

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

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

REPORT AND ORDER

Adopted: April 22, 2021

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

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I. INTRODUCTION

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

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

(continued....)

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

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

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

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

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

<sup>3</sup> See 47 U.S.C. § 310(a).

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

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

<sup>6</sup> See NPR Comments at 2-4.

<sup>7</sup> 22 U.S.C. § 611.

<sup>8</sup> 47 U.S.C. § 624.

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

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

## II. BACKGROUND

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

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<sup>9</sup> See Joe Chiodo, *Russian Radio Takes to Kansas City Airwaves*, KCTV News 5 (Feb. 13, 2020), [https://www.kctv5.com/news/local\\_news/russian-radio-takes-to-kc-airwaves/article\\_638da88c-4eae-11ea-b931-ef157bacebf.html](https://www.kctv5.com/news/local_news/russian-radio-takes-to-kc-airwaves/article_638da88c-4eae-11ea-b931-ef157bacebf.html) (describing how a midwestern station’s “hope” is that the public “stumble[s] upon” Russia radio carried on three Kansas City radio stations during the “morning drive and get[s] hooked,” while critics claim the radio show “is an operation run out of Moscow” airing “propaganda and the goal is to convince you America isn’t good” – once it is known there is “a Russian radio station spinning the news in a negative way,” listeners “may greet all media with greater skepticism”); Letter from Rep. Anna Eshoo, United States House of Representatives, to Ajit Pai, Chairman, Federal Communications Commission (FCC) (Apr. 8, 2020) (supporting the start of a rulemaking to modify the Commission’s sponsorship identification rules to require the identification of foreign government “propaganda”); see also Letter from Rep. Frank Pallone, Jr. et al., U.S. House of Representatives to Ajit Pai, Chairman, FCC (May 22, 2018) (on file at <https://docs.fcc.gov/public/attachments/DOC-351492A2.pdf>); Letter from Rep. Anna Eshoo, et. al., U.S. House of Representatives, to Ajit Pai, Chairman, FCC (Feb. 13, 2020) (on file at <https://docs.fcc.gov/public/attachments/DOC-363492A1.pdf>) (regarding reports about Russian government programming being broadcast over radio stations in Washington, DC, and Kansas City without disclosing the source of the programming); Letter from Rep. Anna Eshoo, U.S. House of Representatives, to Ajit Pai, Chairman, FCC (Jan. 30, 2018) (on file at <https://docs.fcc.gov/public/attachments/DOC-350469A2.pdf>).

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

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

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

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

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

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

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

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

<sup>13</sup> Section 317 provided:

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

48 Stat. at 1089.

<sup>14</sup> *NPRM*, 35 FCC Rcd at 12101-05, paras. 5-10.

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

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

<sup>17</sup> *NPRM*, 35 FCC Rcd at 12100 n.4, 12105 n.40.

<sup>18</sup> *Id.* at 12105-06, para. 12.

<sup>19</sup> *Id.* at 12100, para. 2.

<sup>20</sup> *Id.* at 12106, para. 13.

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

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

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

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

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 12117-18, paras. 34-35

<sup>25</sup> *Id.* at 12118, para 35.

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

<sup>27</sup> *Id.* at 12113-14, paras. 27-28.

<sup>28</sup> *Id.* at 12115-16, para. 32.

<sup>29</sup> *Id.* at 12121-23, para. 47.

<sup>30</sup> *Id.* at 12123-26, paras. 48-51.

<sup>31</sup> *Id.* at 12126-27, paras. 52-54.

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

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

### III. DISCUSSION

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

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

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<sup>32</sup> *Id.* at 12119-20, para. 42.

<sup>33</sup> *Id.* at 12117-20, paras. 34-42.

<sup>34</sup> *Id.* at 12120-21, paras. 43-45.

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

<sup>36</sup> See APTS Comments at ii; NAB Comments at 2; NPR Comments at i; REC Comments at 1-2; NCTA Reply at 2.

