ORAL ARGUMENT SCHEDULED FOR APRIL 12, 2022

No. 21-1171

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF BROADCASTERS; MULTICULTURAL MEDIA, TELECOM AND INTERNET COUNCIL, INC.; NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, *Petitioners*,

v.

FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES OF AMERICA,

Respondents.

On Petitions for Review from the Federal Communications Commission

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FINAL INITIAL JOINT BRIEF OF PETITIONERS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), Petitioners the National Association of Broadcasters, the Multicultural Media, Telecom and Internet Council, Inc. and the National Association of Black Owned Broadcasters submit this certificate as to parties, rulings and related cases.

A. Parties and *Amici*. Because this case involves direct review of a final agency action, the requirement to furnish a list of parties, intervenors and *amici* that appeared below is inapplicable. This case involves the following parties:

(i) Petitioners: National Association of Broadcasters, Multicultural Media, Telecom and Internet Council, Inc. and National Association of Black Owned Broadcasters.

(ii) Respondents: Federal Communications Commission and the United States of America.

(iii) Intervenors and *Amici*: None.

B. Ruling Under Review. The final agency action under review is *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021), (JA200), published in the Federal Register on June 17, 2021. *See* 86 Fed. Reg. 32221.

C. Related Cases. This case has not previously been before this Court or any other court.

CORPORATE DISCLOSURE STATEMENTS

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

NAB is a nonprofit, incorporated association of radio and television stations. It has no parent company, and has not issued any shares or debt securities to the public; thus no publicly held company owns ten percent or more of its stock. As a continuing association of numerous organizations operated for the purpose of promoting the interests of its membership, the coalition is a trade association for purposes of D.C. Circuit Rule 26.1.

MMTC is a national nonprofit and non-partisan organization dedicated to promoting and preserving equal opportunity and civil rights in the mass media, telecommunications and broadband industries. It has no parent company, and has not issued any shares or debt securities to the public; thus no publicly held company owns ten percent or more of its stock.

NABOB is a national not-for-profit organization dedicated to increasing ownership of broadcast radio and television stations and other media by African Americans and other people of color. It has no parent company and has not issued

any shares or debt securities to the public; thus, no publicly held company owns ten percent or more of its stock.

/s/ Stephen B. Kinnaird

Stephen B. Kinnaird
Counsel for Petitioners

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GLOSSARY

APA	Administrative Procedure Act
Act	Communications Act of 1934, as amended
DOJ	Department of Justice
Draft Order	[Draft] Report and Order, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, FCC-CIRC2104-06, MB Docket No. 20-299 (rel. Apr. 1, 2021)
FARA	Foreign Agents Registration Act
FCC or Commission	Federal Communications Commission
JA	Joint Appendix
MMTC	Multicultural Media, Telecom and Internet Council, Inc.
NAB	National Association of Broadcasters
NABOB	National Association of Black Owned Broadcasters
Notice	Notice of Proposed Rulemaking, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, 35 FCC Rcd 12099 (2020)
Order	Report and Order, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, 36 FCC Rcd 7702 (2021)

JURISDICTION

The Order under review, Report and Order, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, 36 FCC Rcd 7702 (2021) (JA200), is a final rule published in the Federal Register on June 17, 2021. *See* 86 Fed. Reg. 32221. The FCC's regulatory jurisdiction rests on the Communications Act of 1934, 47 U.S.C. § 151 *et seq*. This Court's jurisdiction rests on 28 U.S.C. §§ 2342(1) and 2344. The petition for review was timely filed on August 13, 2021.

STATUTES AND REGULATIONS

Relevant statutes and regulations are reprinted in the Addendum to this brief, which is separately bound.

STATEMENT OF THE ISSUES

1. Whether the Order requiring broadcasters to undertake independent investigations of government databases to determine if programming lessors are foreign governmental entities violates 47 U.S.C. § 317(c), which this Court has held permits a broadcaster to rely upon "persons with whom it deals directly" without independent investigation.

2. Whether the Order violates the First Amendment of the Constitution because it is not narrowly tailored to serve a sufficient governmental interest.

3. Whether the Order is arbitrary and capricious in violation of the Administrative Procedure Act.

PRELIMINARY STATEMENT

In its Order, the Commission adopted unnecessary and overly burdensome rules that violate the Communications Act of 1934 ("Act"), the First Amendment and the Administrative Procedure Act ("APA"). The new rules impose on *every broadcaster—i.e.*, thousands of radio and television stations, some operating with very small staffs, which collectively have many thousands of contracts for the lease of time to air programming—onerous requirements to make specified inquiries of *all the entities* with whom broadcasters currently or will in the future have lease agreements, and conduct independent research on all lessors who do not admit to being foreign governmental entities and do not disclose the existence of other foreign governmental entities in the production and distribution chain. The broadcaster must determine whether the sponsor of the programming is a foreign governmental entity or its agent, even if the leased programming (such as an infomercial or local religious broadcast) poses no colorable risk of foreign sponsorship. Broadcasters must conduct those multi-stage inquiries and investigations at the time any lease is initially entered into and repeat them every time that lease (with the same, already-investigated party) is renewed. Stations also must memorialize those inquiries and investigations and maintain that

documentation. These regulations are imposed only upon broadcasters, even though the problem that the Commission purports to address—the failure to identify a foreign government entity as the source of the programming—is almost entirely associated with satellite and cable channels and, above all, with social media and the Internet.

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

The Order also violates the First Amendment of the Constitution, which underscores the need for this Court to adhere to its properly narrow construction of

Section 317(c). The Order compels investigation and speech about third parties, not merely disclosure of the broadcaster's information or transmission of disclosures from the program sponsor. Those requirements should be held to strict scrutiny, but the Order also fails the exacting-scrutiny standard sometimes applied to disclosure requirements. The Order is not narrowly tailored to a sufficiently important governmental interest. It demands investigation into whether *every* program lessor (even local businesses and churches) is a foreign governmental entity registered with the Department of Justice under the Foreign Agents Registration Act ("FARA") or disclosed to the Commission as a U.S.-based foreign media outlet. But the Commission identified only a handful of foreign governmental entities that sponsored broadcast programming without disclosure of the payor's identity, and *none* that were at the time registered under FARA or listed with the Commission. This non-existent problem cannot justify imposing onerous investigative burdens on every single lease, for any amount of airtime, entered into by thousands of local radio and television stations. The Order is certainly not narrowly tailored. The regulations are both overinclusive (applying to a vast number of broadcast leases where there is no risk of foreign governmental sponsorship or misleading the public, such as infomercials and local church services) and underinclusive (applying only to broadcasters and not cable, satellite or social media companies).

Moreover, the Commission could have achieved its objectives by less restrictive means. It could have limited investigative obligations to leases where the broadcaster had a reason to know the sponsor was a foreign governmental entity, or to programming on matters of public controversy. It could have allowed broadcasters simply to rely on the disclosures of lessors, since entities that are in fact registered under FARA or disclosed to the Commission as foreign media outlets are unlikely to misrepresent the relevant facts to stations. For the same reasons, the regulatory overreach of the Order is arbitrary and capricious and in violation of the APA.

Accordingly, Petitioners request that this Court set aside the Order as contrary to the Communications Act, the First Amendment and the APA.

STATEMENT OF THE CASE

The Communications Act of 1934 has long required broadcasters to identify on air the name of the person that has paid for or furnished any matter broadcast by the station. *See* 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212. A broadcaster must "exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement" required. 47 U.S.C. § 317(c).

In addition, FARA, which has been in effect for many decades, promotes transparency so that Americans are aware of foreign governmental attempts to sway their opinions and enables them to make informed decisions about the information they see and hear.[1]

FARA requires certain agents of foreign principals who are engaged in political or other specified activities to make periodic public disclosure of their relationship with the foreign principal, as well as their activities, receipts and disbursements in support of those activities. *See* 22 U.S.C. §§ 611-621. FARA and related regulations promulgated by the Department of Justice include disclosure requirements affecting registrants' dissemination of "informational materials." *Id.* § 614(a)-(b); 28 C.F.R. §§ 5.400, 5.402. Any physical or electronic items an agent disseminates in interstate commerce on behalf of the foreign principal must be labeled with a specific "conspicuous statement" identifying the registrant and its foreign principal and informing audiences that they can obtain more information

[1] *See* DOJ, FARA Homepage, available at: https://www.justice.gov/nsd-fara.

from the DOJ.[2] Copies of these informational materials must also be filed with the DOJ within 48 hours of dissemination. *Id*.[3]

On October 26, 2020, the FCC issued a Notice of Proposed Rulemaking ("Notice") to modify its sponsorship identification rules to require broadcasters to provide new standardized on-air and public inspection file disclosures specifically identifying the foreign government involved in the event they air any programming sourced from certain foreign governmental entities or their representatives. *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, 35 FCC Rcd 12099, ¶¶ 3, 35 (2020), (JA002, JA019-20). The obligations set forth in the proposed rule would be triggered if the sponsor of the content is: 1) a "government of a foreign country" as defined by FARA; 2) a "foreign political party" as defined by FARA; 3) an entity or individual registered as an "agent of a foreign principal" under FARA, whose "foreign principal" has the meaning given such term in Section 611(b)(1) of FARA

[2] The conspicuous statement required is as follows: "This material is distributed by (name of registrant) on behalf of (name of foreign principal). Additional information is available at the Department of Justice, Washington, DC." DOJ, FARA Frequently Asked Questions, available at: https://www.justice.gov/nsd-fara/frequently-asked-questions (citing 22 U.S.C. § 614(b)).

[3] *See also* DOJ, *FARA Frequently Asked Questions*, available at: https://www.justice.gov/nsd-fara/frequently-asked-questions (discussing how to file copies of informational materials shared via radio and television broadcasts, other video, the web and social media).

and that is acting in its capacity as an agent of such "foreign principal"; 4) an entity designated as a "foreign mission" under the Foreign Missions Act; or 5) an entity meeting the definition of a "U.S. based foreign media outlet" pursuant to Section 722 of the Communications Act that has filed a report with the Commission. *Id.* ¶ 14, (JA008). The Notice did not propose any similar requirements for foreign-sponsored programming appearing on cable and satellite television, satellite radio or online platforms (or seek comment on whether it would have authority to adopt rules for non-broadcast platforms).

