

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

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

SECOND NOTICE OF PROPOSED RULEMAKING

Adopted: October 4, 2022

Released: October 6, 2022

Comment Date: [30 Days After Publication in the Federal Register]

Reply Comment Date: [45 Days After Publication in the Federal Register]

By the Commission:

I. INTRODUCTION

1. With today’s Second Notice of Proposed Rulemaking (*Second NPRM*), we take the next step to ensure that we have strong foreign sponsorship identification rules. On April 22, 2021, the Commission released a Report and Order (*Order*) in the above captioned proceeding adopting a requirement that radio and television stations broadcast clear disclosures for programming that is provided by a foreign governmental entity and setting forth the procedures for exercising reasonable diligence to determine whether such a disclosure is needed.¹ We adopted the requirements in response to reports of undisclosed foreign government programming being transmitted by U.S. broadcast stations.² The principle that the public has a right to know the identity of those soliciting their support is a fundamental and long-standing tenet of broadcast regulation.³ We promulgated the foreign sponsorship identification rules against the backdrop of regulation that has evolved over ninety years to ensure that the public is informed when airtime has been purchased on broadcast stations in an effort to persuade

¹ *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702, 7702-03, para. 1 (2021) (*Order*). The *Order* defined the term “foreign governmental entity” to include those entities or individuals that would trigger a disclosure pursuant to the foreign sponsorship identification rules. *Id.* at 7708-13, paras. 14-23. This Second Notice of Proposed Rulemaking accords to the term “foreign governmental entity” the definition established in the *Order*. See *infra* n. 20 (providing the definition of the term “foreign governmental entity” as it appears in section 73.1212(j)(2) of our rules).

² See, e.g., *Order*, 36 FCC Rcd at 7702-03, para. 1 & n. 1 (describing reports of undisclosed foreign government programming being transmitted over U.S. radio stations).

³ The Commission’s words from nearly sixty years ago, in the context of adopting changes to the sponsorship identification rules, remain equally applicable today: “Perhaps to a greater extent today than ever before, the listening and viewing public is being confronted and beseeched by a multitude of diverse, and often conflicting, ideas and ideologies. Paramount to an informed opinion and wisdom of choice in such a climate is the public’s need to know the identity of those persons or groups who solicit the public’s support.” *Amendment of Sections 3.119, 3.289, 3.654 and 3.789 of the Commission’s Rules*, Report and Order, 34 FCC 829, 849, para. 59 (1963).

audiences, enabling the public to distinguish between paid content and material chosen by the broadcaster itself.⁴

2. On August 13, 2021, the National Association of Broadcasters (NAB), the Multicultural Media, Telecom and Internet Council (MMTC), and the National Association of Black Owned Broadcasters (NABOB) (collectively, Petitioners) filed a Petition for Review of the *Order* with the U.S. Court of Appeals for the District of Columbia Circuit challenging one step in our reasonable diligence requirement, established to ensure that broadcasters independently confirm the lessee’s status when determining whether programming is provided by a foreign governmental entity.⁵ The Petitioners alleged that the Commission lacked statutory authority to adopt such a requirement and also contended that such a requirement violated the First Amendment and the Administrative Procedure Act.

3. On July 12, 2022, the D.C. Circuit ruled on the Petition for Review,⁶ leaving untouched the bulk of the foreign sponsorship identification requirements and vacating only the provision that broadcasters check two federal sources to verify whether a lessee is a “foreign governmental entity,” as defined in the rules.⁷

