 514, 519 (D.C. Cir. 2009). Thus the FCC reasonably concluded that reports of undisclosed foreign governmental sponsorship reflect a larger problem calling for action to "ensure that audiences of broadcast stations are aware when a foreign government, or its representatives, are seeking to persuade the American public." *Order* ¶ 2 (JA__); *id.* ¶¶ 4, 69 (JA__, __).[15]

[15] The FCC was not alone in perceiving a problem that called for action. *See Order* ¶ 45 n.132 (JA__) (the FCC acted "in the context of congressional concern … and

This also answers Petitioners' criticism that the reported instances of undisclosed foreign governmental sponsorship are "hyper-localized." Br. at 42.[16] Petitioners' reliance on cases involving "categorical restrictions on speech for limited [or] localized … problems" is therefore misplaced. *Id.* at 44 (citing *McCullen v. Coakley*, 573 U.S. 464, 493 (2014), and *Reynolds v. Middleton*, 779 F.3d 222, 231 (4th Cir. 2015)). Nor is undisclosed foreign governmental sponsorship a "sporadic" problem, *id.*, as in *Initiative and Referendum Inst. v. U.S. Postal Serv.*, 417 F.3d 1299, 1307-08 (D.C. Cir. 2005), where the Court held that a regulation banning signature-gathering on postal property was not narrowly tailored because such activity was only "occasionally" problematic. Undisclosed foreign governmental broadcast sponsorship is *always* problematic.

Petitioners contend that the reports cited by the Commission "would not even have been redressed by the independent searches mandated by the Order, since the foreign entities in question were not at the time registered under [the Foreign Agents Registration Act] or disclosed as a foreign media outlet to the Commission." Br. at 43. But "both the [Foreign Agents Registration Act] website

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on the heels of amendments to the Communications Act that link identification of foreign governmental actors to [the Foreign Agents Registration Act]").

[16] We note that broadcast stations are licensed to serve specific communities and so are "localized" by definition. *See* 47 U.S.C. § 307(b) (directing the FCC to distribute station licenses "among the several States and communities").

listings and the U.S.-based foreign media outlet lists are dynamic in nature, and the entities appearing on those lists may change periodically." *Stay Denial Order* ¶ 22 (JA__). Indeed, one representative of a foreign government involved in a reported instance of nondisclosure has since been forced to register as a foreign agent. *Order* ¶ 17 n.52 (JA__) (noting that a federal court in 2019 upheld the Department of Justice's determination that RM Broadcasting LLC must register as a foreign agent under the Foreign Agents Registration Act).

Further, Petitioners ignore the value of reminding lessees of the rule and ensuring that they provide "above board" sponsorship information to broadcasters. Br. at 52; *see Order* ¶ 63 (JA__) ("the reports about incidents of undisclosed foreign government programming indicate the need for greater action to ensure transparency"). Even if most lessees "who say they are not foreign governmental entities will not be," Br. at 21; *id.* at 55, the name search helps to ensure the credibility of sponsorship information that the broadcaster obtains from the lessee. "Trust, but verify." *Stampley v. Altom Transp., Inc.*, 958 F.3d 580, 582 (7th Cir. 2020) (cleaned up).[17]

[17] Petitioners are mistaken that the rule compels a licensee to "document its [investigative] efforts on a quarterly basis." Br. at 55; *see id.* at 37. The licensee need only conduct reasonable diligence "at the time of the lease agreement and at any renewal thereof." 47 C.F.R. § 73.1212(j)(3). The quarterly documentation requirement, which tracks preexisting regulations, *Order* ¶ 58 n.163 & accompanying text (JA__), pertains to on-air sponsorship announcements. 47 C.F.R. § 73.1212(j)(7).

Petitioners also ignore the value of the rule's other requirements in promoting transparency of program sponsorship by foreign governmental entities. 47 C.F.R. § 73.1212(j)(1). Because the Foreign Agents Registration Act applies only to those persons who must register as foreign agents, the disclosure that the statute requires may not be included in programming sponsored by a foreign governmental entity "unless the licensee of a broadcast station itself is a registered agent under [the Foreign Agents Registration Act]." *Order* ¶ 63 (JA__). And unlike the Foreign Agents Registration Act, the rule also requires "identification of the *country* associated with the foreign governmental entity that provided the programming." *Id.* ¶ 64 (JA__).