The Notice further proposed that to meet the "reasonable diligence" standard set forth in Section 317(c) of the Communications Act, a broadcaster would need to, at a minimum: 1) inquire of the programming supplier whether it qualified as a "foreign governmental entity"; and 2) independently review the DOJ's FARA database and the FCC's list of U.S.-based foreign media outlets. *Id.* ¶ 47, (JA023-25). Broadcasters explained in comments that the proposal was overbroad and threatened to sweep in innocuous programming not intended to influence the American public, and that such overbreadth, coupled with the fact that only broadcasters would be subject to these requirements, would chill protected speech

and unduly encroach upon First Amendment interests.[4] Broadcasters also explained that the proposed reasonable diligence standard would exceed the FCC's statutory authority, run afoul of the U.S. Court of Appeals for the D.C. Circuit's precedent in *Loveday*, and impose an unreasonable burden on broadcasters who would be forced to invest significant time and resources hiring and training employees on the required diligence steps.[5]

Broadcasters also discussed the practical challenges of conducting research in the FARA database, citing the changing content of the database, the burdens of training staff, and the fact that the database "was not designed to serve this purpose so the user interface does not facilitate relevant searches."[6] Although the statute does not permit the Commission to impose any form of independent investigation on licensees, straightforward or not, the investigation into a possible foreign

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[4] *See* Comments of NAB, MB Docket No. 20-299, at 2, 8-13 (Dec. 28, 2020) ("NAB Comments"), (JA072, JA078-83); Comments of National Public Radio, Inc., MB Docket No. 20-299, at 8-9 (Dec. 28, 2020) ("NPR Comments), (JA105-06); Comments of America's Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS") (collectively, "PTV"), MB Docket No. 20-299, at 8 (Dec. 23, 2020) ("PTV Comments"), (JA056); Reply Comments of NAB, MB Docket No. 20-299, at 4-5 (Jan. 25, 2021) ("NAB Reply Comments"), (JA118-19).

[5] *See* NAB Comments at 14-17, (JA084-87); NAB Reply Comments at 5-7, (JA119-21); NPR Comments at 5-8, (JA102-05); PTV Comments at 18-19, (JA066-67).

[6] NPR Comments at 7, (JA104). *See also* PTV Comments at 18-19, (JA066-67); NAB Reply Comments at 5-6, (JA119-20).

governmental principal that indirectly or directly has paid for programming is by no means always a simple task.

As even the Commission admits, FARA registrants (including law firms and marketing firms) often represent multiple foreign principals, only some of which meet the FCC's definition of "foreign governmental entity," Order ¶ 18 & n.57, (JA209). Some of the listings of FARA registrants are quite extensive; for example, the law firm Squire Patton Boggs has 1,251 records associated with its registration as a foreign agent, a substantial subset of which are registration statements or retention agreements identifying foreign principals (of which it appears there are 168 (designated in the FARA database as "Exhibits AB")).[7] A station employee would need to figure out how to navigate the FARA website to identify those statements, examine them to determine which foreign principals qualify as "foreign governmental entities" under the Order, and then review each of them for possible applicability to the leased programming. But even then, the FARA registration statements are not going to disclose the relevant information. They will provide information on the identity of the potential principals, and the services the agent performs for the various principals, *see* Order ¶ 17 n.55, (JA208-09); 22 U.S.C. § 612(a)(3), but will not disclose which foreign governmental entity

[7] *See* https://efile.fara.gov/ords/fara/f?p=1381:4 (search "Active Registrants" for "Squire Patton Boggs").

is being represented with regard to specific programming or which principal has "provided some type of inducement to air the programming," Order, App. A (proposed 47 C.F.R. § 73.1212(j)(2)(iii)), (JA238). It is unclear how broadcasters will be able to determine that definitively, even though the Order imposes the duty to speak upon them.

Broadcasters therefore urged the Commission, among other things, to narrow the scope of programming subject to the requirements and to "implement the 'reasonable diligence' requirement in a manner consistent with the sponsorship identification statute by allowing stations to make inquiries of those with whom they 'deal directly' and that are likely to be foreign entities," rather than independently researching potential lessees.[8] Broadcasters also observed that existing sponsorship identification and FARA statutes and regulations were sufficient to ensure that broadcast audiences would be aware of whether foreign governmental entities are attempting to persuade them.[9]

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[8] NAB Comments at 4, 15 (quoting 47 U.S.C. § 317(c)), (JA074, JA085).

[9] NPR Comments at 2-3 ("The Commission's current rules already require broadcasters to identify the 'true identity' of the entity by whom or on whose behalf valuable consideration or programming is provided. Assuming a foreign government is the true source of the programming broadcast by a station leased to it or its agent, the failure to identify the foreign government as the true sponsor would be inconsistent with existing law."), (JA099-100); NAB Comments at 5-8 (discussing duplicative nature of FARA disclosure mandates and the FCC's proposed rules), (JA075-078).

On April 1, 2021, the Commission released a draft report and order ("Draft Order") where, for the first time, the Commission proposed to apply the foreign sponsorship due diligence requirements in any case in which a foreign governmental entity programs a broadcast station pursuant to a lease of airtime. *See Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, MB Docket No. 20-299, FCC-CIRC2104-06, ¶¶ 2, 24-32 (rel. Apr. 1, 2021), (JA127, JA137-42). The Draft Order's terms required all broadcasters with a leasing agreement to implement the proposed reasonable diligence requirements, regardless of whether a broadcaster had any reason to believe it was dealing with a foreign governmental entity. *Id*. ¶¶ 35-44, (JA143-48).

Broadcasters noted in further submissions that the FCC's approach remained overbroad because it "appear[ed] to sweep in thousands of leasing agreements, forcing broadcasters who never have and never will contract to air foreign government-sponsored content to expend a great deal of time, energy and expense repeatedly (and needlessly) confirming that their program suppliers do not have foreign governmental affiliations."[10] NAB, NABOB and MMTC also pointed out that the proposed diligence standards would especially harm smaller, diverse

[10] Letter from Rick Kaplan, NAB to Marlene Dortch, FCC, MB Docket No. 20-299, at 2-3 (Apr. 13, 2021) ("NAB April 13 Ex Parte"), (JA175-76).

broadcasters and potential new entrants.[11] MMTC and NABOB observed that the diligence requirements in the Draft Order would likely have a particularly negative effect on persons of color and women seeking to own broadcast radio and television stations.[12] They explained that many women and people of color enter the industry as owners after first programming another station pursuant to leasing or similar programming agreements to gain experience and build a track record of success.[13] MMTC and NABOB observed that the unnecessary additional burdens imposed by the proposed new, multi-step diligence standard would discourage station owners from entering into leasing or similar arrangements, "ultimately making it more difficult for minorities, women and other new entrants to pursue this path toward programming and/or owning a station." MMTC Ex Parte at 2, (JA188).

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[11] *See id.*; Letter from James Winston, NABOB to Marlene Dortch, FCC, MB Docket No. 20-299, at 2-3 (Apr. 14, 2021) ("NABOB Ex Parte"), (JA185-86); Letter from Maurita Coley, MMTC to Marlene Dortch, FCC, MB Docket No. 20-299, at 1-2 (Apr. 15, 2021) ("MMTC Ex Parte"), (JA187-88).

[12] MMTC Ex Parte at 1-2, (JA187-88); NABOB Ex Parte at 2-3, (JA185-86).

[13] MMTC Ex Parte at 2 ("MMTC can attest to the importance of this pathway into the broadcast business."), (JA188); NABOB Ex Parte at 2 ("The Commission's proposal will have an especially harmful impact on minority and women-owned broadcasters, many of which start their business by programming another station pursuant to a [leasing agreement] for a few years before purchasing the station."), (JA185).

Various broadcast organizations also observed that the Draft Order would place significant burdens on stations' efforts to secure content from a wide range of sources, including religious content suppliers, minority-owned programmers and foreign language programmers, even in cases where a station has worked with its programming suppliers for years and the programming does not come from foreign governmental sources. These parties further advised the FCC that the proposed diligence standard would impede broadcasters' ability to air sponsored content, making it more difficult for program providers to reach their intended audiences and reducing the quality, quantity and diversity of programming available to broadcast audiences.[14]

To avoid these potential harms to broadcasters, program providers and broadcast audiences, NAB and several other commenters again urged the Commission to narrow the reasonable diligence requirements by clarifying that broadcasters need only undertake the requisite notification, inquiries and research "if they have reason to believe that a lessee is affiliated with a foreign

[14] *See, e.g.,* Letter from Rick Kaplan, NAB, to Marlene Dortch, FCC, MB Docket No. 20-299, at 2 (Apr. 15, 2021) ("NAB April 15 Ex Parte"), (JA191); Letter from Troy Miller, National Religious Broadcasters ("NRB"), to Marlene Dortch, FCC, MB Docket No. 20-299 at 3 (Apr. 15, 2021) ("NRB Ex Parte"), (JA195); NABOB Ex Parte at 2, (JA185); MMTC Ex Parte at 2, (JA188).

governmental entity."[15] No commenting party in the FCC's proceedings below opposed NAB's proposal or similar proposals made by other commenters.

In the Order, the Commission rejected broadcasters' arguments and concluded that the new requirements would apply to "any arrangement in which a licensee makes a block of broadcast time on its station available to another party in return for some form of compensation" regardless of "what those agreements are called, how they are styled, and whether they are reduced to writing." Order ¶¶ 24, 27, (JA211, JA213). The Order exempted from this definition only "traditional, short-form advertising." *Id*. ¶ 28, (JA213-14).

The Order rejected broadcasters' arguments that the proposed reasonable diligence requirements were unduly burdensome and contrary to the D.C. Circuit's holding in *Loveday*. *See id*. ¶¶ 44-45 & n.132, (JA222-24). The Order accordingly requires broadcasters that engage in any leasing arrangement to: 1) inform the lessee at the time of agreement and at renewal of the foreign sponsorship

[15] NAB April 13 Ex Parte at 4-6, (JA177-79); NAB April 15 Ex Parte at 2-3, (JA191-92). *See also* NABOB Ex Parte at 1, (JA184); NRB Ex Parte at 2, (JA194); MMTC Ex Parte at 1, (JA187); Letter from Joseph M. Di Scipio, Fox Corporation, to Marlene Dortch, FCC, MB Docket No. 20-299 at 1 (Apr. 15, 2021), (JA196); Letter from Mark J. Prak, Counsel for the ABC Television Affiliates Association and the NBC Television Affiliates, and John R. Feore, Counsel for the CBS Television Network Affiliates Association and the FBC Television Affiliates Association, to Marlene Dortch, FCC, MB Docket No. 20-299 at 2 (Apr. 15, 2021), (JA198).

disclosure requirement; 2) inquire of the lessee at the time of agreement and at renewal whether it falls into any of the categories that qualify it as a "foreign governmental entity"; 3) inquire of the lessee at the time of agreement and at renewal whether it knows if anyone further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming; 4) if the lessee does not identify itself and others in the production/distribution chain as foreign governmental entities, independently investigate the lessee's status, at the time of agreement and at renewal, by consulting the DOJ's FARA website and the FCC's semi-annual U.S.-based foreign media outlets reports; 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. *See id.* ¶¶ 38-41, (JA218-21), App. A (proposed 47 C.F.R. § 73.1212(j)), (JA237-39).[16] These diligence requirements must be undertaken at contract execution and renewal, and broadcasters must ensure that lease agreements already in existence at the time the rules take effect "come into compliance with the new

[16] The Order defined "foreign governmental entity" similarly to the proposed rule, but excluded foreign missions. *See* Order ¶ 14, (JA206-07).

requirements including undertaking reasonable diligence," within six months of the rules becoming effective. *Id.* ¶¶ 42-43, 48, (JA221-22, JA225).