4. This *Second NPRM* seeks to fortify the rules in the wake of the court’s decision. Specifically, pursuant to section 317(e), which directs the Commission to prescribe rules and regulations to carry out the provisions of section 317, we propose that, in order to comply with the “reasonable diligence” requirement regarding foreign sponsorship identification,⁸ a licensee must certify that it has informed its lessee of the foreign sponsorship identification rules and obtained, or sought to obtain, a certification from its lessee stating whether the lessee is or is not a “foreign governmental entity.” In turn, we propose that the lessee submit a certification in response to a licensee’s request. These new certification requirements would subsume the duty of licensees under section 73.1212(j)(3)(v) of our rules to memorialize and retain their reasonable diligence inquiries.⁹ As this *Second NPRM* proposes to establish standardized certification language for licensees and lessees, the time and cost associated with compliance should be minimal. This *Second NPRM* also seeks comment on an alternative approach to the certification requirement. This alternative approach was raised as a hypothetical by the D.C. Circuit during the oral argument in *NAB v. FCC*.¹⁰ Under this approach, in the event that a lessee states it is not a “foreign governmental entity” a licensee must obtain from the lessee appropriate documentation (e.g., a screen shot(s)) showing that the lessee’s name does not appear on either of the two federal government websites which we identified in the *Order* as reference points for determining whether a given individual/entity is a “foreign governmental entity.” Finally, this *Second NPRM* provides interested parties an additional opportunity to comment on a pending Petition for Clarification “regarding the

⁴ See *Sponsorship Identification Requirements for Foreign Government-Provided Programming, Notice of Proposed Rulemaking*, 35 FCC Rcd 12099-105, paras. 1-11 (2020) (*NPRM*) (describing the evolution of the statutory sponsorship identification requirements in section 317 of the Act and the Commission’s implementing regulations).

⁵ *Petition for Review, the National Association of Broadcasters, the Multicultural Media, Telecom and Internet Council, and the National Association of Black Owned Broadcasters v. FCC*, No. 21-1171 (D.C. Cir. filed Aug. 13, 2021).

⁶ *National Association of Broadcasters, et al., v. FCC*, 39 F.4th 817, 820 (D.C. Cir. July 12, 2022) (*NAB v. FCC*).

⁷ See *infra* n. 20 (providing definition of “foreign governmental entity”).

⁸ 47 U.S.C. § 317.

⁹ See 47 CFR § 73.1212(j)(3)(v).

¹⁰ Oral Argument at 24:05, *National Association of Broadcasters, et al., v. FCC*, 39 F.4th 817, 820 (D.C. Cir. July 12, 2022) (No. 21-1171), [https://www.cadc.uscourts.gov/recordings/recordings2021.nsf/BBAF4A6ABFCFB734852588220055C0EF/\\$file/21-1171.mp3](https://www.cadc.uscourts.gov/recordings/recordings2021.nsf/BBAF4A6ABFCFB734852588220055C0EF/$file/21-1171.mp3).

applicability of the foreign sponsorship identification rules to advertisements sold by local broadcast stations.”¹¹

II. BACKGROUND

5. The *Order* amended the Commission’s long-standing sponsorship identification rules¹² by establishing new foreign sponsorship identification rules designed to identify foreign government-provided programming airing on broadcast radio and television stations.¹³ The foreign sponsorship identification rules seek to increase transparency and ensure that audiences of broadcast stations are aware when a foreign government, or its representatives, are seeking to persuade the American public.¹⁴ The rules require a specific disclosure at the time of broadcast if material aired pursuant to the lease of time on a licensee’s station has been sponsored, paid for, or furnished by a foreign governmental entity.¹⁵ Consistent with section 317(a)(2) of the Act and the pre-existing sponsorship identification rules,¹⁶ the foreign sponsorship identification rules also require disclosure of political programming or programming involving the discussion of a controversial issue if such programming is provided by a foreign governmental entity for free, or for nominal compensation, as an inducement to air.¹⁷ Hence, the phrase “provided by” when used in relation to “foreign government programming” covers both the broadcast of programming in exchange for consideration *and* the furnishing of any “political program or any program involving the discussion of a controversial issue” for free as an inducement to broadcast the programming.¹⁸

6. The requirements apply to leased programming because the record in the underlying proceeding identified leased airtime as the primary means by which foreign governmental entities are accessing U.S. airwaves to persuade the American public without adequately disclosing the true sponsor.¹⁹ The foreign sponsorship identification rules established a definition of “foreign governmental

¹¹ ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates’ *Petition for Clarification* (July 19, 2021), Sponsorship Identification Requirements for Foreign Government-Provided Programming, MB 20-299, FCC 21-42 (Petition for Clarification).