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

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

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

- 1) A “government of a foreign country” as defined by FARA;<sup>38</sup>
- 2) A “foreign political party” as defined by FARA;<sup>39</sup>
- 3) An individual or entity registered as an “agent of a foreign principal,” under section 611(c) of FARA,<sup>40</sup> whose “foreign principal” is a “government of a foreign country,” a “foreign

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<sup>38</sup> 22 U.S.C. § 611(e). FARA defines a “government of a foreign country” as:

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

*Id.*

<sup>39</sup> *Id.* § 611(f). FARA defines a “foreign political party” as:

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

*Id.*

<sup>40</sup> *Id.* § 611(c). Section 611(c) of FARA provides that, except as provided in subsection (d) of this section, the term “agent of a foreign principal” means:

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

*Id.*

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

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

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political party,” or is directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a “government of a foreign country” or by a “foreign political party” as defined by FARA, and that is acting in its capacity as an agent of such “foreign principal;”<sup>41</sup>

- 4) An entity meeting the definition of a “U.S.-based foreign media outlet” pursuant to section 722 of the Act that has filed a report with the Commission.<sup>42</sup>

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

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

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

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

<sup>41</sup> *Id.* § 611(b)(1). Section 611(b)(1) of *FARA* provides that “[t]he term ‘foreign principal’ includes a government of a foreign country and a foreign political party.” *Id.*

<sup>42</sup> 47 U.S.C. § 624.

<sup>43</sup> See *Meese v. Keene*, 481 U.S. 465, 469 (1987) (quoting the legislative history of *FARA*).

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

<sup>45</sup> 22 U.S.C. § 611(e). See *supra* note 38 (providing the text of section 611(e) of *FARA*).

<sup>46</sup> 22 U.S.C. §§ 611-21.



furthering our goal of increasing transparency when such agents may be seeking to persuade the audiences of broadcast stations.<sup>47</sup>

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

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

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

<sup>48</sup> See 22 U.S.C. § 611(c) (stating FARA’s definition of “agent of a foreign principal”).

<sup>49</sup> *Id.* § 612.

<sup>50</sup> *Id.* § 611(b)(1).

<sup>51</sup> *Id.* §§ 611(e) and (f).

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

<sup>53</sup> See 22 U.S.C. § 612(a)(3).

government of a foreign country or foreign political party.<sup>54</sup> This information is readily ascertainable by those who examine the FARA database.<sup>55</sup>

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

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

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<sup>54</sup> For example, Rossiya Segodnya, a listed foreign principal, may not fall within the FARA definition of “government of a foreign country” but its agent’s FARA filings indicate that Rossiya Segodnya is financed by the Russian government and therefore its agent would qualify as a foreign governmental entity under our rules.

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

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

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

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

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

<sup>59</sup> 47 U.S.C. § 624.

<sup>60</sup> 47 U.S.C. § 624(d)(1); *see also* 22 U.S.C. § 611(b)(1).

identification rules to include both a “government of a foreign country” and “foreign political party,” as those terms are defined by FARA, within our definition of “foreign governmental entity.”<sup>61</sup>

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

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

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

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

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

<sup>62</sup> *NPRM*, 35 FCC Rcd at 12113, para. 25.

<sup>63</sup> *See* APTS Comments at 18-19.

<sup>64</sup> *Id.*

<sup>65</sup> *See id.*

<sup>66</sup> *NPRM*, 35 FCC Rcd at 12113, para. 25.

<sup>67</sup> *See* 22 U.S.C. § 4301.

<sup>68</sup> *See supra* note 47.

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

### **B. Scope of Foreign Programming that Requires a Disclosure**

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

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

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<sup>69</sup> APTS Comments at 15-16. *See also* NAB Reply at 8-9 (supporting APTS’s proposal).

<sup>70</sup> APTS Comments at 15-16.