2. Petitioners next argue that the new rule is "wildly underinclusive" because it does not apply to cable and satellite television, social media or the Internet. Br. at 46; 45-47. This argument is puzzling, because the Commission is acting under Section 317 of the Act, and Section 317 authorizes the FCC to impose sponsorship identification requirements only on broadcast licensees. In any event, the Supreme Court has rejected like arguments even in cases where it applied exacting scrutiny. *Citizens United*, 558 U.S. at 368 (adhering to *McConnell*, 540 U.S. at 230-31, in rejecting challenge to Bipartisan Campaign Reform Act of 2002 provision "because it requires disclaimers for broadcast advertisements but not for print or Internet advertising."). The rule is justified by evidence of undisclosed foreign

governmental sponsorship of broadcast programming. *Order* ¶ 25 (JA__); *see McConnell*, 540 U.S. at 207 (use of soft money to finance televised advertising before elections justified applying segregated-fund requirement to broadcasting but not print media and the Internet). The rule "'is not fatally underinclusive simply because an alternative regulation, which would restrict more speech or the speech of more people, could be more effective.'" *Trans Union Corp. v. FTC*, 245 F.3d 809, 819 (2001) (quoting *Blount v. SEC*, 61 F.3d 938, 946 (D.C. Cir. 1995)); *see Zauderer*, 471 U.S. at 652 n.14 ("As a general matter, governments are entitled to attack problems piecemeal.").

3. Conversely, Petitioners argue that the foreign governmental sponsorship identification rule is overinclusive because the Commission "refused to impose any reasonable limit on the type of leased programming subject to the investigation requirements." Br. at 48-49. But the Commission explained that a rule applying uniformly to lease agreements would be more effective, and less open to discriminatory application, than one "based on the broadcaster's belief of who may have connections to a foreign governmental entity." *Order* ¶ 44 n.129 (JA__).

Petitioners' assumption (Br. at 20, 48, 50-51) that leases involving certain types of leased programming pose no risk of undeclared foreign governmental

sponsorship also is unfounded.[18] For example, one reported instance of undisclosed foreign governmental sponsorship included "a mix of news, music and cultural programs." *Beijing's covert radio network airs China-friendly news across Washington, and the world* (cited in *Order* ¶ 1 n.1 (JA__)). And a requirement that a broadcaster inquire about leases involving programming with particular content would raise more First Amendment issues, not fewer.

4. Finally, the Commission reasonably explained why the alternatives proposed by Petitioners, *see* Br. at 49-53, would be less effective. *See John Doe No. 1 v. Reed*, 561 U.S. 186, 198-99 (2010) (disclosure requirements satisfied exacting scrutiny where, *inter alia*, alternatives were less effective).

The FCC rejected Petitioners' proposal to require disclosure only when a broadcaster had "reason to believe" that its lessee was "affiliated with a foreign governmental entity" as "ineffectual and unenforceable" because it would leave the broadcaster's diligence to its subjective discretion. *Order* ¶ 44 (JA__). Petitioners' assertion that such a standard would be "objective" is incorrect, Br. at 51, as the proposed standard would depend on a broadcaster's belief rather than "objective" name searches. *See Order* ¶ 44 (JA__). The Commission also found that such a

[18] Licensees need not inquire "whether a foreign governmental entity has sponsored *every*" program aired pursuant to a lease agreement. Br. at 48. A licensee's "reasonable diligence" obligations apply to individual lease agreements, not individual programs. *See* 47 C.F.R. § 73.1212(j)(2)(iv).

subjective standard might disfavor new and diverse lessees by inviting broadcasters to subject them, rather than established lessees, to further inquiry. *Id.* (JA __). Petitioners argue that "a broadcaster will have more information on existing lessees that might trigger a duty to investigate." Br. at 51. The FCC was reasonably concerned, however, that a subjective standard would allow broadcasters to be governed by suspicion of the unknown rather than by objective criteria.

Petitioners contend that the Commission alternatively could have limited the rule just to "programming on matters of public controversy." Br. at 48; *id.* at 52. To be sure, the statute authorizes the FCC to require a sponsorship announcement for programming on matters of public controversy where "any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast." 47 U.S.C. § 317(a)(2). But the statute *requires* an announcement whenever programming of any type is aired in exchange for "valuable consideration." *Id.* § 317(a)(1); *Order* ¶ 30 (JA__). Consistent with the statute, the rule's "concern is not the content of the speech but providing transparency about the true identity of the speaker." *Id.* ¶ 23 (JA__) (internal quotation marks omitted). Nor is there any foundation for Petitioners' assumption

that certain program content "is most likely to attract foreign governmental speech." Br. at 52.[19]

Petitioners further contend that the Commission could have achieved its goal by only "requiring the sponsor to disclose the required information to the broadcaster." Br. at 52. But Section 317(c) requires broadcast licensees themselves to "exercise reasonable diligence" to obtain sponsorship information. 47 U.S.C. § 317(c); *Order* ¶ 35 (JA__) ("the final responsibility for any necessary foreign sponsorship identification … rests with the licensee in accordance with the statutory scheme."). And there is no reason to believe this alternative would be effective. Third parties already have an obligation – backed by a $10,000 fine or imprisonment, 47 U.S.C. § 508(g) – "to communicate information to the licensee relevant to determining whether a disclosure is needed," *Order* ¶ 46 (JA__), but this requirement did not prevent abuses. *Stay Denial Order* ¶ 35 (JA__).