On June 17, 2021, the Commission published the Order in the *Federal Register* as a Final Rule. *See* 86 Fed. Reg. 32221. On August 13, 2021, Petitioners filed a timely petition for review of the Order with the U.S. Court of Appeals for the District of Columbia Circuit. On July 21, 2021, the Commission sought comment on the information collections arising from the rule changes adopted in the Order pursuant to the Paperwork Reduction Act of 1995. *See* 86 Fed. Reg. 38482.

SUMMARY OF ARGUMENT

The Order on review contravenes not only the plain text of the governing statute, but also the binding precedent of this Court. When a person directly or indirectly pays for the material broadcast by a radio or television station, Congress requires announcement of the payor's identity, but a broadcast station licensee need only "exercise reasonable diligence *to obtain from its employees, and from other persons with whom it deals directly* in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section." 47 U.S.C. § 317(c) (emphasis added). Because the statute specifies the type of diligence required of broadcasters to acquire information necessary for the payor announcement (*i.e.*, the sponsorship

identification)—namely, obtaining information "from its employees, and from other persons with whom it deals directly"—the Commission lacks power to impose other types of diligence on licensees, including independent investigations of other sources.

Accordingly, this Court has held that Section 317(c) of the Communications Act of 1934 does "not impose any burden of independent investigation upon licensees," and "is satisfied by appropriate inquiries made by the station to the party that pays it for the broadcast." *Loveday*, 707 F.2d at 1449, 1454. In reaching its decision, this Court relied not only on the plain language of the statute, but also on its legislative history. The original precursor of Section 317 in the Radio Act of 1927 required payor disclosure without any independent investigation by the broadcaster. The FCC's implementing regulations required disclosure of the principal if the payor was known to be an agent upon the exercise of reasonable diligence by the broadcast license, but those regulations (the Court held) did not require independent investigation. Congress ratified those regulations when it amended Section 317 in 1960 to add the "reasonable diligence" obligation, and the House and Senate Reports confirm that the broadcaster was entitled to rely in good faith on the information provided by the sponsor.

In the Order, the Commission never grapples with either the plain statutory text or *Loveday*, both of which are dispositive. Nor does the Commission reconcile

the Order with its prior statutory interpretation (recounted in *Loveday*) that no independent investigations are required of broadcasters. The Order's requirement that broadcasters conduct independent investigations of government databases to determine if a new or existing lessor is a foreign governmental entity defies the statute and *Loveday*, and must be set aside.

Even if the statute could be construed to allow the Commission to impose independent-investigation mandates upon broadcasters, the Order is unconstitutional. The requirement here—compelling investigation and speech about a third party—warrants strict scrutiny. But even under the exacting-scrutiny standard sometimes applied to disclosure obligations, a regulation must serve a sufficiently important governmental interest and be narrowly tailored to advance that interest. A speech regulation is narrowly tailored only if it burdens no more speech than necessary to advance the government interest. That is not true here, and the Order is unconstitutional under either standard.

The Commission has only identified three scattered past examples of foreign governmental entities sponsoring undisclosed broadcast programming. None of those entities was at the time a FARA registrant or disclosed to the Commission as a foreign media outlet. The Commission cited no example of a FARA registrant or a disclosed foreign media outlet surreptitiously sponsoring broadcasting to deceive the American public, which is all that the investigations mandated by the Order

might discover. Thus, the Order attacks a problem that does not exist, and does so with a bludgeon. It requires every station in the United States, no matter how small, to conduct independent investigations of every existing or new programming lessor if they do not admit to being a foreign governmental entity or disclose a foreign governmental entity in the production or distribution chain of the programming. The enormous waste of resources conducting investigations of domestic lessees that pose an infinitesimal risk of being undisclosed foreign governmental entities burdens far more speech than warranted to serve the putative government interest.

Furthermore, underinclusive or overinclusive regulations are, by definition, not narrowly tailored as required by the First Amendment, and the Order is both. The Order is underinclusive because the problems with undisclosed foreign governmental programming exist primarily on cable systems and the Internet, and those are untouched by the Order. It is overinclusive because the Commission applied its rule to all programming leases even though most such leases—*e.g.*, for infomercials and local commercial, religious and municipal programming—pose no risk whatsoever of undisclosed sponsorship by foreign governmental entities.

Finally, numerous less restrictive means would accomplish the FCC's putative objective without burdening as much speech. The Commission could have required a station to investigate only when it has reason to believe the lessor is

affiliated with a foreign governmental entity, or when the programming addresses matters of public controversy. Or the Commission could have exercised its existing statutory power to require the lessee to disclose its status to the broadcast station, with no independent investigation by the licensee. A foreign governmental entity that has already registered under FARA or disclosed itself to the Commission as a foreign media outlet has no reason to lie to a broadcast station regarding its identity. Conversely, a foreign governmental entity that wishes to hide its identity will almost invariably not have registered under FARA or disclosed itself as a foreign media outlet to the Commission, and thus will not be caught by any licensee investigation. And the vast majority of domestic and private foreign lessors who say they are not foreign governmental entities will not be, and yet each must be investigated under the Order. The untold thousands of investigations mandated by the Order are unlikely to bear any fruit. That is not narrow tailoring, nor rational decision-making. Accordingly, for much the same reasons, the Order is also arbitrary and capricious in violation of the APA, which is an alternative ground for setting aside the Order.

STANDING

NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Commission, other federal agencies and the courts. NAB and its members actively participated

in the rulemaking. *See* NAB Declaration ¶¶ 1-2 (Add. 1-2). MMTC is a national nonprofit and non-partisan membership organization dedicated to promoting and preserving equal opportunity and civil rights in the mass media, telecommunications and broadband industries. Its members include owners of radio and television broadcast stations, programmers and prospective station owners of color who rely on leasing arrangements to gain experience programming stations. MMTC participated in the rulemaking. *See* MMTC Declaration ¶¶ 1-2 (Add. 37-38). NABOB is a national not-for-profit organization dedicated to increasing ownership of broadcast radio and television stations and other media by African Americans and other people of color. NABOB participated in the rulemaking. *See* NABOB Declaration ¶¶ 1-2 (Add. 41-42).

NAB, MMTC and NABOB have associational standing. "Associations … have representational standing if: (1) at least one of their members has standing to sue in her or his own right, (2) the interests the association seeks to protect are germane to its purpose, and (3) neither the claim asserted nor the relief requested requires the participation of an individual member in the lawsuit." *Am. Library Ass'n v. FCC*, 401 F.3d 489, 492 (D.C. Cir. 2005). Each association's members would otherwise have standing to sue in their own right. Many of each association's members lease programming, and the Order's requirements of inquiry, investigation and reporting apply to all broadcasters that lease

programming; the unlawful Order injures member broadcasters by compelling action and the expenditure of resources and violates their statutory and constitutional rights. *See* NAB Declaration ¶¶ 3-4 (Add. 2-3); MMTC Declaration ¶¶ 3-4 (Add. 38-39); NABOB Declaration ¶¶ 3-4 (Add. 42-43). Because NAB, MMTC and NABOB advocate for proper regulatory treatment of their members, the interests they seek to protect are germane to each organization's purpose. *See* NAB Declaration ¶ 5 (Add. 3); MMTC Declaration ¶ 5 (Add. 39); NABOB Declaration ¶ 5 (Add. 44). Because the Order's requirements apply uniformly to all broadcasters that lease programming, neither the claim asserted nor the relief requested requires the participation in the lawsuit by individual members of any of the organizations. *See* NAB Declaration ¶ 6 (Add. 3); MMTC Declaration ¶ 6 (Add. 40); NABOB Declaration ¶ 6 (Add. 44).

So long as one petitioner has standing, this Court need not determine the standing of other petitioners. *See Bowsher v. Synar*, 478 U.S. 714, 721 (1986).

ARGUMENT

The Order defies the governing statute and the precedent of this Court. When a person pays for broadcast programming, the payor's identity must be announced at the time of the broadcast, but a broadcast station licensee need only "exercise reasonable diligence *to obtain from its employees, and from other persons with whom it deals directly* in connection with any program or program

matter for broadcast, information to enable such licensee to make the announcement required by this section." 47 U.S.C. § 317(c) (emphasis added). This Court has already held that this provision does "not impose any burden of independent investigation upon licensees," and "is satisfied by appropriate inquiries made by the station to the party that pays it for the broadcast." *Loveday*, 707 F.2d at 1449, 1454. The Commission has no power to require independent investigations beyond what the statute requires. Moreover, compelling speech violates the First Amendment because it is not narrowly tailored to serve a sufficiently important governmental interest. For the same reason, the Order, which addresses one medium where the problem scarcely exists while leaving others untouched, is arbitrary and capricious.

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

"[W]hen a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished." *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). That maxim applies with full force in the field of administrative law: "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984). This Court interprets a

statute *de novo*, and defers to the agency's reasonable interpretation only if the statute is ambiguous. *Nat'l Ass'n of Clean Air Agencies v. EPA*, 489 F.3d 1221, 1228 (D.C. Cir. 2007).

When Congress has prescribed the means by which some end shall be accomplished, the agency cannot prescribe different ones. "All questions of government are ultimately questions of ends and means." *Nat'l Fed'n of Fed. Emps. v. Greenberg*, 983 F.2d 286, 290 (D.C. Cir. 1993). "The extent of [the Commission's] powers can be decided only by considering the powers Congress specifically granted it in the light of the statutory language and background." *Am. Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 965 (D.C. Cir. 1985). "Agencies are therefore 'bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes.'" *Colo. River Indian Tribes v. Nat'l Gaming Comm'n*, 466 F.3d 134, 139 (D.C. Cir. 2006) (quoting *MCI Telecomms. Corp. v. AT&T*, 512 U.S. 218, 231 n.4 (1994)). If Congress declares that something should be done "in a particular way," an agency cannot proceed differently. *Id.* at 140. As the Supreme Court has "so often admonish[ed], only Congress can rewrite" the Communications Act. *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 376 (1986).

Here, Congress has spoken exactly to the disclosure that it intended broadcast stations to make, and the type of diligence the station had to exercise to

acquire that information. When a station broadcasts any matter for "which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person." 47 U.S.C. § 317(a)(1). Section 317(c) then defines the obligation of licensees in developing the information for that disclosure: "The licensee of each radio station shall exercise reasonable diligence *to obtain from its employees, and from other persons with whom it deals directly* in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section." *Id.* § 317(c) (emphasis added).