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

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

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

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

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

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

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

<sup>75</sup> *Id.*

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

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

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

<sup>79</sup> The Commission refers applications involving foreign ownership and investment to executive branch agencies for their input on any national security, law enforcement, foreign policy, and trade policy concerns. The national security and law enforcement agencies (the Department of Defense, Department of Homeland Security and Department of Justice, informally known as Team Telecom), generally initiate review of a referred application by sending the applicant a set of questions seeking further information. Upon completion of its review, Team Telecom advises the Commission of its recommendation, and the Commission, while according an appropriate level of

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complete prohibition on a foreign government or its representatives' holding a U.S. broadcast license, some foreign governmental actors or their agents appear nonetheless to be programming stations that they otherwise would not be able to own, as detailed in the *NPRM*.<sup>80</sup> When they do so, the American public and the Commission may not be aware that a foreign governmental entity has leased the time on the station and is programming the station.

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

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

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

<sup>80</sup> *See, e.g., NPRM*, 35 FCC Rcd at 12100, 12106, nn.4, 42.

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

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

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

<sup>84</sup> Our adoption of the disclosure obligation in the context of TBA/LMAs is consistent with Commission precedent, including the seminal 1963 guidance regarding sponsorship identification provided when the Commission implemented Congress’s 1960 amendments to section 317 of the Act. The Commission’s 1963 order and an accompanying public notice that laid out the new rules provided an example of the application of sponsorship identification requirements to the time brokerage situation. *See Amendment of Sections 3.119, 3.289, 3.654 and 3.789 of the Commission’s Rules*, Report and Order, 34 FCC 829, 847-48, paras. 54-55 (May 1, 1963); *Amendment of Sections 73.119, 73.289, 73.654, 73.789 and 76.221 of the Commission’s Rules, Report and Order*, 52 FCC 2d 701 (1975); *Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141 (1963) (containing thirty-six illustrative examples of how the statutory provisions and new rules were to be applied). Even today the Commission’s rules specifically reference these interpretations. *See* 47 CFR § 73.1212(i). Pursuant to that example, a film that required a sponsorship disclosure was not transmitted by the licensee but rather was included within a time slot that had been sold to a sponsor (other than the supplier of the film) and contained proper identification of

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form advertising time constitutes a lease of airtime for these purposes.<sup>85</sup> Our action here today is focused on agreements by which a third party controls and programs a discrete block of time on a broadcast station. Ultimately, we believe that requiring a disclosure to inform the audience of the source of the programming whenever a foreign governmental entity provides programming to a station for broadcast pursuant to the lease of time is wholly consistent with sections 317(a)(1) and (2) of the Act.

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

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

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

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

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

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

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

<sup>89</sup> *NPRM*, 35 FCC Red at 12115-16, paras. 31-32.

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

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

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

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

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

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

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

<sup>93</sup> *See infra* paras. 38-46 at Section C.

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



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

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

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<sup>95</sup> *NPRM*, 35 FCC Rcd at 12117, paras. 32-33.

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

<sup>97</sup> *NPRM*, 35 FCC Rcd at 12115-17, paras. 30-33.

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

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

programming that inadvertently might be swept into the ambit our new foreign sponsorship identification rules.<sup>100</sup>

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

### C. Reasonable Diligence

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

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

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

<sup>101</sup> 47 U.S.C. § 508(a)-(c).

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

<sup>103</sup> *See infra* paras. 38-46 at Section C.

<sup>104</sup> *NPRM*, 35 FCC Rcd at 12124, para. 49.

<sup>105</sup> 47 U.S.C. § 317(c).

<sup>106</sup> *NPRM*, 35 FCC Rcd at 12121-23, para. 47.

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

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

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

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

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

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

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

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<sup>107</sup> 47 U.S.C. § 317(c).

<sup>108</sup> *NPRM*, 35 FCC Rcd at 12124, para. 49.

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

<sup>110</sup> *See supra* at paras. 14-20 and *infra* at Appendix A (defining the term “foreign governmental entity”).

ascertain whether the programming to be aired will require a disclosure under the rules we adopt herein.<sup>111</sup>

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

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

<sup>112</sup> *See* 47 U.S.C. § 508(b).

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

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

<sup>115</sup> 47 U.S.C. § 317(c).

<sup>116</sup> *See supra* note 52.