[19] Petitioners are mistaken that the FCC failed to address their proposal to limit the rule to programming on matters of public controversy. Br. at 52 (citing *Order* ¶ 33 & n.99 (JA__)). In the cited passage of the *Order* the Commission declined to address Petitioners' argument that the FCC should reject a proposal in the *Notice* to reinterpret the meaning of the term "political program" – because the FCC agreed to reject the proposal. The Commission stated its reasons for rejecting the proposal to limit the rule to programming on matters of public controversy elsewhere. *See Order* ¶¶ 23, 30 (JA__, __).

III. THE FOREIGN GOVERNMENTAL SPONSORSHIP RULE IS REASONABLE AND REASONABLY EXPLAINED.

Petitioners argue that the rule is arbitrary and capricious "for the same reasons that [it] is not narrowly tailored under the First Amendment." Br. at 54. Petitioners' arguments are no more persuasive when repeated under the Administrative Procedure Act.

The foreign sponsorship identification rule is "reasonable and reasonably explained." *See Prometheus*, 141 S. Ct. at 1158. Broadcasters' responsibilities as trustees of the nation's airwaves include sponsorship identification based on the fundamental "principle that the public has the right to know whether the broadcast material has been paid for and by whom." *Advert. Council, Inc.*, 17 FCC Rcd 22616, 22620 (2002) (internal quotation marks omitted). Notwithstanding the preexisting sponsorship identification regulations, however, and restrictions on foreign ownership and control of licenses that reflect Congress's longstanding concern with foreign influence in broadcasting, *Order* ¶ 26 (JA__) (citing 47 U.S.C. § 310(a), (b)), news reports have documented flagrant examples of hidden sponsorship of broadcast programming by foreign governments. *See Notice* ¶¶ 1-2, 13 n.42, 56 n.159 (JA__-__, __, __); pgs. 6-7 *supra*.

The Commission concluded that such reports reflect a larger problem calling for targeted action to "ensure that audiences of broadcast stations are aware when a foreign government, or its representatives, are seeking to persuade the American

public." *Order* ¶ 2 (JA__); *id.* ¶ 69 (JA__); *see Chamber of Commerce of U.S. v. SEC*, 412 F.3d 133, 141 (2005) (agencies have authority for "'precautionary or prophylactic responses to perceived risks'" based on "documented abuses.") (quoting *Certified Color Mfrs. Assn. v. Mathews*, 543 F.2d 284, 296 (D.C. Cir. 1976)). This is the kind of "reasonable predictive judgment" about broadcasting that is entitled to deferential review. *See Prometheus*, 141 S. Ct. at 1160.

Petitioners complain that "the Commission has issued a sweeping mandate for every one of the more than 12,000 broadcasters across the country, no matter how small." Br. at 54. As set forth above, however, *see* § II.B.2 *supra*, by narrowing the rule to lease agreements the Commission excluded from the rule's coverage "broadcast stations that do not engage in such leasing agreements and virtually all non-commercial, educational broadcasters, which rarely lease time to third parties." *Order* ¶ 70 (JA__); *id.* ¶ 29 (JA__). In addition, neither Petitioners nor any other commenter asked the FCC to exclude "small" stations from the rule or responded to the Commission's Initial Regulatory Flexibility Analysis regarding the proposed rule's burden on smaller entities. *See Order* App. B ¶ 10 (JA__).

Petitioners further contend that the rule "accomplish[es] nothing" because "there is no reason to think that a [Foreign Agents Registration Act] registrant or FCC-disclosed foreign media outlet would not divulge the correct information" to licensees. Br. at 53; *id.* at 55-56. As discussed above, this contention ignores the

value of reminding lessees of the rule and verifying the sponsorship information that they provide to broadcasters, as well as the independent value of the rule's other requirements. *See* § II.C.1 *supra*. To the extent that a foreign governmental entity would have disclosed its identity even without the rule, the rule ensures more meaningful public disclosure. *See Order* ¶ 64 (JA__) (explaining that, unlike the Foreign Agents Registration Act, the rule requires "identification of the *country* associated with the foreign governmental entity that provided the programming," and provides "specific guidance … as to the frequency and content of the required" announcement) (emphasis in original).

In short, the rule's "reasonable diligence" requirements are not "fruitless make-work," Br. at 55, but are a reasonably targeted means to "ensure that audiences of broadcast stations are aware when a foreign government, or its representatives, are seeking to persuade the American public." *Order* ¶ 2 (JA__).

CONCLUSION

The petition for review should be denied.

Dated: January 21, 2022

Respectfully submitted,

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/s/ William J. Scher
William J. Scher
Counsel for Respondents

STATUTORY ADDENDUM

STATUTORY ADDENDUM CONTENTS

22 U.S.C. § 611
§ 611. Definitions

As used in and for the purposes of this subchapter—

(a) The term "person" includes an individual, partnership, association, corporation, organization, or any other combination of individuals;

(b) The term "foreign principal" includes--

(1) a government of a foreign country and a foreign political party;

(2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(c) 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.