¹² 47 CFR § 73.1212.

¹³ See generally *Order*, 36 FCC Rcd 7739-40, Appendix A (establishing new rule sections 73.1212(j) and (k)). In this *Second NPRM*, our use of the term “foreign government-provided programming” refers to all programming that is provided by an entity or individual that falls into one of the four categories listed in section 73.1212(j)(2) of our rules. 47 CFR § 73.1212(j)(2).

¹⁴ See *Order*, 36 FCC Rcd at 7703, para. 2 (stating that “[t]he foreign sponsorship identification rules we adopt in this *Order* seek to eliminate any potential ambiguity to the viewer or listener regarding the source of programming provided from foreign governmental entities”); and 47 CFR § 73.1212(j)-(k).

¹⁵ See 47 CFR § 73.1212(j)(1)(i) (stating that foreign government-provided programming must include the following disclosure: “The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].”).

¹⁶ See 47 U.S.C. § 317(a)(2) and 47 CFR § 73.1212(d).

¹⁷ See *Order*, 36 FCC Rcd at 7713, para. 24 (stating “[W]e will require a specific disclosure at the time of broadcast if material aired pursuant to the lease of time on the station has been sponsored, paid for, or, in the case of political program or any program involving the discussion of a controversial issue, if it has been furnished for free as an inducement to air by a foreign governmental entity”).

¹⁸ *Id.* at 7719, para. 34.

¹⁹ *Id.* at 7703-04, 7713-17, paras. 3, 24-31.

entity” based on existing definitions, statutes, or determinations by the U.S. government.²⁰ Pursuant to the foreign sponsorship identification rules, to meet the “reasonable diligence” standard of section 317(c) of the Act, with regard to foreign government-provided programming, a licensee must at a minimum:

- (1) Inform the lessee at the time of agreement and at renewal of the foreign sponsorship disclosure requirement;
- (2) Inquire of the lessee at the time of agreement and at renewal whether it falls into any of the categories that qualify it as a “foreign governmental entity;”
- (3) Inquire of the lessee at the time of agreement and at renewal whether it knows if any individual/entity further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;
- (4) Independently confirm the lessee’s status, at the time of agreement and at renewal by consulting the Department of Justice’s FARA website and the Commission’s semi-annual U.S.-based foreign media outlets reports for the lessee’s name. This need not be done if the lessee has already disclosed that it falls into one of the covered categories and/or that there is a separate need for a disclosure because an individual/entity further back in the chain of producing/transmitting the programming falls into one of the covered categories and has provided some form of service, consideration, or, in the case of political programming the programming itself, as an inducement to broadcast the programming;
- (5) Memorialize the above-listed inquiries and investigations and retain such memorialization in its records for the remainder of the then current license term or one year, whichever is longer.²¹

7. The requirements listed above apply to licensees in the case of leased programming when “money, service or other valuable consideration” is provided pursuant to section 317(a)(1) of the Act.²² Likewise, the requirements apply to licensees, pursuant to section 317(a)(2), in the case of political programming or programming involving a controversial issue even when the programming itself has been provided as an inducement to air such programming.²³

²⁰ Pursuant to section 73.1212(j)(2), the term a “foreign governmental entity” “shall include governments of foreign countries, foreign political parties, agents of foreign principals, and United States-based foreign media outlets.” 47 CFR § 73.1212(j)(2). Subsections 73.1212(j)(2)(i)-(iv) of our rules state:

- (i) The term “government of a foreign country” has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(e);
- (ii) The term “foreign political party” has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(f);
- (iii) The term “agent of a foreign principal” has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose “foreign principal” is a “government of a foreign country,” a “foreign political party,” or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a “government of a foreign country” or a “foreign political party” as defined above in subsection 73.1212(j) (i) and (ii), and that is acting in its capacity as an agent of such “foreign principal;”
- (iv) The term “United States-based foreign media outlet” has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

²¹ See *id.* at § 73.1212(j)(3) and *Order*, 36 FCC Rcd at 7719-26, paras. 35-45 (describing licensee’s reasonable diligence requirements).