This Court has interpreted Section 317(c) in accord with its plain language, holding that "the language of section 317, of itself, does not" "impose *any burden* of independent investigation upon licensees." *Loveday*, 767 F.2d at 1454 (emphasis added). In *Loveday*, the petitioner claimed that under Section 317(c), the Commission should have required broadcasters to conduct an independent investigation as to whether tobacco companies were the true sponsor of political advertising concerning a referendum restricting public smoking. In interpreting the statute, this Court emphasized that, outside of the duty to gather information from

its own employees, a licensee could rely strictly on information received from those with whom it dealt directly.

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

Id. at 1449 (emphasis added).

Although no resort to legislative history was necessary given the plain statutory language, the Court buttressed its findings by noting that Congress, in enacting the original sponsorship identification requirement in Section 19 of the Radio Act of 1927, "imposed only a very limited obligation upon broadcasters: to announce that a program had been paid for or furnished to the station by a third-party and to identify that party." *Id.* at 1451. That provision, modeled after a requirement of the postal laws requiring mailed newspapers and magazines to identify paid advertisements, generated little discussion in the debates over the 1927 Act. *Id.* at 1448-51. The sponsorship identification provision was renumbered without amendment as Section 317 of the 1934 Communications Act, and nothing gave any indication that the statute "might require broadcasters to investigate whether a party purchasing commercial time was acting on his own behalf or as an agent for someone else." *Id.* at 1451.

This Court in *Loveday* further found that the later amendment adding subsection (c) to Section 317 of the Act did not require independent investigation. Congress added Subsection 317(c) in 1960 in response to the payola scandal of the 1950s, in which record companies paid disc jockeys to play their songs on the radio. *Id.* at 1452-53; Pub. L. No. 86–752, § 8(a), 74 Stat. 889, 895 (1960). In requiring licensees to "exercise reasonable diligence to obtain [the necessary information] from its employees, and from other persons with whom it deals directly," 47 U.S.C. § 317(c), Congress ratified the reasonable-diligence standard that the FCC had implemented in preceding decades. *Loveday*, 707 F.2d at 1453. FCC regulations originally promulgated in 1944 had required that, *if* a licensee knew that it was dealing with the agent of a principal, the licensee had a duty to disclose the identity of the principal in making the announcement required by statute.

> The announcement required by this section shall fully and fairly disclose the true identity of the person or persons by whom or in whose behalf such payment is made or promised, or from whom or in whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (b) hereof are furnished. Where an agent or other person contracts or otherwise makes arrangements with a station on behalf of another, *and such fact is known to the station,* the announcement shall disclose the identity of the person or persons in whose behalf such agent is acting instead of the name of such agent.

47 C.F.R. § 3.409(c) (Supp. 1944) (quoted in *Loveday*, 707 F.2d at 1453 n.15) (emphasis added).

As this Court noted, "Congress' ratification of these Commission regulations did not impose any burden of independent investigation upon licensees." *Loveday*, 707 F.2d at 1454. "[T]he language of section 317, of itself, does not do so," nor did the language of the ratified regulations. *Id.* "Subsection (c) of the regulations requires disclosure by the licensee but does not require investigation," an "inference … fortified" by the statement in Rule 3.409(c) that disclosure of the principal is required only when the fact of an agency relationship "'is known to the station.'" *Id.* (quoting 47 C.F.R. § 3.409(c) (Supp. 1944)). "The regulations Congress ratified imposed an extremely limited duty upon licensees." *Id.*

The Senate and House Reports concerning the 1960 Act confirmed this interpretation. The Senate Report declared that "'reasonable diligence' would require the licensee to take appropriate steps to secure such information, but it would not place a licensee in the position of being an insurer . . . ." S. Rep. No. 1857, 86th Cong., 2d Sess. at 6 (1960). This Court interpreted this explanation to "indicate[] that a licensee need not go behind the information it receives to guarantee its accuracy." *Loveday*, 707 F.2d at 1455 n.18. In a statement incorporated in the House Report, the Department of Justice interpreted the proposed Section 317(c) to mean that "the person who makes the announcement would not be held to have violated this section if the announcement so made is false, provided he establishes that he made the announcement *in good faith in*

reliance upon information furnished by the person making the payment." H.R. Rep. No. 1800, 86th Cong., 2d Sess. at 21 (1960) (App. A, Comments of Department of Justice) (emphasis added).

Indeed, this Court noted, the Commission so interpreted the statute: "The Commission interprets the statute and its own regulations to impose a much less stringent obligation [than the *Loveday* petitioners proposed]: a licensee confronted with undocumented allegations and an undocumented rebuttal may safely accept the apparent sponsor's representations that he is the real party in interest." *Loveday*, 707 F.2d at 1449. Because of the "constitutional difficulties" in a contrary position, moreover, this Court declared its "reluctan[ce] … to find a power in the Commission to require more of licensees than it has required here unless there existed rather clear evidence that Congress intended to vest such a power." *Id.* Thus, as a matter both of the dispositive plain language and the legislative history, this Court concluded that a licensee has no duty under Section 317(c) to obtain information for the statutorily required announcement other than "from its employees, and from other persons with whom it deals directly," 47 U.S.C. § 317(c).

In the Order, the Commission recites the statutory text but does not analyze the language or history of Section 317(c), *see* Order ¶ 37, (JA218); addresses *Loveday* only in a single footnote, Order ¶ 45 n.132, (JA223-24); and does not

even acknowledge its own prior contrary interpretation of the statute. The Commission never reconciles its newly minted obligation that "the licensee … verify independently that the lessee does not qualify as a 'foreign government entity'" through "independent searches," Order ¶ 40, (JA220), with the statutory text requiring only that the broadcaster exercise reasonable diligence in obtaining sponsor information from its employees and parties with whom it deals directly, 47 U.S.C. § 317(c). This telling lack of analysis implies that the Commission could not in fact demonstrate the Order's consistency with Section 317(c).

With regard to *Loveday*, the FCC's truncated footnote analysis falls far short. *See Bechtel v. FCC*, 957 F.2d 873, 880-81 (D.C. Cir. 1992) (finding an FCC decision inadequate where its "only response" to a party's "serious arguments was presented in a footnote," which did not address those arguments' substance). The Commission first attempts to distinguish the binding precedent of this Court because "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." Order ¶ 45 n.132, (JA223-24). But *current* congressional concerns cannot change the scope of a statute passed more than 60 years ago, and they are not (as the FCC's footnote suggests) a form of legislative history. Indeed,

this Court has dismissed the notion of "post-enactment legislative history" as "oxymoronic." *Cobell v. Norton*, 428 F.3d 1070, 1075 (D.C. Cir. 2005). *Accord Hazardous Waste Treatment Council v. U.S. EPA*, 886 F.2d 355, 365 (D.C. Cir. 1989) (emphasizing that "legislative history" "is just that: *history*") (emphasis in original).[17]

Second, the Commission declared that its specific regulatory guidance "obviates the concern raised by the *Loveday* court about licensees having 'to guess in every situation what the Commission would later find to be "reasonable diligence."'" Order ¶ 45 n.132, (JA223-24) (quoting *Loveday*, 707 F.2d at 1457). But that discussion came after *Loveday* had interpreted Section 317(c) not to extend to independent investigations, and this Court simply proceeded to declare that "[t]here are, moreover, good reasons why this court should not read into the statute or regulations the licensee duty petitioners seek to establish." *Loveday*, 707 F.2d at 1457. Those reasons included both the indeterminacy of that obligation and the constitutional questions raised. *Id.* at 1457-59. Even if *arguendo* the searches mandated by the Order are more limited than the type of investigation proposed by the *Loveday* petitioners, this Court's statutory construction remains unaltered: the

[17] Moreover, in the letters the Commission cited, members of the House of Representatives were expressing concern about the specific practice at issue (*e.g.*, allegedly unclear disclosures), and did not attempt to shed any light on the FCC's authority under Section 317. The Members never even cited the statute.

statute does "not impose any burden of independent investigation upon licensees," and "is satisfied by appropriate inquiries made by the station to the party that pays it for the broadcast." *Id.* at 1449, 1454.

The Commission also asserts 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.'" Order ¶ 45 n.132 (quoting *United States of America v. WHAS, Inc.*, 385 F.2d 784, 788 (6th Cir. 1967)), (JA223-24). But again, the Commission misses the mark as it confuses the questions of whether or not it can require licensees to go beyond the named sponsor of a program with *what sources* it can require licensees to review in making that determination. Even if *WHAS* was controlling – which it is not – it says nothing about that issue, and *Loveday* makes clear that 317(c) limits inquiries to the sponsoring party.

More to the point, the Commission takes the Sixth Circuit's statement completely out of context. *WHAS* dealt with a circumstance where a radio station licensee announced that the sponsor of a paid political broadcast critical of the sitting Kentucky governor was the "Committee for Good Government," without disclosing that the Committee was controlled by the governor's opponent in the primary election. *WHAS*, 385 F.2d at 785-86. In *WHAS*, it was established that the

station knew or certainly had reason to know the sponsor's true identity. The station was well aware that the advertising agency in question represented one of the candidates in the relevant election, and the advertising agency even initially told the station that it would be identifying the sponsor as affiliated with that candidate. The FCC's regulations at the time, however, did not require a licensee to do anything more than identify the committee name provided by the sponsor. Thus, when the *WHAS* court stated it was not precluding the FCC from issuing a regulation requiring licensees to go beyond the name they are provided, the court meant at most that it was not precluding the FCC from requiring a licensee to disclose the "true" sponsor in cases where the licensee knew that true identity. As further evidence of this (and as the Notice notes), the Commission, following the *WHAS* decision, amended its sponsorship identification rules to state:

> 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 . . . 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 C.F.R. § 73.1212(e); Notice ¶ 24, (JA014-15); *see also* Notice ¶ 47 & n.127, (JA023-25).[18] Notably, in more than 45 years since that rule change, the

[18] "In 1975, the Commission modified its rules to include the 'could be known' language specifically in response to a federal court decision finding that the Commission's prior rule did not require a licensee to make reasonable efforts to go

Commission has never required a station to consult third-party sources to reveal the "true identity" of a sponsor.

If there were any conflict between *Loveday* and *WHAS*, this panel would have to follow the binding precedent of this Court. But there is no such conflict. Nothing in *WHAS* suggests that, in conflict with the statute or *Loveday*, the Commission has the power to require a station to conduct independent investigations to acquire information from sources other than "its employees, and … other persons with whom it deals directly …." 47 U.S.C. § 317(c). As this Court observed, commenting on the Commission's 1975 amendment of its regulations in response to *WHAS*, "the Commission has never indicated in enforcement proceedings that section 317 or its own regulations require a station to conduct any investigation or to look behind the plausible representations of a sponsor that it is the true party in interest." *Loveday*, 707 F.2d at 1456-57.