(d) 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 36112 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 its policies are determined by any foreign principal defined in subsection (b) of this section, or by any agent of a foreign principal required to register under this subchapter;

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

(f) The term "foreign political party" includes any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity

devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof;

(g) The term "public-relations counsel" includes any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal;

(h) The term "publicity agent" includes any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise;

(i) The term "information-service employee" includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country;

(j) Repealed. Pub.L. 104-65, § 9(1)(A), Dec. 19, 1995, 109 Stat. 699

(k) The term "registration statement" means the registration statement required to be filed with the Attorney General under section 612(a) of this title, and any supplements thereto required to be filed under section 612(b) of this title, and includes all documents and papers required to be filed therewith or amendatory thereof or supplemental thereto, whether attached thereto or incorporated therein by reference;

(l) The term "American republic" includes any of the states which were signatory to the Final Act of the Second Meeting of the Ministers of Foreign Affairs of the American Republics at Habana, Cuba, July 30, 1940;

(m) The term "United States", when used in a geographical sense, includes the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States;

(n) The term "prints" means newspapers and periodicals, books, pamphlets, sheet music, visiting cards, address cards, printing proofs, engravings, photographs, pictures, drawings, plans, maps, patterns to be cut out, catalogs, prospectuses, advertisements, and printed, engraved, lithographed, or autographed notices of various kinds, and, in general, all impressions or reproductions obtained on paper or other material assimilable to paper, on parchment or on cardboard, by means of printing, engraving, lithography, autography, or any other easily recognizable mechanical process, with the exception of the copying press, stamps with movable or immovable type, and the typewriter;

(o) The term "political activities" means any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party;

(p) The term "political consultant" means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.

22 U.S.C. § 612
§ 612. Registration statement

(a) Filing; contents

No person shall act as an agent of a foreign principal unless he has filed with the Attorney General a true and complete registration statement and supplements thereto as required by subsections (a) and (b) of this section or unless he is exempt from registration under the provisions of this subchapter. Except as hereinafter provided, every person who becomes an agent of a foreign principal shall, within ten days thereafter, file with the Attorney General, in duplicate, a registration statement, under oath on a form prescribed by the Attorney General. The

obligation of an agent of a foreign principal to file a registration statement shall, after the tenth day of his becoming such agent, continue from day to day, and termination of such status shall not relieve such agent from his obligation to file a registration statement for the period during which he was an agent of a foreign principal. The registration statement shall include the following, which shall be regarded as material for the purposes of this subchapter:

(1) Registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

(2) Status of the registrant; if an individual, nationality; if a partnership, name, residence addresses, and nationality of each partner and a true and complete copy of its articles of copartnership; if an association, corporation, organization, or any other combination of individuals, the name, residence addresses, and nationality of each director and officer and of each person performing the functions of a director or officer and a true and complete copy of its charter, articles of incorporation, association, constitution, and bylaws, and amendments thereto; a copy of every other instrument or document and a statement of the terms and conditions of every oral agreement relating to its organization, powers, and purposes; and a statement of its ownership and control;

(3) A comprehensive statement of the nature of registrant's business; a complete list of registrant's employees and a statement of the nature of the work of each; the name and address of every foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act; the character of the business or other activities of every such foreign principal, and, if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party, or by any other foreign principal;

(4) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is an agent of a foreign principal; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by

the registrant as agent of a foreign principal for each such foreign principal, including a detailed statement of any such activity which is a political activity;

(5) The nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received within the preceding sixty days from each such foreign principal, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(6) A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or any other person other than a foreign principal and which requires his registration hereunder, including a detailed statement of any such activity which is a political activity;

(7) The name, business, and residence addresses, and if an individual, the nationality, of any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act under such circumstances as require his registration hereunder; the extent to which each such person is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party or by any other foreign principal; and the nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received during the preceding sixty days from each such person in connection with any of the activities referred to in clause (6) of this subsection, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

(8) A detailed statement of the money and other things of value spent or disposed of by the registrant during the preceding sixty days in furtherance of or in connection with activities which require his registration hereunder and which have been undertaken by him either as an agent of a foreign principal or for himself or any other person or in conection1 with any activities relating to his becoming an agent of such principal, and a detailed statement of any contributions of money or other things of value made by him during the preceding sixty days (other than contributions the making of which is prohibited under the terms of section 613 of Title 18) in connection with an election to any political office or in connection with any primary

election, convention, or caucus held to select candidates for any political office;

(9) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for himself or for a foreign principal or for any person other than a foreign principal any activities which require his registration hereunder;

(10) Such other statements, information, or documents pertinent to the purposes of this subchapter as the Attorney General, having due regard for the national security and the public interest, may from time to time require;

(11) Such further statements and such further copies of documents as are necessary to make the statements made in the registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(b) Supplements; filing period

Every agent of a foreign principal who has filed a registration statement required by subsection (a) of this section shall, within thirty days after the expiration of each period of six months succeeding such filing, file with the Attorney General a supplement thereto under oath, on a form prescribed by the Attorney General, which shall set forth with respect to such preceding six months' period such facts as the Attorney General, having due regard for the national security and the public interest, may deem necessary to make the information required under this section accurate, complete, and current with respect to such period. In connection with the information furnished under clauses (3), (4), (6), and (9) of subsection (a) of this section, the registrant shall give notice to the Attorney General of any changes therein within ten days after such changes occur. If the Attorney General, having due regard for the national security and the public interest, determines that it is necessary to carry out the purposes of this subchapter, he may, in any particular case, require supplements to the registration statement to be filed at more frequent intervals in respect to all or particular items of information to be furnished.