²² See 47 U.S.C. § 317(a)(1) and *Order*, 36 FCC Rcd at 7716-17, paras. 30-31.

²³ See 47 U.S.C. § 317(a)(2) and *Order*, 36 FCC Rcd at 7717-19, paras. 32-33.

8. While the “reasonable diligence” requirements of section 317(c) apply to licensees, as noted in the *Order*, lessees have an obligation, pursuant to section 507 of the Act, to communicate information to the licensee relevant to determining whether a sponsorship identification disclosure is required.²⁴ Pursuant to section 507, the lessee’s obligation to communicate information to the licensee is not limited to just programming provided in exchange for consideration. As stated in the *Order*, the provision of any “political program or any program involving the discussion of a controversial issue” by a foreign governmental entity to a party in the distribution chain for no cost and as an inducement to air that material on a broadcast station is a “service of other valuable consideration” under the terms of section 507.²⁵ Thus, under this section, if an individual/entity involved in the production, preparation, or supply of programming that is intended to be aired on a station has received any “political program or any program involving the discussion of a controversial issue” from a foreign governmental entity for free, or at nominal charge, as an inducement for its broadcast, this individual/entity must disclose this fact to its employer, the person for whom the program is being produced, or the licensee of the station.²⁶ In addition, this programming will require an appropriate identification.²⁷

9. Further, the *Order* established requirements concerning the format and frequency of the disclosure that must accompany foreign government-provided programming.²⁸ The foreign sponsorship identification rules apply to all new leases and renewals of existing leases as of March 15, 2022. Lease agreements that were in place prior to March 15, 2022, were given an additional six months to come into compliance – i.e., by September 15, 2022.²⁹

10. As stated above, following the Petitioners’ challenge to the *Order*, the D.C. Circuit vacated the fourth reasonable diligence requirement itemized above, leaving all other elements of the rules in place.³⁰ The court held that the Commission lacked authority under section 317(c) of the Act to require licensees to review two federal government websites to ascertain a lessee’s status. The D.C. Circuit stated that the “reasonable diligence” requirement contained in section 317(c) of the Act imposes on licensees only “a duty of inquiry, not a duty of investigation.”³¹ The court looked to prior precedent in

²⁴ See *Order*, 36 FCC Rcd at 7726-27, paras. 46-48 (concluding that sections 507(b) and (c) of the Act impose a duty on the lessee to inform the licensee to the extent it is aware of any payments (or other valuable consideration) associated with the programming such as to trigger a disclosure); see also 47 U.S.C. § 508(b)-(c).

²⁵ See *Order*, 36 FCC Rcd at 7719, para. 34 (noting that section 507 of the Act also covers political programming and programming involving the discussion of a controversial issue).

²⁶ *Id.* at 7719, para. 34.

²⁷ *Id.*

²⁸ *Id.* at 7727-31, paras. 49-61.

²⁹ See Media Bureau Announces March 15, 2022 Compliance Date of Sponsorship Identification Requirements for Foreign Government-Provided Programming on Broadcast Stations, Public Notice, DA 22-277 (rel. March 15, 2022). On June 17, 2021, a summary of the *Order* was published in the *Federal Register*, and thirty days after publication, the rules adopted became effective, although compliance with the information-collection and recordkeeping portions was not required until after review by the Office of Management and Budget (OMB). On March 7, 2022, OMB approved the information collection requirements associated with the foreign sponsorship identification and public inspection filing rules. On March 15, 2022, the Media Bureau announced that the notice of the compliance date for the rule changes was published in the *Federal Register* on March 15, 2022, and thus the compliance date for the Commission’s foreign sponsorship identification rules is March 15, 2022.

³⁰ *NAB v. FCC*, 39 F.4th at 820. As shown in Appendix A below, we propose to delete the fourth “reasonable diligence” requirement from our rules in conformance with the court’s vacatur.