Yet the Order does just that, in contravention of the statute. For every new or renewed programming lease, the Order requires a licensee, in addition to queries to potential lessees, to "[i]ndependently confirm[] the lessee's status, by consulting the Department of Justice's FARA website and the Commission's semi-annual

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beyond a named sponsor to find and announce the real party in interest. . . . [In the prior decision, t]he Commission found the local station knew that [the committee identified on air] was a straw entity fronting for one of the candidates . . . ." Notice ¶ 47 & n.127, (JA023-25).

U.S.-based foreign media outlets reports," if the lessee does not admit to being a foreign governmental entity and further does not identify another person in the programming production or distribution chain that qualifies as a foreign governmental entity and has provided an inducement to air the programming. Order, App. A (proposed 47 C.F.R. § 73.1212(j)(2)(iv)), (JA238).

There is simply no statutory basis for sending thousands of radio and television stations, no matter how tiny, on a wild goose chase through the thickets of the FARA website and the often confusing disclosures therein to determine—for every new or renewed programming lease, including those for ordinary commercial or local programming—whether a foreign governmental entity lurks undisclosed in the background. Because the Order contravenes both the plain language of Section 317(c) and its binding interpretation in *Loveday*, this Court should declare the Order void.

II. The Order's Investigation and Public Speech Requirements Are Not Narrowly Tailored to Serve a Sufficiently Important Government Interest and Thus Violate the First Amendment

The Order both compels speech and burdens the underlying constitutionally protected choice to air leased programming. This Court should construe the statute to avoid the serious constitutional questions arising from the Order, or alternatively should declare the Order in violation of the First Amendment. Whether the Order

violates the First Amendment is a legal question reviewed *de novo*. *United States v. Popa*, 187 F.3d 672, 674 (D.C. Cir. 1999).

The Order compels speech. "And it does so in no small measure." *Wash. Post v. McManus*, 944 F.3d 506, 514 (4th Cir. 2019). The Order requires broadcasters to speak publicly on their own behalf. *See* Order ¶ 35, (JA217-18) ("[T]he final responsibility for any necessary foreign sponsorship identification disclosure rests with the licensee in accordance with the statutory scheme."). The Order chooses certain words for stations to use in their on-air announcements, dictates how often the speech must occur (at least once a program or at the beginning and end of every hour for programs sixty minutes or longer) and requires burdensome investigations into a sponsor's identity that must be documented and reported at least four times a year. *See* Order, App. A (proposed 47 C.F.R. § 73.1212(j)), (JA237-38). "[M]easures compelling speech are at least as threatening" as those proscribing it. *Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2464 (2018); *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

"Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech," *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). Accordingly, the general rule is that compelled speech requires strict scrutiny, *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 193

(4th Cir. 2013) (en banc), "which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011) (internal quotation marks omitted). Although the courts apply less demanding scrutiny to disclosure obligations, *see infra*, the Order does not simply mandate disclosure of information known to the broadcaster or supplied to it by a third party. The Order compels the broadcaster to investigate the status of a third party and report that status as its own representation. Strict scrutiny applies.

Even if *arguendo* a lesser standard applies, the Supreme Court instructs that compelled disclosure requirements under the First Amendment still demand "exacting scrutiny." *See Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2383 (2021) (plurality); *id.* at 2390-91 (Op. of Thomas, J., concurring in part and concurring in judgment in part) (favoring strict scrutiny); *id.* at 2391-92 (Op. of Alito, J., concurring in part and concurring in the judgment, joined by Gorsuch J.) (not deciding whether strict or exacting scrutiny applies, but agreeing with plurality's exegesis of exacting scrutiny). Exacting scrutiny requires that the speech compulsion be "narrowly tailored" to "a sufficiently important" government interest, even if not the least restrictive means. *Id.* at 2383. That is the same First Amendment standard the Supreme Court has applied to certain

regulations of broadcaster speech. *See FCC v. League of Women Voters*, 468 U.S. 364, 380 (1984).

A. Interpreting Section 317(c) to Empower the Commission to Impose Investigative Obligations on Broadcasters Raises Serious Constitutional Questions

The Commission claims that, because it has exercised discretion to require only a limited form of investigation by licensees into the status of lessees as foreign governmental entities, the Order avoids First Amendment problems. Order ¶¶ 69-73, (JA232-35). But, as this Court held in *Loveday*, interpreting Section 317(c) to vest in the Commission the power to impose investigative obligations of its liking upon broadcasters raises First Amendment concerns, which counsels in favor of an interpretation of Section 317(c) consonant with its plain language.

As the *Loveday* Court observed, even if some greater freedom exists to impose disclosure requirements on broadcasters, a court must discern congressional intent to permit regulation that intrudes on free speech rights:

> [W]here the law's attempt to discover the true utterers of political messages becomes so intrusive and burdensome that it threatens to silence or make ineffective the speech in question, the law presses into areas which the guarantee of free speech makes at least problematic. Before we would construe a statute or a regulation to have that effect, we would require a far clearer congressional directive that stations affirmatively seek out true sponsors than we have here. The failure of Congress to address these questions thus provides an additional reason for doubting that Congress intended any rule such as petitioners urge. Had Congress so intended, there surely would have been some discussion of the practicalities of investigation, the difficulties of

> administration, the potential unfairness, and the constitutional questions that would follow from such a rule. The legislative history is bare of any such concerns.

707 F.2d at 1459. This Court thus concluded that Congress meant what it said in limiting a licensee's information-gathering obligations to obtaining information from the parties with which it dealt directly, without independent investigation. *See id.*; *Conn. Nat'l Bank. v. Germain*, 503 U.S. 249, 253-54 (1992) (identifying the "one, cardinal canon" in interpreting a statute as "presum[ing] that a legislature says in a statute what it means and means in a statute what it says there"). If this Court has any doubt as to the scope of Section 317(c), it should interpret the provision narrowly to preclude the Commission from compelling broadcasters to conduct independent investigations of programming providers in order to declare the status of third parties. *See Motion Picture Ass'n of Am., Inc. v. FCC*, 309 F.3d 796, 805 (D.C. Cir. 2002) (stating that "Congress has been scrupulously clear when it intends to delegate authority to the FCC to address areas significantly implicating [broadcast] program content"); *Jones v. United States*, 526 U.S. 227, 239-40 (1999) (observing that the principle of construing statutes to avoid constitutional questions "has for so long been applied by this Court that it is beyond debate") (citation omitted).

B. The Order Is Not Narrowly Tailored to Serve a Sufficiently Important Governmental Interest

Even if *arguendo* Section 317(c) vested the Commission with the power to require broadcasters to conduct independent investigations into sponsor identity, the Order is unconstitutional. Under strict scrutiny, narrow tailoring requires use of the least restrictive means; "[w]here exacting scrutiny applies, the challenged requirement must be narrowly tailored to the interest it promotes, even if it is not the least restrictive means of achieving that end." *Americans for Prosperity Found.*, 141 S. Ct. at 2384 (plurality). The Order fails under either standard.

A regulation is narrowly tailored only if it does not "burden substantially more speech than is necessary to further the government's legitimate interests." *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (citation omitted). The regulation "need not be the least restrictive or least intrusive means of serving the government's interests. But the government still may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals." *Id.* (internal quotation marks omitted); *NAACP v. Button*, 371 U.S. 415, 438 (1963) ("Precision of regulation must be the touchstone …."). The Government bears the burden of proving that its regulation is narrowly tailored. *See McCullen*, 573 U.S. at 495; *Edenfield v. Fane*, 507 U.S. 761, 770 (1993). The Order fails the narrow tailoring requirement for multiple reasons.

1. The Order Burdens Substantially More Speech than Necessary

First, the Order burdens substantially more speech than necessary to serve the asserted governmental interest. Petitioners do not dispute that in the abstract the federal government has an interest in "ensuring that the public is aware of when a party has sponsored content on a broadcast station," particularly if the sponsor is a foreign governmental entity. Order ¶ 69, (JA232-33). But "a governmental body seeking to sustain a restriction on . . . speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield*, 507 U.S. at 770-71.

The Commission has not established a sufficiently important problem warranting the nationwide regulation of *all* leased programming at *all* 1,324 commercial television stations and 11,288 commercial radio stations across the country (of which 92% and 99% respectively are small businesses). Order, App. B, ¶¶ 13-17, (JA244-45). The FCC relies on only three hyper-localized examples of foreign propaganda on U.S. airwaves to implement its nationwide rule. Specifically, the FCC relies on instances of Russian propaganda by RM Broadcasting and Radio Sputnik on a couple of radio stations in Washington, D.C and Kansas City, Missouri. Order at nn.1, 9, 52, 71, 74, 75 and 178, (JA200-202, JA208, JA211, JA212, JA231). Additionally, the Commission cites to China Radio

International's (CRI) ability to lease airtime on a Washington, DC area station and "broadcast pro-Chinese government programming on this station without disclosing the linkage to the Chinese government." Order at nn.1, 74, 75 and 178, (JA200, JA212, JA231). That hardly indicates a wave of foreign propaganda on radio and television stations that would justify a burdensome *nationwide* regulation applicable to all the leased programming of all the nation's broadcasters.

Notably, the scant examples cited by the Commission would not even have been redressed by the independent searches mandated by the Order, since it identified no foreign entity registered under FARA or disclosed as a foreign media outlet to the Commission that leased programming without proper disclosure. *See* Order ¶ 17 n.52, (JA208-09) (discussing dispute with DOJ as to whether Radio Sputnik had to register as a foreign agent); *see* Koh Gui Qing and John Shiffman, *Beijing's covert radio network airs China-friendly news across Washington, and the world*, Reuters Investigates (Nov. 2, 2015) https://www.reuters.com/investigates/special-report/china-radio/ ("Public records show that CRI's U.S. Chinese-American business partner and his companies haven't registered as foreign agents under the law, called the Foreign Agents Registration Act, or FARA."). Thus, the problem the Order purports to solve—undisclosed sponsorship of leased broadcast programming by FARA registrants or Commission-listed foreign media outlets—does not seem to exist.

Even if there were a legitimate concern about undisclosed foreign propaganda in broadcasting, the Commission is obliged to craft a regulation fitting the problem identified. Under the narrow tailoring requirement, the courts have routinely invalidated laws and regulations that impose categorical restrictions on speech for limited, localized or sporadic problems. *See*, *e.g.*, *McCullen*, 573 U.S. at 493 ("For a problem shown to arise only once a week in one city at one clinic, creating 35–foot buffer zones at every clinic across the Commonwealth is hardly a narrowly tailored solution."); *Initiative and Referendum Inst. v. U.S. Postal Serv.*, 417 F.3d 1299, 1307-08 (D.C. Cir. 2005) ("since the problems the government identifies arise only 'occasionally and 'at times,' the across-the-board ban on signature solicitation" was not narrowly tailored); *Reynolds v. Middleton*, 779 F.3d 222, 231 (4th Cir. 2015) ("Given the absence of evidence of a county-wide problem, the county-wide sweep of the Amended Ordinance burdens more speech than necessary …."). The Order's blanket requirement that every station conduct independent investigations of every program lessor that does not confess to being a foreign governmental entity is not remotely tailored to the "problem" identified.