(c) Execution of statement under oath

The registration statement and supplements thereto shall be executed under oath as follows: If the registrant is an individual, by him; if the registrant is a partnership, by the majority of the members thereof; if the registrant is a person other than an

individual or a partnership, by a majority of the officers thereof or persons performing the functions of officers or by a majority of the board of directors thereof or persons performing the functions of directors, if any.

(d) Filing of statement not deemed full compliance nor as preclusion from prosecution

The fact that a registration statement or supplement thereto has been filed shall not necessarily be deemed a full compliance with this subchapter and the regulations thereunder on the part of the registrant; nor shall it indicate that the Attorney General has in any way passed upon the merits of such registration statement or supplement thereto; nor shall it preclude prosecution, as provided for in this subchapter, for willful failure to file a registration statement or supplement thereto when due or for a willful false statement of a material fact therein or the willful omission of a material fact required to be stated therein or the willful omission of a material fact or copy of a material document necessary to make the statements made in a registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

(e) Incorporation of previous statement by reference

If any agent of a foreign principal, required to register under the provisions of this subchapter, has previously thereto registered with the Attorney General under the provisions of section 2386 of Title 18, the Attorney General, in order to eliminate inappropriate duplication, may permit the incorporation by reference in the registration statement or supplements thereto filed hereunder of any information or documents previously filed by such agent of a foreign principal under the provisions of said section.

(f) Exemption by Attorney General

The Attorney General may, by regulation, provide for the exemption--

> **(1)** from registration, or from the requirement of furnishing any of the information required by this section, of any person who is listed as a partner, officer, director, or employee in the registration statement filed by an agent of a foreign principal under this subchapter, and
>
> **(2)** from the requirement of furnishing any of the information required by this section of any agent of a foreign principal,
>
> where by reason of the nature of the functions or activities of such person the Attorney General, having due regard for the national security and the

public interest, determines that such registration, or the furnishing of such information, as the case may be, is not necessary to carry out the purposes of this subchapter.

(g) Electronic filing of registration statements and supplements
A registration statement or supplement required to be filed under this section shall be filed in electronic form, in addition to any other form that may be required by the Attorney General.

22 U.S.C. § 613
§ 613. Exemptions

The requirements of section 612(a) of this title shall not apply to the following agents of foreign principals:

(a) Diplomatic or consular officers
A duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer;

(b) Officials of foreign government
Any official of a foreign government, if such government is recognized by the United States, who is not a public-relations counsel, publicity agent, information-service employee, or a citizen of the United States, whose name and status and the character of whose duties as such official are of public record in the Department of State, while said official is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official;

(c) Staff members of diplomatic or consular officers
Any member of the staff of, or any person employed by, a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel, publicity agent, or information-service employee, whose name and status and the character of whose duties as such member or employee are of public record in the Department of State, while said member or employee is engaged exclusively in the performance of activities which are recognized by the Department of State as being within the scope of the functions of such member or employee;

(d) Private and nonpolitical activities; solicitation of funds
Any person engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest; or (3) in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of subchapter II of chapter 9 of this title, and such rules and regulations as may be prescribed thereunder;

(e) Religious, scholastic, or scientific pursuits
Any person engaging or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts;

(f) Defense of foreign government vital to United States defense
Any person, or employee of such person, whose foreign principal is a government of a foreign country the defense of which the President deems vital to the defense of the United States while, (1) such person or employee engages only in activities which are in furtherance of the policies, public interest, or national defense both of such government and of the Government of the United States, and are not intended to conflict with any of the domestic or foreign policies of the Government of the United States, (2) each communication or expression by such person or employee which he intends to, or has reason to believe will, be published, disseminated, or circulated among any section of the public, or portion thereof, within the United States, is a part of such activities and is believed by such person to be truthful and accurate and the identity of such person as an agent of such foreign principal is disclosed therein, and (3) such government of a foreign country furnishes to the Secretary of State for transmittal to, and retention for the duration of this subchapter by, the Attorney General such information as to the identity and activities of such person or employee at such times as the Attorney General may require. Upon notice to the Government of which such person is an agent or to such person or employee, the Attorney General, having due regard for the public interest and national defense, may, with the approval of the Secretary of State, and shall, at the request of the Secretary of State, terminate in whole or in part the exemption herein of any such person or employee;

(g) Persons qualified to practice law
Any person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or

any agency of the Government of the United States: *Provided,* That for the purposes of this subsection legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record.

(h) Agents of foreign principals

Any agent of a person described in section 611(b)(2) of this title or an entity described in section 611(b)(3) of this title if the agent has engaged in lobbying activities and has registered under the Lobbying Disclosure Act of 1995 in connection with the agent's representation of such person or entity.