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

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

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

<sup>118</sup> 22 U.S.C. § 611(e).

<sup>119</sup> *Id.* § 611(f).

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>128</sup> See Joint Affiliates *Ex Parte* Letter at 1.

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

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

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

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

<sup>131</sup> See NAB Comments at 14-17; NPR Comments at 5-8; NAB Reply at 5-6.

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

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

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

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

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

<sup>133</sup> 47 U.S.C. § 508(b).

<sup>134</sup> *Id.* § 508(c).

<sup>135</sup> *NPRM*, 35 FCC Rcd at 12125-26, para. 51.

<sup>136</sup> *Id.*

<sup>137</sup> 47 U.S.C. §§ 508(b)-(c).

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

<sup>139</sup> Section 507(a) of the Act states that “any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee,

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

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

#### **D. Contents and Frequency of Required Disclosure of Foreign Sponsorship**

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

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

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

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

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

<sup>142</sup> See NAB Comments at 21.

<sup>143</sup> See 47 CFR § 73.1212(a)(1).

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

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programming that was provided by a foreign governmental entity,<sup>145</sup> we require a disclosure identifying that fact and the origin of the programming as follows:

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

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

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

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

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

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

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

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

<sup>148</sup> See 22 U.S.C. § 614(b).

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

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

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

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

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<sup>150</sup> The *NPRM* sought comment on this format, but no commenters addressed this point. *NPRM*, 35 FCC Rcd at 12118, para. 38.

<sup>151</sup> 47 CFR § 73.1212(a)(2)(ii).

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

<sup>153</sup> *NPRM*, 35 FCC Rcd at 12119, at para. 40.

<sup>154</sup> 47 CFR § 73.1212(d).

<sup>155</sup> *Id.*

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

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

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

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

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

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

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

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

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

<sup>160</sup> *NPRM*, 35 FCC Rcd at 12120, para. 43.

<sup>161</sup> *Id.* at 12121, para. 46.

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

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

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

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

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

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

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<sup>165</sup> See *NPRM*, 35 FCC Rcd at 12120-21, para. 45.

<sup>166</sup> NAB Comments at 19-20.

<sup>167</sup> *Id.*

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

<sup>169</sup> See NAB Comments at 18-19. See also 47 CFR §73.1212(e).

<sup>170</sup> See *NPRM*, 35 FCC Rcd at 12120, para. 44; NAB Comments at 18-19.

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

### E. Concerns About Overlap with Other Statutory or Regulatory Requirements

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

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

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

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

<sup>174</sup> NAB Comments at 5-6; NCTA Reply at 2.

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

<sup>176</sup> 22 U.S.C. § 614 (b) provides that:

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

*Id.*

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

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

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

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

#### **F. Section 325(c) Permits**

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

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

<sup>179</sup> *See NPRM*, 35 FCC Rcd at 12117, para. 34.

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

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

<sup>182</sup> *See* NPR Comments at 2-4.

<sup>183</sup> REC Reply at 2.



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

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

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

### **G. First Amendment Considerations**

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

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<sup>184</sup> *Wrather-Alvarez Broadcasting, Inc. v. F.C.C.*, 248 F.2d 646, 651 (D.C. Cir. 1957). See also Remote Control Border Stations: Hearing before the Comm. on Merchant Marine, Radio, and Fisheries at 7, 14, 73d Cong. 2 (1934) (Statement of C. B. Jolliffe, Chief Engineer Federal Radio Commission),

[ftp://ftp.fcc.gov/pub/Bureaus/OSEC/library/legislative\\_histories/50.pdf](http://ftp.fcc.gov/pub/Bureaus/OSEC/library/legislative_histories/50.pdf). Section 325(c) permit applications are subject to the requirements of section 309 (applicable to applications for U.S. station licenses). 47 U.S.C. § 325(d).

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

(continued....)

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

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

(Continued from previous page) \_\_\_\_\_

substance and value of foreign government-provided programming, thus promoting an informed public and improving the quality of public discourse.

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

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

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

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

<sup>190</sup> *Supra*, Sections III.B.-C.