2. The Order Is Both Overinclusive and Underinclusive

Not only does the Order not serve an important governmental interest (much less a compelling one), but the scope of the regulation also reveals its lack of narrow tailoring. The Order requires investigation of programming lessors who do

not pose the least risk of being undisclosed foreign governmental entities, and fails to address other media where the putative problem is much more acute.

A regulation compelling speech that is both overinclusive and underinclusive is by definition not narrowly tailored. *See Ruggiero v. FCC*, 317 F.3d 239, 244 (D.C. Cir. 2003) (characterizing *FCC v. League of Women Voters*, 468 U.S. 364 (1984), as having found that a statute "failed" the narrow-tailoring "test twice over" because it was "both overinclusive and underinclusive"); *Cahaly v. Larosa*, 796 F.3d 399, 406 (4th Cir. 2015) (finding robocall regulation not narrowly tailored because it was both overinclusive and underinclusive); *Victory Processing, LLC v. Fox*, 937 F.3d 1218, 1229 (9th Cir. 2019) (same); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993) (finding no narrow tailoring because the "four ordinances are overbroad or underinclusive in substantial respects," for "[t]he proffered objectives are not pursued with respect to analogous non-religious conduct, and those interests could be achieved by narrower ordinances that burdened religion to a far lesser degree"). Here, the Order is both underinclusive and overinclusive, and thus not narrowly tailored.

"Underinclusivity creates a First Amendment concern when the State regulates one aspect of a problem while declining to regulate a different aspect of the problem that affects its stated interest *in a comparable way*." *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 451 (2015) (emphasis in original). While the government

need not address all aspects of a problem at once, an underinclusive restriction "can raise doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Id.* at 448 (internal quotation marks omitted). Additionally, underinclusivity may show that the law does not in fact advance the state's interest. *Id.* at 449.

Here, the Order is wildly underinclusive. The Commission declined to consider whether it had the authority to impose *any* disclosure obligation on cable operators or satellite broadcasters, or evaluate what (if any) jurisdiction it had over online platforms. It regulated broadcasters alone, even though there are *no disclosure requirements* applicable to cable leased access channels or satellite programming under the sponsorship identification rules, and even though the primary problems of disinformation or propaganda sponsored by foreign governments, as NAB pointed out,[19] have occurred over social media and the Internet.[20] A recent report found that YouTube carried 47 foreign-government

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[19] NAB April 13 Ex Parte at 1-2 and notes 2-3, (JA174-75).

[20] *See, e.g.,* William Marcellino, Christian Johnson, Marek N. Posard & Todd C. Helmus, *Foreign Interference in the 2020 Election: Tools for Detecting Online Election Interference*, RAND CORP. (2020), available for download at: https://www.rand.org/pubs/research_reports/RRA704-2.html; Mike Isaac & Daisuke Wakabayashi, *Russian Influence Reached 126 Million Through Facebook Alone*, N.Y. TIMES (Oct. 30, 2017), https://www.nytimes.com/2017/10/30/technology/facebook-google-russia.html; Laura Rosenberger, *Foreign Influence Operations and their use of Social Media*

channels without disclosure.[21] Ironically, when the Commission noted "an increase in the dissemination of programming in the United States by foreign governments and their representatives," it cited two articles discussing cable and Internet propaganda unaddressed by the Order. *See* Order ¶ 4 & n.10 (citing William J. Broad, *Putin's Long War Against American Science*, NEW YORK TIMES (Apr. 13, 2020) and Julian Barnes, Matthew Rosenberg and Edward Wong, *As Virus Spreads, China and Russia See Openings for Disinformation*, NEW YORK TIMES (Apr. 10, 2020)), (JA202). So, the Commission has ordered the entirety of the nation's broadcasters to conduct cumulatively expensive investigations into foreign propaganda that barely exists on the airwaves, while the real problem festers. And if any lessee is troubled by the Order's disclosure obligations, it can simply shift to other competitive media to escape them, to the detriment of broadcasters.

Platforms, ALLIANCE FOR SECURING DEMOCRACY (Jul. 31, 2018), https://securingdemocracy.gmfus.org/foreign-influence-operations-and-their-use-of-social-media-platforms/; Jeff Kao, ProPublica, and Raymond Zhong, Paul Mozur and Aaron Krolik, The New York Times, *How China Spreads Its Propaganda Version of Life for Uyghurs*, PROPUBLICA (June 23, 2021) (discussing propaganda distributed through Twitter and YouTube videos), https://www.propublica.org/article/how-china-uses-youtube-and-twitter-to-spread-its-propaganda-version-of-life-for-uyghurs-in-xinjiang.

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

Furthermore, even if some differential regulation of broadcasters were permissible, the Order is also significantly overinclusive. *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 502 U.S. 105, 121 (1991) ("significantly overinclusive" statute not narrowly tailored). The Commission refused to impose any reasonable limit on the type of leased programming subject to the investigation requirements, such as programming on matters of public controversy, or programming that the broadcaster would have reason to believe was sponsored by a foreign governmental entity. *See* Order ¶¶ 44-45, (JA222-24). A broadcaster must conduct the mandated investigation into whether a foreign governmental entity has sponsored *every* infomercial (for Snuggies, a Beachbody workout program, or the latest cosmetic skin cream or hair treatment); a radio call-in program by a local financial planner to discuss retirement funding options; or a local First Baptist Church broadcasting its Sunday services. The absurd overkill of this regulation, for no predictable effect, underscores its unlawfulness.

Even apart from the First Amendment right to be free from compulsion to investigate and report on the status of third parties, broadcasters have an expressive right of editorial control over the programming they transmit, by leasing or otherwise. *Cf. Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994) (finding that cable operators are entitled to First Amendment protection in exercising editorial discretion over which programs to carry on their channels). Broadcasters

at the margin may decline to enter at least certain types of leased programming agreements; their speech in the form of editorial selection of programming will be chilled by the investigative burdens imposed by the Order.[22] Moreover, programmers seeking to gain experience through leasing arrangements with the ultimate goal of purchasing broadcast stations may find it more difficult to identify broadcasters willing to enter leasing arrangements, impeding their ability to disseminate their content and become broadcast station owners.[23]

For all the foregoing reasons, the Order burdens substantially more speech than necessary to achieve its putative objectives, and the Order's simultaneous underinclusivity and overinclusivity are fatal.

3. The Commission Did Not Demonstrate That There Were No Less Restrictive Means to Serve its Claimed Interests

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

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[22] *See, e.g.,* NAB April 15 Ex Parte at 2, (JA191).

[23] NABOB Ex Parte at 2, (JA185); MMTC Ex Parte at 2, (JA188).

As noted above, run-of-the-mill commercial or local leased programming poses no substantial risk of undeclared foreign governmental sponsors deceiving audiences, and so the Commission could have limited its independent-investigation rule to types of programming where at least some arguable risk of undisclosed foreign governmental sponsorship existed. As Petitioners proposed, the Commission could have limited a requirement of independent investigation to cases where the broadcaster has "reason to believe that their lessee is affiliated with a foreign governmental entity."[24]

The Commission rejected that proposal, but for no good reason. First, the Commission stated that "the Act does not … contain a threshold showing of 'reason to believe' in advance of requiring that broadcasters engage in 'reasonable diligence.'" Order ¶ 44, (JA222). But that is a non-sequitur; the Commission is not implementing a statutory mandate in requiring independent investigations into possible foreign governmental sponsorship of programming. Restricting the investigation requirement in that fashion would advance the government's interests without the extraordinary burdens upon speech of a nationwide mandate as to *all* leased programming of *all* radio and television stations, even where the risk of

[24] *See* NAB April 13 Ex Parte at 3, (JA176); NABOB Ex Parte at 1, (JA184); MMTC Ex Parte at 1, (JA187); Order ¶ 44 n.126, (JA222-23).

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undisclosed foreign sponsorship is vanishingly small. The Government "may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989). Second, the Commission stated that leaving the decision to the broadcaster's "discretion" or "belief" would be ineffectual, Order ¶ 44, (JA222), but the Commission misunderstands the alternative proposal. A "reason to believe" standard is objective, not subjective. Third, the Commission stated that a "reason to believe" standard would "favor existing lessees at the expense of new and diverse entrants and … jeopardize the Commission's efforts to ensure broadcast audiences know who is seeking to persuade them." Order ¶ 44, (JA222-23). That makes no sense; a broadcaster will have more information on existing lessees that might trigger a duty to investigate.

Regardless, the question is whether the Commission has burdened more speech than necessary in pursuit of its putative objective. For new or existing lessees, the risk that a local church, business, municipality or commercial vendor of products or services, is actually a front for a foreign governmental entity is too infinitesimal to justify the broad encroachment on broadcasters' First Amendment rights. At a minimum, the Commission had to tailor its regulation to circumstances where there is reasonable risk of undisclosed foreign governmental sponsorship of programming.

Alternatively, if any independent-investigation obligation were permissible, the Commission could have limited it to "any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance," a category of programming already identified in the statute (47 U.S.C. § 317(a)(2)), and the FCC's sponsor identification regulations (*see* 47 C.F.R. § 73.1212(d)). That category is the most likely to attract foreign governmental speech. The Commission did not address this proposal, even though NAB raised it, and thus did not carry its burden. *See* Order ¶ 33 & n.99, (JA216-17); NAB Comments at 8-13, (JA078-JA083). "To meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *McCullen*, 573 U.S. at 495.

Finally, the Commission could easily have achieved its purported objectives by simply requiring the sponsor to disclose the required information to the broadcaster. The Commission has undoubted power to require lessees to provide sponsorship information to broadcasters. *See* Order ¶¶ 31, 39, 46-47, (JA215, JA219, JA224-25); 47 U.S.C. § 508(a)-(c). Notably, the Order is only addressed to those foreign governmental sponsors that are above board and compliant with the law: *i.e.*, those having already registered under FARA or disclosed their status as foreign media outlets to the Commission under 47 U.S.C. § 624. As the

Commission concedes, FARA registrants are required to disclose their identity in programming. *See* Order ¶ 51, (JA226); 22 U.S.C. § 614(b). The Commission could easily have required the lessees to add the additional information (such as the country involved) that the Order requires, and to do so at designated times. Because there is no reason to think that a FARA registrant or FCC-disclosed foreign media outlet would not divulge the correct information, the unduly burdensome requirements the Order places upon broadcasters accomplish nothing. Moreover, the Commission could have required FARA registrants (and disclosed foreign media outlets) to make that disclosure when placing programming with other providers that may be within the FCC's jurisdiction, including cable systems and satellite broadcasters. This narrower alternative not only would have avoided the unnecessary and ineffective investigatory burdens on broadcasters, but also could perhaps have advanced the asserted governmental interest in the media sectors where undisclosed foreign propaganda may actually be a problem.