22 U.S.C. § 614
§ 614. Filing and labeling of political propaganda

(a) Copies to Attorney General; statement as to places, times, and extent of transmission

Every person within the United States who is an agent of a foreign principal and required to register under the provisions of this subchapter and who transmits or causes to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any informational materials for or in the interests of such foreign principal (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons shall, not later than forty-eight hours after the beginning of the transmittal thereof, file with the Attorney General two copies thereof.

(b) Identification statement

It shall be unlawful for any person within the United States who is an agent of a foreign principal and required to register under the provisions of this subchapter to transmit or cause to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any informational materials for or in the interests of such foreign principal without placing in such informational materials a conspicuous statement that the materials are distributed by the agent on behalf of the foreign principal, and that additional information is on file with the Department of Justice, Washington, District of Columbia. The Attorney General may by rule define what constitutes a conspicuous statement for the purposes of this subsection.

(c) Public inspection
The copies of informational materials required by this subchapter to be filed with the Attorney General shall be available for public inspection under such regulations as he may prescribe.

(d) Library of Congress
For purposes of the Library of Congress, other than for public distribution, the Secretary of the Treasury and the United States Postal Service are authorized, upon the request of the Librarian of Congress, to forward to the Library of Congress fifty copies, or as many fewer thereof as are available, of all foreign prints determined to be prohibited entry under the provisions of section 1305 of Title 19 and of all foreign prints excluded from the mails under authority of section 1717 of Title 18. Notwithstanding the provisions of section 1305 of Title 19 and of section 1717 of Title 18, the Secretary of the Treasury is authorized to permit the entry and the United States Postal Service is authorized to permit the transmittal in the mails of foreign prints imported for governmental purposes by authority or for the use of the United States or for the use of the Library of Congress.

(e) Information furnished to agency or official of United States Government
It shall be unlawful for any person within the United States who is an agent of a foreign principal required to register under the provisions of this subchapter to transmit, convey, or otherwise furnish to any agency or official of the Government (including a Member or committee of either House of Congress) for or in the interests of such foreign principal any political propaganda or to request from any such agency or official for or in the interests of such foreign principal any information or advice with respect to any matter pertaining to the political or public interests, policies or relations of a foreign country or of a political party or pertaining to the foreign or domestic policies of the United States unless the propaganda or the request is prefaced or accompanied by a true and accurate statement to the effect that such person is registered as an agent of such foreign principal under this subchapter.

(f) Appearances before Congressional committees
Whenever any agent of a foreign principal required to register under this subchapter appears before any committee of Congress to testify for or in the interests of such foreign principal, he shall, at the time of such appearance, furnish the committee with a copy of his most recent registration statement filed with the Department of Justice as an agent of such foreign principal for inclusion in the records of the committee as part of his testimony.

22 U.S.C. § 615
§ 615. Books and records

Every agent of a foreign principal registered under this subchapter shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions of this subchapter, in accordance with such business and accounting practices, as the Attorney General, having due regard for the national security and the public interest, may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this subchapter and shall preserve the same for a period of three years following the termination of such status. Until regulations are in effect under this section every agent of a foreign principal shall keep books of account and shall preserve all written records with respect to his activities. Such books and records shall be open at all reasonable times to the inspection of any official charged with the enforcement of this subchapter. It shall be unlawful for any person willfully to conceal, destroy, obliterate, mutilate, or falsify, or to attempt to conceal, destroy, obliterate, mutilate, or falsify, or to cause to be concealed, destroyed, obliterated, mutilated, or falsified, any books or records required to be kept under the provisions of this section.

22 U.S.C. § 616
§ 616. Public examination of official records; transmittal of records and information

(a) Permanent copy of statement; inspection; withdrawal
The Attorney General shall retain in permanent form one copy of all registration statements furnished under this subchapter, and the same shall be public records and open to public examination and inspection at such reasonable hours, under such regulations, as the Attorney General may prescribe, and copies of the same shall be furnished to every applicant at such reasonable fee as the Attorney General may prescribe. The Attorney General may withdraw from public examination the registration statement and other statements of any agent of a foreign principal whose activities have ceased to be of a character which requires registration under the provisions of this subchapter.
(b) Secretary of State
The Attorney General shall, promptly upon receipt, transmit one copy of every registration statement filed hereunder and one copy of every amendment or

supplement thereto filed hereunder, to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General so to transmit such copy shall not be a bar to prosecution under this subchapter.

(c) Executive departments and agencies; Congressional committees
The Attorney General is authorized to furnish to departments and agencies in the executive branch and committees of the Congress such information obtained by him in the administration of this subchapter, including the names of registrants under this subchapter, copies of registration statements, or parts thereof, or other documents or information filed under this subchapter, as may be appropriate in the light of the purposes of this subchapter.