³¹ *Id.* at 820.

asserting that “Section 317(c) ‘is satisfied by appropriate inquiries made by the station to the party that pays it for the broadcast.’”³²

11. Before the Commission’s *Order* was appealed, on July 19, 2021, the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, “the Affiliates”) filed a Petition for Clarification.³³ The Affiliates asked us to clarify what constitutes “traditional, short-form advertising,” which we exempted from the foreign sponsorship identification requirements adopted in the *Order*. In their petition, the Affiliates recommended that the foreign sponsorship identification rules not apply when a licensee “sells time to advertisers in the normal course of business, no matter the length of the advertisement.”³⁴ The petition resulted in just two responses from commenters, each requesting the Commission to clarify that all forms of advertising for commercial goods and services are not subject to the foreign sponsorship rules.³⁵ The petition remains pending.

III. DISCUSSION

A. Certification Requirement for the Foreign Sponsorship Identification Rules

12. With this *Second NPRM*, we seek to strengthen the process supporting the foreign sponsorship identification rules in the wake of the D.C. Circuit’s vacatur of the requirement that licensees search two government websites to verify a lessee’s assertion that it is not a foreign governmental entity.³⁶ As stated above, the foreign sponsorship identification rules require licensees to notify their lessees of the disclosure requirement pertaining to foreign government-provided programming at the time of entering into a lease agreement or at renewal of such an agreement.³⁷ In addition, the licensee must inquire whether the lessee is a foreign governmental entity and if the lessee is aware of any individual/entity further back in the chain of production or distribution of the programming that may qualify as a foreign governmental entity and has provided compensation (including the programming itself, in the case of political programming or programming involving a controversial issue) as an inducement to air the programming.³⁸ Finally, the licensee must memorialize these inquiries in writing and retain such documentation for a set time period.³⁹ The rules do not, however, establish a format for this memorialization.

13. With the court’s elimination of the obligation that a licensee verify the lessee’s status independently using two federal government websites, the exchange between a licensee and lessee about the lessee’s status takes on heightened importance in ensuring that the necessary disclosure is made, if needed. It is now even more imperative that the licensee inform any lessee in as clear a manner as possible about the foreign sponsorship identification rules and obtain a complete response in return

³² See *id.* at 820 (quoting *Loveday v. FCC*, 707 F.2d 1443, 1449 (D.C. Cir. 1983)).

³³ See Petition for Clarification, MB Docket No. 20-299 (filed July 19, 2021).

³⁴ *Id.*

³⁵ The two commenters that responded to the Petition for Clarification were the Meredith Corporation and the Affiliates. Meredith Corporation Comments at 3 (filed Sept. 2, 2021) (Meredith); The ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates Comments at 2 (filed Sept. 2, 2021) (Affiliates).

³⁶ *NAB v. FCC*, 39 F.4th at 820.

³⁷ 47 CFR § 73.1212(j)(3)(i).

³⁸ *Id.* at § 73.1212(j)(3)(ii)-(iii).

³⁹ See *id.* at § 73.1212(j)(3)(v) (requiring a licensee to memorialize its inquiries of the lessee and retain such documentation for either the remainder of the then-current license term or one year, whichever is longer, so as to respond to any future Commission inquiry).

regarding whether the lessee is, or is not, a foreign governmental entity or is aware of one further back in the chain that has produced/provided the programming in question.

14. Accordingly, in this *Second NPRM*, we seek comment on establishing a transparent mechanism to determine whether the licensee made the requisite inquiries of each lessee and that each lessee responded in a complete manner regarding whether it qualifies as a foreign governmental entity (or is aware of one further back in the chain) pursuant to our rules. We tentatively conclude that the optimal mechanism for achieving this outcome is to require both licensee and lessee to certify their respective parts in this critical inquiry regarding the lessee's status and lessee's knowledge of any individual/entity further back in the programming production or distribution chain who may qualify as a foreign governmental entity. Specifically, we propose that the licensee certify that it has made the appropriate inquiry of each lessee and sought a certification from the lessee regarding its status. Likewise, we propose that the lessee certify as to whether it is or is not a foreign governmental entity and whether it knows of any entity or individual further back in the programming production or distribution chain that qualifies as a foreign governmental entity and has provided some form of compensation, or, in some cases the programming itself,⁴⁰ as an inducement to air the programming. We tentatively conclude that the proposed certification requirement for the licensee would subsume the licensee's duty to memorialize its inquiry of its lessee pursuant to section 73.1212(j)(3)(v) of the Commission's rules. We seek comment on our proposed rule and approach.