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

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

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

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

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<sup>191</sup> *Supra*, Section III.B.

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

<sup>193</sup> *Supra*, para. 49.

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

<sup>195</sup> NAB *Ex Parte* Letter at 1.

<sup>196</sup> Fox *Ex Parte* Letter at 1.

<sup>197</sup> NAB Comments at 5-6. *See also*, NAB Reply at 7.

website to review.<sup>198</sup> For these reasons we conclude that our modified foreign sponsorship identification rules comply with the First Amendment.<sup>199</sup>

#### H. Cost-Benefit Analysis

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

#### IV. PROCEDURAL MATTERS

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

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<sup>198</sup> See *supra* para. 49 and note 149.

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

<sup>200</sup> *NPRM*, 35 FCC Rcd at 12130, paras. 61-62.

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

<sup>202</sup> See, e.g., *supra* note 9. See generally United States Department of State, Global Engagement Center, GEC Special Report: Pillars of Russia’s Disinformation and Propaganda Ecosystem (2020), [https://www.state.gov/wp-content/uploads/2020/08/Pillars-of-Russia%E2%80%99s-Disinformation-and-Propaganda-Ecosystem\\_08-04-20.pdf](https://www.state.gov/wp-content/uploads/2020/08/Pillars-of-Russia%E2%80%99s-Disinformation-and-Propaganda-Ecosystem_08-04-20.pdf).

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

to the RFA,<sup>204</sup> the Commission's Final Regulatory Flexibility Certification relating to this Report and Order is attached as Appendix B.

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

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

## V. ORDERING CLAUSES

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

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

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>204</sup> *See* 5 U.S.C. § 604.

**APPENDIX A****Final Rules**

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

**PART 73 – RADIO BROADCAST SERVICE**

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

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

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

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

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

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

- iii. Inquiring of the lessee whether the lessee knows if anyone involved in the production or distribution of the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;
  - iv. Independently confirming the lessee's status, by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports, if the lessee states that it does not fall within the definition of "foreign governmental entity" and that there is no separate need for a disclosure because no one further back in the chain of producing/transmitting the programming falls within the definition of "foreign governmental entity" and has provided an inducement to air the programming; and
  - v. Memorializing the above-listed inquiries to track compliance therewith and retaining such documentation in the licensee's records for either the remainder of the then-current license term or one year, whichever is longer, so as to respond to any future Commission inquiry.
- 3) In the case of any video programming, the foreign governmental entity and the country represented shall be identified with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.
  - 4) At a minimum, the required announcement shall be made at both the beginning and conclusion of the programming. For programming of greater than sixty minutes in duration, an announcement shall be made at regular intervals during the broadcast, but no less frequently than once every sixty minutes.
  - 5) Where the primary language of the programming is other than English, the disclosure statement shall be made in the primary language of the programming. If the programming contains a "conspicuous statement" pursuant to the Foreign Agents Registration Act of 1938 (22 U.S.C. § 614(b)), and such conspicuous statement is in a language other than English so as to conform to the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611 et. seq.), an additional disclosure in English is not needed.
  - 6) A station shall place copies of the disclosures required by paragraph (j) and the name of the program to which the disclosures were appended in its online public inspection file on a quarterly basis in a standalone folder marked as "Foreign Government-Provided Programming Disclosures." The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the online public inspection file in the same manner.
- (k) The requirements in paragraph (j) of this section shall apply to programs permitted to be delivered to foreign broadcast stations under an authorization pursuant to the section 325(c) of the Communications Act of 1934 (47 U.S.C. § 325(c)) if any part of the material has been sponsored, paid for, or furnished for free as an inducement to air on the foreign station by a foreign governmental entity. A section 325(c) permit holder shall place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Bureau's public filing System (IBFS) under the relevant IBFS section 325(c) permit file. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the IBFS in the same manner.
- (l) Paragraphs (j) and (k) of this section contain information-collection and recordkeeping requirements. Compliance with paragraphs (j) and (k) of this section shall not be required until after review by the Office of Management and Budget. The Commission will publish a document

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

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

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

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

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



## APPENDIX B

## Final Regulatory Flexibility Act Analysis

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

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

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

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

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

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

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> 47 U.S.C. § 317(c).