In short, the Order is unconstitutional. The Court may avoid the constitutional question by giving the statute its proper construction as not requiring independent investigations by broadcasters into the identity of program sponsors, or it may set aside the Order as contrary to the First Amendment. Alternatively, as discussed in the next section, the Court may avoid the constitutional question because the Order also violates the APA.

III. The Order Is Arbitrary and Capricious Under the Administrative Procedure Act

Under the APA, agency actions must be "set aside" if they are "arbitrary" or "capricious." 5 U.S.C. § 706(2)(A). To avoid this, "the agency 'must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'" *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (citing *Motor Vehicle Mfrs. Assn. of U.S., Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983)).

Here, for the same reasons that the Order is not narrowly tailored under the First Amendment, it is arbitrary and capricious. Even though the administrative record identifies only three instances of undisclosed foreign governmental sponsorship of broadcast programming, the Commission has issued a sweeping mandate for every one of the more than 12,000 broadcasters across the country, no matter how small, to expend resources investigating and documenting whether every lessor that does not admit to being or serving a foreign governmental entity is speaking the truth. *Supra* at 41-43. And it does so by mandating that broadcasters search government-maintained databases where the concerned entity has presumably already made a truthful disclosure of its status as a foreign

governmental entity. No other providers—including cable operators and satellite broadcasters—bear such a burden.

This entire regulatory scheme will accomplish nothing. If the lessor has already registered with FARA or the Commission as a foreign governmental entity, it will likely disclose that fact upon inquiry by the broadcaster, and no independent broadcaster investigation will be necessary. If a foreign governmental entity desires to unleash surreptitious propaganda upon the unsuspecting American public, or disguise its true principal, it likely will not have registered with FARA or the Commission, or disclosed its true principal in the FARA or Commission databases, and thus will not be discovered by the mandated investigation. In all reasonable probability, the lessor in the overwhelming majority of cases will be a domestic or perhaps a foreign private actor and (accordingly) not listed in the FARA or Commission databases. Still, each broadcast station must investigate the lessor's status as a foreign governmental entity and document its efforts on a quarterly basis. The investigation and recordkeeping required by the Order is fruitless make-work.

A FARA registrant or Commission-listed foreign media outlet that refuses to identify its sponsorship of programming to the broadcaster will be a rare bird indeed, and perhaps an imaginary one. But even if such a bird might ever be captured by the many thousands of investigations that the Order mandates, it

cannot justify the utter waste of resources entailed by the FCC's scheme. The arbitrary and capricious standard is appropriately deferential, but does not require this Court to sanction regulatory overreach.

CONCLUSION

For the foregoing reasons, this Court should set aside the Order as unlawful.

Dated: February 25, 2022

Respectfully submitted,

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CIRCUIT RULE 32(A)(2) ATTESTATION

In accordance with D.C. Circuit Rule 32(a)(2), I hereby attest that all other parties on whose behalf this joint brief is submitted concur in its filing.

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

CERTIFICATE OF COMPLIANCE

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

This brief complies with the word-count limitation of Fed. R. App. P. 32(e) and this Court's October 25, 2021 scheduling order. This brief contains 12,706 words, not counting the parts excluded by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

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

CERTIFICATE OF SERVICE

I, Richard Kaplan, hereby certify that on February 25, 2022, I filed the foregoing Final Initial Joint Brief of Petitioners with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system which will serve participants in this case who are registered CM/ECF users.

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

ADDENDUM

DECLARATIONS IN SUPPORT OF STANDING

STATUTES AND REGULATIONS

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

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

DECLARATION IN SUPPORT OF STANDING

My name is Richard Kaplan I am the General Counsel and Executive Vice President of the National Association of Broadcasters ("NAB"). I have personal knowledge of the facts set forth in this declaration.

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

2. NAB and its members actively participated in the rulemaking proceeding that led to the Commission's adoption of the Order at issue in this case,

Sponsorship Identification Requirements for Foreign Government-Provided Programming, Report and Order, 36 FCC Rcd 7702 (2021) ("Order"), published in the Federal Register on June 17, 2021. *See* 86 Fed. Reg. 32221.

3. Many NAB members air sponsored programming pursuant to leasing arrangements, and the Order's requirements of inquiry, investigation, and reporting apply to all broadcasters that lease programming. Order. ¶¶ 38-41, App. A (proposed 47 C.F.R. § 73.1212(j)).

4. The unlawful Order injures NAB member broadcasters by coercing action and the expenditure of resources and violates their statutory and constitutional rights. Specifically, as detailed in broadcaster declarations filed with petitioner's joint stay petition before the FCC, broadcasters with leasing arrangements will be forced to spend significant sums to hire and train employees to conduct the reasonable diligence prescribed by the Order, and will be forced to divert significant amounts of employee time to undertaking the diligence requirements, including making inquiries of their lessees, obtaining certifications or amendments to lease agreements, conducting research in the Department of Justice's Foreign Agents Registration Act database and FCC foreign media outlets lists, and documenting the results of that research. *See* Ex. 1, McCoy Declaration, at ¶¶ 5-9; Ex. 2, Santrella Declaration, at ¶¶ 10-11; Ex. 3, Zimmer Declaration, at ¶¶ 5-9; Ex. 4, Neuhoff Declaration, at ¶¶ 5-9; Ex. 5, Wishart Declaration, at ¶¶ 5-9;

Ex. 6, Bustos Declaration, at ¶¶ 7-10, attached hereto.* Broadcasters will also need to hire outside legal counsel to advise on compliance and address questions that arise during research, develop amendments and/or certifications for all lease agreements and negotiate with programming partners. *See* Ex. 1 at ¶ 10; Ex. 2 at ¶ 11; Ex. 3 at ¶¶ 8-9; Ex. 4 at ¶¶ 8-9; Ex. 5 at ¶¶ 8-9. In addition, broadcasters may ultimately lose sponsored programming to platforms where such inquiries are not required, as the diligence requirements may open the door to negotiations with long-standing partners on other agreement terms and introduce an element of distrust in these relationships, to the detriment of broadcasters' bottom lines. *See* Ex. 1 at ¶ 11; Ex. 2 at ¶ 13; Ex. 3 at ¶ 10; Ex. 4 at ¶ 10; Ex. 5 at ¶¶ 11-12; Ex. 6 at ¶¶ 10-11.

5. Because NAB advocates for proper regulatory treatment of its members, the interests it seeks to protect are germane to the association's purpose.

6. Because the Order's requirements apply uniformly to all broadcasters that lease programming, neither the claim asserted nor the relief requested requires the participation in the lawsuit of NAB's individual members.

Richard Kaplan

* Each declarant is a senior executive of an NAB member company.

Exhibit 1

Declaration of DuJuan McCoy,

Circle City Broadcasting, LLC

DECLARATION OF DUJUAN MCCOY

I, DuJuan McCoy, declare as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

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

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

September 7, 2021

Exhibit 2

Declaration of David Santrella,

Salem Media Group, Inc.

DECLARATION OF DAVID SANTRELLA

I, David Santrella, declare as follows:

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

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

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

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

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

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

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

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

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

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

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

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

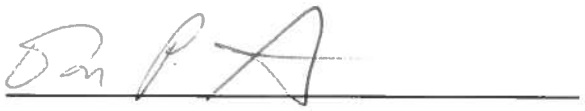
12. I further estimate that Salem's annual compliance costs and burdens to comply with the diligence standards with respect to new agreements and renewals of existing arrangements may require approximately five hours of employee time per contract at an average cost of $25.00 per hour. Based on our usual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

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

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

* * *

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



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

Exhibit 3

Declaration of John Zimmer,

Zimmer Midwest Communications, Inc.

DECLARATION OF JOHN ZIMMER

I, John Zimmer, hereby declare as follows:

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

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

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

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

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

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

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

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

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

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

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

* * *

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

John Zimmer
President
Zimmer Midwest Communications, Inc.

September 8, 2021

Exhibit 4

Declaration of Elizabeth Neuhoff,

Neuhoff Communications

DECLARATION OF ELIZABETH NEUHOFF

I, Elizabeth Neuhoff, declare as follows:

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

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

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

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

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

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

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

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

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

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

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

* * *

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

Beth Neuhoff Elizabeth R. Neuhoff

August __, 2021 9/4/2021

Exhibit 5

Declaration of Karen Wishart,

Urban One, Inc.

DECLARATION OF KAREN WISHART

I, Karen Wishart, declare as follows:

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

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

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

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

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

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

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

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

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

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

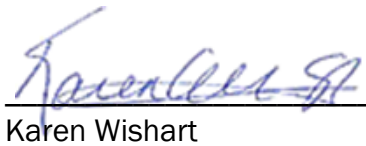
10. Indeed, given these costs, the disruption it would cause to existing compliance efforts, particularly in political years and to provide for continuity of knowledge and efforts, we may need to hire another full-time employee simply to comply with the diligence requirements for foreign government-sponsored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

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

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

* * *

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



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

September 7, 2021

Exhibit A
Urban One Stations

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

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

Exhibit 6

Declaration of Amador Bustos,

Bustos Media Holdings, LLC

DECLARATION OF AMADOR S. BUSTOS

I, Amador S. Bustos, declare as follows:

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

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

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

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

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

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

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

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

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

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

10. It is difficult to estimate the total financial and legal costs of compliance because we have no experience with the new rules. Some programmers may simply decide the hassle is not worth the effort and stop buying the time. Others may feel insulted if I start to question their sponsorship and programming practices.

11. All our foreign language leasing arrangements are on AM stations. Our ability to ensure that these stations remain financially viable depends on our ability to serve niche audiences by securing programming religious and/or foreign language content. I am very concerned we will lose clients from our AM broadcast platform, digging an even deeper hole for our struggling AM stations. It will be very easy for our programming partners to simply

migrate to other platforms such as subscription video or audio services—or digital outlets like social media—where such inquiries are not mandated.

* * *

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

Amador S. Bustos

September 7, 2021

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

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

DECLARATION IN SUPPORT OF STANDING

My name is Robert E. Branson. I am the President and Chief Executive Officer of the Multicultural Media, Telecom and Internet Council, Inc. ("MMTC"). I have personal knowledge of the facts set forth in this declaration.

1. MMTC is a national nonprofit and non-partisan membership organization dedicated to promoting and preserving equal opportunity and civil rights in the mass media, telecommunications and broadband industries. Its members include owners of radio and television broadcast stations, programmers and prospective station owners of color who rely on leasing arrangements to gain experience programming stations.