15. As these certifications would formalize an inquiry process that, under our current foreign sponsorship identification rules, occurs at the time that parties either enter into or renew a lease agreement, we tentatively conclude that this certification process should occur at those same times. Further, we tentatively conclude that a certification, in particular one containing standardized language, as proposed below, provides the most efficient means of gauging a licensee's compliance with both the disclosure to a lessee of the foreign sponsorship identification rules and the request for lessee's certification. Likewise, a certification from the lessee provides increased assurance that it has taken the time to fully understand licensee's query and given due consideration to its own response. Moreover, the proposed certifications provide the Commission with a straightforward mechanism to monitor compliance with the inquiry requirements contained in the foreign sponsorship identification rules. It will also provide the information necessary for the Commission to independently confirm the certification, should an investigatory need arise. We seek comment on these tentative conclusions and our proposed approach of requiring certifications by the parties involved in a leasing agreement.

16. We recognize that there may be rare instances in which a lessee declines to make the necessary certification or fails to submit the certification regarding its status to the licensee. We seek comment on whether, in these limited instances, the licensee's own certification is sufficient to demonstrate that the licensee has complied with its obligation to inform the lessee of the foreign sponsorship identification rules and to seek a certification from lessee. In these instances, should the licensee be permitted to move forward with the lease agreement, or has lessee's refusal to complete the certification as to its status raised sufficient questions about the involvement of a foreign governmental entity such that further action is required on the licensee's part? What additional actions, if any, could the licensee undertake consistent with section 317(c) of the Act to verify a lessee's status? In this regard, we note that section 73.1212(e) of our rules requires the licensee to disclose the "true identity of the person" who has sponsored the programming. Would notifying the Commission about the lessee's failure to certify alleviate some of the concerns associated with lessee's lack of response? Absent such a response, if the licensee decides to proceed with the lease agreement, should we require the licensee to notify the Media Bureau, via a designated email box, about a lessee's failure to certify? Should such notification include the lessee's full name and contact information (such as address, email address, and/or telephone number)? Such a notification with the contact information could enable the Media Bureau, perhaps in

⁴⁰ As noted above in para. 5, in the case of political programming or programming concerning a controversial issue, provision of the programming itself as an inducement to air the programming triggers the disclosure requirement.

conjunction with the Enforcement Bureau, to conduct its own inquiry regarding the lessee's status and whether the lessee has violated its obligations pursuant to section 507 of the Act.⁴¹ Would such a notification alleviate the licensee of its responsibility under section 73.1212(e) of our rules to disclose the "true identity of the person" who has sponsored the programming?⁴²

17. *Submission of Certifications to the Commission.* With regard to oversight, we tentatively conclude that submission of licensee and lessee certifications to the Commission provides an efficient and transparent means of verifying compliance with the certification requirement. Given that a licensee must already upload copies of its lease agreements to its online public inspection file (OPIF),⁴³ and that this certification process will essentially occur at the time of entering into, or renewing a lease, we tentatively conclude that the licensee should upload both its own and the lessee's certifications into the same designated public inspection file subfolder in which it places its lease agreements. In addition, we tentatively conclude that such certifications should be conspicuous, clear, and arranged in such a manner that the parties' certifications are readily discernable. While we do not propose to require that the certifications be incorporated into a lease agreement itself, we observe that incorporation into the lease, or attachment as an appendix to the lease, could be the most efficient means of facilitating oversight and ensuring the certification process is completed. In this regard, we note that a number of broadcasters already incorporate into their leases provisions concerning compliance with various Commission requirements.⁴⁴ We seek comment on this proposed approach for memorializing and submitting the certifications and our tentative conclusions outlined above.