(d) Public database of registration statements and updates

(1) In general
The Attorney General shall maintain, and make available to the public over the Internet, without a fee or other access charge, in a searchable, sortable, and downloadable manner, to the extent technically practicable, an electronic database that--

(A) includes the information contained in registration statements and updates filed under this subchapter; and

(B) is searchable and sortable, at a minimum, by each of the categories of information described in section 612(a) of this title.

(2) Accountability
The Attorney General shall make each registration statement and update filed in electronic form pursuant to section 612(g) of this title available for public inspection over the Internet as soon as technically practicable after the registration statement or update is filed.

22 U.S.C. § 617
§ 617. Liability of officers

Each officer, or person performing the functions of an officer, and each director, or person performing the functions of a director, of an agent of a foreign principal which is not an individual shall be under obligation to cause such agent to execute

and file a registration statement and supplements thereto as and when such filing is required under subsections (a) and (b) of section 612 of this title and shall also be under obligation to cause such agent to comply with all the requirements of sections 614(a) and (b) and 615 of this title and all other requirements of this subchapter. Dissolution of any organization acting as an agent of a foreign principal shall not relieve any officer, or person performing the functions of an officer, or any director, or person performing the functions of a director, from complying with the provisions of this section. In case of failure of any such agent of a foreign principal to comply with any of the requirements of this subchapter, each of its officers, or persons performing the functions of officers, and each of its directors, or persons performing the functions of directors, shall be subject to prosecution therefor.

22 U.S.C. § 618
§ 618. Enforcement and penalties

(a) Violations; false statements and willful omissions
Any person who--

> **(1)** willfully violates any provision of this subchapter or any regulation thereunder, or
>
> **(2)** in any registration statement or supplement thereto or in any other document filed with or furnished to the Attorney General under the provisions of this subchapter willfully makes a false statement of a material fact or willfully omits any material fact required to be stated therein or willfully omits a material fact or a copy of a material document necessary to make the statements therein and the copies of documents furnished therewith not misleading, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, except that in the case of a violation of subsection (b), (e), or (f) of section 614 of this title or of subsection (g) or (h) of this section the punishment shall be a fine of not more than $5,000 or imprisonment for not more than six months, or both.

(b) Proof of identity of foreign principal
In any proceeding under this subchapter in which it is charged that a person is an agent of a foreign principal with respect to a foreign principal outside of the United

States, proof of the specific identity of the foreign principal shall be permissible but not necessary.

(c) Removal
Any alien who shall be convicted of a violation of, or a conspiracy to violate, any provision of this subchapter or any regulation thereunder shall be subject to removal pursuant to chapter 4 of title II of the Immigration and Nationality Act.

(d) Repealed. Pub.L. 104-65, § 9(8)(B), Dec. 19, 1995, 109 Stat. 700

(e) Continuing offense
Failure to file any such registration statement or supplements thereto as is required by either section 612(a) or section 612(b) of this title shall be considered a continuing offense for as long as such failure exists, notwithstanding any statute of limitation or other statute to the contrary.

(f) Injunctive remedy; jurisdiction of district court
Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this subchapter, or regulations issued thereunder, or whenever any agent of a foreign principal fails to comply with any of the provisions of this subchapter or the regulations issued thereunder, or otherwise is in violation of the subchapter, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts or enjoining such person from continuing to act as an agent of such foreign principal, or for an order requiring compliance with any appropriate provision of the subchapter or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper.

(g) Deficient registration statement
If the Attorney General determines that a registration statement does not comply with the requirements of this subchapter or the regulations issued thereunder, he shall so notify the registrant in writing, specifying in what respects the statement is deficient. It shall be unlawful for any person to act as an agent of a foreign principal at any time ten days or more after receipt of such notification without filing an amended registration statement in full compliance with the requirements of this subchapter and the regulations issued thereunder.
(h) Contingent fee arrangement

It shall be unlawful for any agent of a foreign principal required to register under this subchapter to be a party to any contract, agreement, or understanding, either express or implied, with such foreign principal pursuant to which the amount or payment of the compensation, fee, or other remuneration of such agent is contingent in whole or in part upon the success of any political activities carried on by such agent.

22 U.S.C. § 619
§ 619. Territorial applicability of subchapter

This subchapter shall be applicable in the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States.

22 U.S.C. § 620
§ 620. Rules and regulations

The Attorney General may at any time make, prescribe, amend, and rescind such rules, regulations, and forms as he may deem necessary to carry out the provisions of this subchapter.

22 U.S.C. § 621
§ 621. Reports to Congress

The Attorney General shall every six months report to the Congress concerning administration of this subchapter, including registrations filed pursuant to the subchapter, and the nature, sources and content of political propaganda disseminated and distributed.

28 U.S.C. § 2342
§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of--

(1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47;

47 U.S.C. § 307
§ 307. Licenses

* * *

(b) Allocation of facilities
In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

47 U.S.C. § 310
§ 310. License ownership restrictions

(a) Grant to or holding by foreign government or representative
The station license required under this chapter shall not be granted to or held by any foreign government or the representative thereof.