2. MMTC actively participated in the rulemaking proceeding that led to the Commission's adoption of the Order at issue in this case, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021) ("Order"), published in the Federal Register on June 17, 2021. *See* 86 Fed. Reg. 32221.

3. Several MMTC members air sponsored programming pursuant to leasing arrangements, and the Order's requirements of inquiry, investigation, and reporting apply to all broadcasters that lease programming. Order, ¶¶ 38-41, App. A (proposed 47 C.F.R. § 73.1212(j)). Other MMTC members seek to become owners of broadcast stations by gaining experience in the broadcast industry by providing programming to broadcast stations pursuant to leasing arrangements.

4. The unlawful Order injures MMTC member broadcasters by requiring action and the expenditure of resources and violates their statutory and constitutional rights. Specifically, as detailed in broadcaster declarations filed with petitioner's joint stay petition before the FCC, broadcasters with leasing arrangements will be forced to spend significant sums to hire and train employees to conduct the reasonable diligence prescribed by the Order, and will be forced to divert significant amounts of employee time to undertaking the diligence requirements, including making inquiries of their lessees, obtaining certifications or amendments to lease agreements, conducting research in the Department of

Justice's Foreign Agents Registration Act database and FCC foreign media outlets lists, and documenting the results of that research. *See* Declaration of Richard Kaplan at Ex. 1, McCoy Declaration, at ¶¶ 5-9; Ex. 2, Santrella Declaration, at ¶¶ 10-11; Ex. 3, Zimmer Declaration, at ¶¶ 5-9; Ex. 4, Neuhoff Declaration, at ¶¶ 5-9; Ex. 5, Wishart Declaration, at ¶¶ 5-9; Ex. 6, Bustos Declaration, at ¶¶ 7-10.* Broadcasters will also need to hire outside legal counsel to advise on compliance and address questions that arise during research, develop amendments and/or certifications for all lease agreements and negotiate with programming partners. *Id.* at Ex. 1 at ¶ 10; Ex. 2 at ¶ 11; Ex. 3 at ¶¶ 8-9; Ex. 4 at ¶¶ 8-9; Ex. 5 at ¶¶ 8-9. In addition, broadcasters may ultimately lose sponsored programming to platforms where such inquiries are not required, as the diligence requirements may open the door to negotiations with long-standing partners on other agreement terms and introduce an element of distrust in these relationships, to the detriment of broadcasters' bottom lines. *See id.*, at Ex. 1 at ¶ 11; Ex. 2 at ¶ 13; Ex. 3 at ¶ 10; Ex. 4 at ¶ 10; Ex. 5 at ¶¶ 11-12; Ex. 6 at ¶¶ 10-11. Moreover, the burdens associated with the new rules could deter established broadcasters from continuing to enter

* Two of the declarants, Mr. McCoy of Circle City Broadcasting, LLC, and Mr. Bustos of Bustos Media Holdings, LLC, are senior executives at MMTC member companies.

5. Because MMTC advocates for proper regulatory treatment of its members, the interests it seeks to protect are germane to the organization's purpose.

6. Because the Order's requirements apply uniformly to all broadcasters that lease programming, neither the claim asserted, nor the relief requested requires the participation in the lawsuit of MMTC's individual members.

Robert E. Branson

Robert E. Branson

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

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

DECLARATION IN SUPPORT OF STANDING

My name is James L. Winston. I am the President of the National Association of Black Owned Broadcasters ("NABOB"). I have personal knowledge of the facts set forth in this declaration.

1. NABOB is a national not-for-profit organization dedicated to increasing ownership of broadcast radio and television stations and other media by African Americans and other people of color. Its members include owners of radio and television broadcast stations, programmers and prospective station owners of color who rely on leasing arrangements to gain experience programming stations.

2. NABOB actively participated in the rulemaking proceeding that led to the Commission's adoption of the Order at issue in this case, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021) ("Order"), published in the Federal Register on June 17, 2021. *See* 86 Fed. Reg. 32221.

3. Several NABOB members air sponsored programming pursuant to leasing arrangements, and the Order's requirements of inquiry, investigation, and reporting apply to all broadcasters that lease programming. Order. ¶¶ 38-41, App. A (proposed 47 C.F.R. § 73.1212(j)). Some NABOB members became owners of broadcast stations after first gaining experience in the broadcast industry by providing programming to broadcast stations pursuant to leasing arrangements.

4. The unlawful Order injures NABOB member broadcasters by requiring action and the expenditure of resources and violates their statutory and constitutional rights. Specifically, as detailed in broadcaster declarations filed with petitioner's joint stay petition before the FCC, broadcasters with leasing arrangements will be forced to spend significant sums to hire and train employees to conduct the reasonable diligence prescribed by the Order, and will be forced to divert significant amounts of employee time to undertaking the diligence requirements, including making inquiries of their lessees, obtaining certifications or amendments to lease agreements, conducting research in the Department of

Justice's Foreign Agents Registration Act database and FCC foreign media outlets lists, and documenting the results of that research. *See* Declaration of Richard Kaplan at Ex. 1, McCoy Declaration, at ¶¶ 5-9; Ex. 2, Santrella Declaration, at ¶¶ 10-11; Ex. 3, Zimmer Declaration, at ¶¶ 5-9; Ex. 4, Neuhoff Declaration, at ¶¶ 5-9; Ex. 5, Wishart Declaration, at ¶¶ 5-9; Ex. 6, Bustos Declaration, at ¶¶ 7-10.[*] Broadcasters will also need to hire outside legal counsel to advise on compliance and address questions that arise during research, develop amendments and/or certifications for all lease agreements and negotiate with programming partners. *Id.* at Ex. 1 at ¶ 10; Ex. 2 at ¶ 11; Ex. 3 at ¶¶ 8-9; Ex. 4 at ¶¶ 8-9; Ex. 5 at ¶¶ 8-9. In addition, broadcasters may ultimately lose sponsored programming to platforms where such inquiries are not required, as the diligence requirements may open the door to negotiations with long-standing partners on other agreement terms and introduce an element of distrust in these relationships, to the detriment of broadcasters' bottom lines. *Id.* at Ex. 1 at ¶ 11; Ex. 2 at ¶ 13; Ex. 3 at ¶ 10; Ex. 4 at ¶ 10; Ex. 5 at ¶¶ 11-12; Ex. 6 at ¶¶ 10-11. Moreover, the burdens associated with the new rules could deter established broadcasters from continuing to enter into leasing arrangements, foreclosing opportunities for prospective broadcast station owners to gain experience through such arrangements.

[*] Two of the declarants, Mr. McCoy of Circle City Broadcasting, LLC, and Ms. Wishart of Urban One, Inc., are senior executives at NABOB member companies.

5. Because NABOB advocates for proper regulatory treatment of its members, the interests it seeks to protect are germane to the organization's purpose.

6. Because the Order's requirements apply uniformly to all broadcasters that lease programming, neither the claim asserted nor the relief requested requires the participation in the lawsuit of NABOB's individual members.

James L. Winston

22 U.S.C. § 614

§ 614. Filing and labeling of political propaganda

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

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

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

(d) Library of Congress
For purposes of the Library of Congress, other than for public distribution, the Secretary of the Treasury and the United States Postal Service are authorized, upon the request of the Librarian of Congress, to forward to the Library of Congress fifty copies, or as many fewer thereof as are available, of all foreign prints determined

to be prohibited entry under the provisions of section 1305 of title 19 and of all foreign prints excluded from the mails under authority of section 1717 of title 18.

Notwithstanding the provisions of section 1305 of title 19 and of section 1717 of title 18, the Secretary of the Treasury is authorized to permit the entry and the United States Postal Service is authorized to permit the transmittal in the mails of foreign prints imported for governmental purposes by authority or for the use of the United States or for the use of the Library of Congress.

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

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

47 U.S.C. § 317

§ 317. Announcement of payment for broadcast

(a) Disclosure of person furnishing

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

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

(b) Disclosure to station of payments

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

(c) Acquiring information from station employees

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

(d) Waiver of announcement

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

(e) Rules and regulations

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

28 C.F.R. § 5.400

§ 5.400 Filing of informational materials

(a) The informational materials required to be filed with the Attorney General under section 4(a) of the Act shall be filed with the Registration Unit no later than 48 hours after the beginning of the transmittal of the informational materials.

(b) Whenever informational materials have been filed pursuant to section 4(a) of the Act, an agent of a foreign principal shall not be required, in the event of further dissemination of the same materials, to forward additional copies thereof to the Registration Unit.

(c) Unless specifically directed to do so by the Assistant Attorney General, a registrant is not required to file a copy of a motion picture which he disseminates on behalf of his foreign principal, so long as he files monthly reports on its dissemination. In each such case this registrant shall submit to the Registration Unit either a film strip showing the label required by section 4(b) of the Act or an affidavit certifying that the required label has been made a part of the film.

28 C.F.R. § 5.402

§ 5.402 Labeling informational materials

(a) Within the meaning of this part, informational materials shall be deemed labeled whenever they have been marked or stamped conspicuously at their beginning with a statement setting forth such information as is required under section 4(b) of the Act.

(b) Informational materials which are required to be labeled under section 4(b) of the Act and which are in the form of prints shall be marked or stamped conspicuously at the beginning of such materials with a statement in the language or languages used therein, setting forth such information as is required under section 4(b) of the Act.

(c) Informational materials required to be labeled under section 4(b) of the Act but which are not in the form of prints shall be accompanied by a statement setting forth such information as is required under section 4(b) of the Act.

(d) Informational materials that are televised or broadcast, or which are caused to be televised or broadcast, by an agent of a foreign principal, shall be introduced by a statement which is reasonably adapted to convey to the viewers or listeners thereof such information as is required under section 4(b) of the Act.

47 C.F.R. § 73.1212

§ 73.1212 Sponsorship identification; list retention; related requirements

(a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce:
(1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and
(2) By whom or on whose behalf such consideration was supplied: Provided, however, That ''service or other valuable consideration'' shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.
(i) For the purposes of this section, the term ''sponsored'' shall be deemed to have the same meaning as ''paid for.''
(ii) In the case of any television political advertisement concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.

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

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

(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is

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

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

(f) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product

constitutes a sponsorship identification, shall be deemed sufficient for the purpose of this section and only one such announcement need be made at any time during the course of the broadcast.

(g) The announcement otherwise required by section 317 of the Communications Act of 1934, as amended, is waived with respect to the broadcast of ‘‘want ad’’ or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever sponsorship announcements are omitted pursuant to this paragraph, the licensee shall observe the following conditions: (1) Maintain a list showing the name, address, and (where available) the telephone number of each advertiser; (2) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list. Such list must be retained for a period of two years after broadcast.

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