18. Further, we tentatively conclude that the transparency we seek regarding a licensee's inquiries of its lessee(s) depends, in part, upon the licensee placing the certifications into its public file in a timely manner. Thus, in accordance with current requirements for licensees to place their lease agreements into their OPIFs within 30 days of execution, we also propose that licensees place the certifications into their OPIFs within 30 days of execution.⁴⁵ We expect that this filing period will impose minimal additional burden on licensees given that licensees should, under existing rules, be accustomed to placing copies of their agreements in their public file. Consistent with the guidance regarding lease agreements in the *Order*, for licensees that do not have obligations to maintain OPIFs, we propose that

⁴¹ See 47 U.S.C. § 508.

⁴² See 47 CFR § 73.1212(e) (stating that "[t]he 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.").

⁴³ *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, MB Docket No. 20-299, Order Denying Stay Petition, at 17, para. 42 (2021). See 47 CFR § 73.3526(e)(14) (requiring licensees to place copies of every agreement or contract involving a time brokerage (i.e., a lease of airtime on a station) in the station's public file).

⁴⁴ See, e.g., Time Brokerage Agreement Between WWIN and Bibleway Community Church (filed Feb. 13, 2018), <https://publicfiles.fcc.gov/am-profile/wwin/time-brokerage-agreements/e3f75c5a-95b4-49ef-8415-08ecbf81a3a2/> (providing a section titled "Licensee's Regulatory Obligations," in which WWIN states how the contract shall not be construed "as limiting in any way Licensee's rights and obligations as an FCC licensee" and proceeding to list some of its obligations under federal rules); see also Time Brokerage Agreement Between WWIN AM and the Jean Alston Show (filed July 14, 2016), <https://publicfiles.fcc.gov/am-profile/wwin/time-brokerage-agreements/e3f75c5a-95b4-49ef-8415-08ecbf81a3a2/> (providing the same "Licensee's Regulatory Obligations" section in its agreement).

⁴⁵ See 47 CFR § 73.3526(e)(14) (requiring licensees to place copies of every agreement or contract involving a time brokerage (i.e., a lease of airtime on a station) in the station's public file within 30 days of execution and retain them in the file as long as the contract or agreement is in force).

such licensees retain a record of the certifications in their station files within 30 days of execution.⁴⁶ We seek comment on these proposals and proposed timing.

19. *Time Period for Retaining Certifications.* We recognize there is a divergence between the time period for which licensees must retain their leases in their public file and the time period that licensees are required, under the foreign sponsorship identification rules, to maintain their documentation memorializing their inquiries of the lessee. Pursuant to section 73.3526(e)(14) of our rules, a lease must be retained in the public file for as long as the agreement is in force;⁴⁷ however, pursuant to section 73.1212(j)(3)(v) of our rules, the licensee must retain its memorialization for the remainder of the then current license term or one year, whichever is longer.⁴⁸ We propose above that the certification requirement set forth herein would replace the licensee's duty to memorialize its inquiries of the lessee and tie the documentation memorializing such inquiries more closely to the lease agreement itself (i.e., by requiring that the certifications be filed along with the lease in the public file). In the event that we adopt this proposal, we seek comment on whether to align the requirement to retain the certifications with the current time period mandated in section 73.3526(e)(14) for retention of the lease in the public file (i.e., for the life of the lease agreement). We tentatively conclude that such an alignment would simplify compliance for licensees by conforming the time period for retaining a lease with the time period for retaining the licensee's documentation of its inquiries of the lessee.

20. *Application of Certification Requirements on a Prospective Basis.* We recognize that beginning on March 15, 2022, licensees had to comply with the new foreign sponsorship identification rules with respect to new lease agreements and renewals. The *Order*, however, gave licensees an additional six months to bring existing lease agreements into compliance (i.e., by September 15, 2022). With respect to the certification requirement we propose today, we similarly propose to apply the requirement on a going forward basis with a six-month grace period for existing lease agreements to come into compliance. We seek comment on this proposal and on any alternative approaches.