(b) Grant to or holding by alien or representative, foreign corporation, etc.
No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by--

(1) any alien or the representative of any alien;

(2) any corporation organized under the laws of any foreign government;

(3) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;
(4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a

foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

47 U.S.C. § 317
§ 317. Announcement of payment for broadcast

(a) Disclosure of person furnishing

(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

(b) Disclosure to station of payments

In any case where a report has been made to a radio station, as required by section 508 of this title, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

(c) Acquiring information from station employees

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.

(d) Waiver of announcement
The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement.

(e) Rules and regulations
The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

47 U.S.C. § 402
§ 402. Judicial review of Commission's orders and decisions

(a) Procedure
Any proceeding to enjoin, set aside, annul, or suspend any order of the Commission under this chapter (except those appealable under subsection (b) of this section) shall be brought as provided by and in the manner prescribed in chapter 158 of Title 28.

47 U.S.C. § 508
§ 508. Disclosure of payments to individuals connected with broadcasts

(a) Payments to station employees
Subject to subsection (d), any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

(b) Production or preparation of programs
Subject to subsection (d), any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.

(c) Supplying of program or program matter
Subject to subsection (d), any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

(d) Waiver of announcements under section 317(d)
The provisions of this section requiring the disclosure of information shall not apply in any case where, because of a waiver made by the Commission under section 317(d) of this title, an announcement is not required to be made under section 317 of this title.

(e) Announcement under section 317 as sufficient disclosure
The inclusion in the program of the announcement required by section 317 of this title shall constitute the disclosure required by this section.
(f) "Service or other valuable consideration" defined
The term "service or other valuable consideration" as used in this section shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast, or for use on a program which is intended for broadcasting over any radio station, unless it is so furnished in consideration for an identification in such broadcast or in such program of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property in such broadcast or such program.

(g) Penalties
Any person who violates any provision of this section shall, for each such violation, be fined not more than $10,000 or imprisoned not more than one year, or both.

47 U.S.C. § 624
§ 624. Disclosure requirements for United States-based foreign media outlets

(a) Reports by outlets to Commission
Not later than 60 days after August 13, 2018, and not less frequently than every 6 months thereafter, a United States-based foreign media outlet shall submit to the Commission a report that contains the following information:

(1) The name of such outlet.

(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.

(b) Reports by Commission to Congress
Not later than 90 days after August 13, 2018, and not less frequently than every 6 months thereafter, the Commission shall transmit to Congress a report that summarizes the contents of the reports submitted by United States-based foreign media outlets under subsection (a) during the preceding 6-month period.

(c) Public availability
The Commission shall make publicly available on the internet website of the Commission each report submitted by a United States-based foreign media outlet under subsection (a) not later than the earlier of--

(1) the date that is 30 days after the outlet submits the report to the Commission; or

(2) the date on which the Commission transmits to Congress under subsection (b) the report covering the 6-month period during which the report of the outlet was submitted to the Commission under subsection (a).

(d) Definitions
In this section:

(1) Foreign principal
The term "foreign principal" has the meaning given such term in section 1(b)(1) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(b)(1)).
(2) United States-based foreign media outlet
The term "United States-based foreign media outlet" means an entity that--

(A) produces or distributes video programming (as defined in section 522 of this title) 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 (as defined in paragraph (1)) for purposes of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.) but for section 1(d) of such Act (22 U.S.C. 611(d)).

47 C.F.R. § 73.1212

§ 73.1212 Sponsorship identification; list retention; related requirements.

<For compliance date information relating to added subsections (j) and (k), see 86 FR 32221.>

(a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce:

(1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and

(2) By whom or on whose behalf such consideration was supplied: *Provided, however*, That "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

(i) For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for."

(ii) In the case of any television political advertisement concerning candidates for public office, the sponsor 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.

(b) The licensee of each broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report has been made to a broadcast station as required by section 507 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such broadcast station, an appropriate announcement shall be made by such station.

(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter: *Provided, however*, That in the case of any broadcast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified under § 73.3526. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the

originating station maintains its public inspection file under § 73.3526. Such lists shall be kept and made available for a period of two years.

(f) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purpose of this section and only one such announcement need be made at any time during the course of the broadcast.

(g) The announcement otherwise required by section 317 of the Communications Act of 1934, as amended, is waived with respect to the broadcast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever sponsorship announcements are omitted pursuant to this paragraph, the licensee shall observe the following conditions:

(1) Maintain a list showing the name, address, and (where available) the telephone number of each advertiser;

(2) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list. Such list must be retained for a period of two years after broadcast.

(h) Any announcement required by section 317(b) of the Communications Act of 1934, as amended, is waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

Note: The waiver heretofore granted by the Commission in its Report and Order adopted November 16, 1960 (FCC 60–1369; 40 F.C.C. 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when § 73.654, the predecessor television rule, went into effect.

(i) Commission interpretations in connection with the provisions of the sponsorship identification rules are contained in the Commission's Public Notice, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 F.C.C. 141), as modified by Public Notice, dated April 21, 1975 (FCC 75–418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports.

(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 t erm 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.