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

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

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

- 1) A “government of a foreign country” as defined by FARA;<sup>7</sup>
- 2) A “foreign political party” as defined by FARA;
- 3) An individual or entity registered as an “agent of a foreign principal,” under section 611(c) of FARA, whose “foreign principal” is a “government of a foreign country,” a “foreign political party,” or is directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a “government of a foreign country” or by a “foreign political party” as defined by FARA, and that is acting in its capacity as an agent of such “foreign principal;”
- 4) An entity meeting the definition of a “U.S.-based foreign media outlet” pursuant to section 722 of the Act that has filed a report with the Commission.

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

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

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

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

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

- (1) Inform the lessee of the foreign sponsorship disclosure requirement;
- (2) Inquire of the lessee whether it falls into any of the categories that qualify it as a “foreign governmental entity”;
- (3) Inquire of the lessee whether it knows if anyone further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a

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<sup>6</sup> 22 U.S.C. § 611 *et seq.*

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

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

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

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

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

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

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

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<sup>8</sup> The *NPRM* sought comment on this format, but no commenters addressed this point. *NPRM*, 35 FCC Rcd at 12118, para. 38.

<sup>9</sup> 47 CFR § 73.1212(d).

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

<sup>11</sup> This requirement does not apply if a station has no existing obligation to maintain an OPIF.

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

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

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

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

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

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

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

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

<sup>13</sup> Licensees may file these data in a format of their choosing until the Media Bureau issues a standard format for these data filings.

<sup>14</sup> 5 U.S.C. § 604(a)(3).

<sup>15</sup> 5 U.S.C. § 603(b)(3).

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

(continued....)

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

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

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

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

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

<sup>18</sup> 15 U.S.C. § 632(a)(1)-(2)(A).

<sup>19</sup> U.S. Census Bureau, 2017 NAICS Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>20</sup> *Id.*

<sup>21</sup> 13 CFR § 121.201; 2012 NAICS code 515120.

<sup>22</sup> U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting). [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

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

<sup>24</sup> *Id.*

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

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

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

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

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

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

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<sup>25</sup> *Id.*

<sup>26</sup> U.S. Census Bureau, 2017 NAICS Definitions, “515112 Radio Stations,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>27</sup> 13 CFR § 121.201; 2017 NAICS code 515112.

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

<sup>29</sup> *Id.*

<sup>30</sup> March 31, 2021 Broadcast Station Totals.

<sup>31</sup> *Id.*

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

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

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

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

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

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

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<sup>33</sup> 22 U.S.C. § 611 *et seq.*

<sup>34</sup> 47 U.S.C. § 624(a).

<sup>35</sup> 47 U.S.C § 508(a) and (c).

<sup>36</sup> The *NPRM* sought comment on this format, but no commenters addressed this point. *NPRM*, 35 FCC Rcd at 12118, para. 38.

<sup>37</sup> 47 CFR § 73.1212(a)(2)(ii).

<sup>38</sup> *Id.* § 73.1212(d).

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

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

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

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

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

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<sup>39</sup> See *NPRM*, 35 FCC Rcd at 12119, at para. 41. No commenter objected to the reasoning for this finding.

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

<sup>41</sup> *NPRM*, 35 FCC Rcd at 12121, para. 46.

<sup>42</sup> See 5 U.S.C. § 603(c).



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

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

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

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<sup>43</sup> *NPRM*, 35 FCC Rcd at 12113, para. 25.

<sup>44</sup> NAB *Ex Parte* Letter at 1; Fox *Ex Parte* Letter at 1.

<sup>45</sup> *NPRM*, 35 FCC Rcd at 12130, paras. 61-62.

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

**G. Report to Congress**

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

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

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

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<sup>47</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>48</sup> See *id.* § 604(b).

**STATEMENT OF  
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

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

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

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

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

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

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

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

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

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

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

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

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

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

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