B. Standardized Language to be Included in Certification Requirement

21. We tentatively conclude that establishing standardized certification language would both minimize the compliance burden on licensees and lessees and bring greater uniformity to the certification process. In this regard, we note that, in previous filings in this proceeding, certain broadcaster groups had asserted that "they would have to expend extensive time and resources to alter their lease agreements so as to obtain certifications from lessees regarding their status."⁴⁹ The establishment of standardized certification language would eviscerate any need for licenses or lessees to seek outside assistance in crafting or reviewing certifications. Licensees and lessees can cut and paste the standardized certification language into the relevant documents and fill in simple details, such as the name of the licensee or lessee, whether the lessee is or is not a foreign governmental entity, and the name of any foreign governmental entity further back in the programming chain. Accordingly, we tentatively conclude that the adoption of standardized certification language should reduce any time and cost licensees have to expend on compliance.

22. *Proposed Licensee Certification.* We propose that broadcast licensees use the following standardized language when making the required certifications:

⁴⁶ See *Order*, 36 FCC Rcd at 7730, para. 57 (citing *Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Applications*, Second Report and Order, 35 FCC Rcd 5094, 5115, para. 45 & n.152 (2020)).

⁴⁷ 47 CFR § 73.3526(e)(14).

⁴⁸ 47 CFR § 73.1212(j)(3)(v).

⁴⁹ See *Petition for Stay Pending Judicial Review of the National Association of Broadcasters (NAB), the Multicultural Media, Telecom and Internet Council (MMTC), and the National Association of Black Owned Broadcasters (NABOB)*, MB Docket No. 20-299, at 18 (filed Sept. 10, 2021).

I am authorized on behalf of [Licensee] to certify the following: I certify that in accordance with 47 CFR § 73.1212(j), [Licensee] has:

(1) Informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR § 73.1212(j);

(2) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR § 73.1212(j) such that the [Lessee] qualifies as a "foreign governmental entity,";

The FCC's rules state that term "foreign governmental entity" includes a "government of a foreign country," "foreign political party," an "agent of a foreign principal," and a "United States-based foreign media outlet." 47 CFR § 73.1212(j)(2). The FCC's rules, at 47 CFR § 73.1212(j)(2)(i)-(iv), define these terms in the following manner:

(i) The term "government of a foreign country" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(e);

(ii) The term "foreign political party" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(f);

(iii) The term "agent of a foreign principal" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose "foreign principal" is a "government of a foreign country," a "foreign political party," or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or a "foreign political party" as defined in subsection 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such "foreign principal,"

(iv) The term "United States-based foreign media outlet" has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

(3) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a "foreign governmental entity," as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(4) Sought and obtained from [Lessee] a certification stating that [Lessee] [is OR is not] a "foreign governmental entity," as that term is defined above;

(5) Sought and obtained from [Lessee] a certification about whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a "foreign governmental entity," as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself; and

(6) If [Lessee] qualifies, or knows of an individual/entity further back in the chain of producing and distributing the programming that qualifies, as a "foreign governmental entity," as defined above, then [Licensee] obtained from [Lessee] the information needed to append the following disclosure to lessee's programming consistent with 47 CFR § 73.1212(j)(1)(i):

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

I, [insert name of person/entity authorized to certify on behalf of Licensee] by my signature attest to the truth of the statements listed above.

23. *Proposed Lessee Certification.* We propose that lessees use the following language when making the required certifications:

I am authorized on behalf of [Lessee] to certify to the following:

(1) [Licensee] has informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR § 73.1212(j);

(2) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR § 73.1212(j) such that the [Lessee] qualifies as a "foreign governmental entity,";

The FCC's rules state that term "foreign governmental entity" includes a "government of a foreign country," "foreign political party," an "agent of a foreign principal," and a "United States-based foreign media outlet." 47 CFR § 73.1212(j)(2). The FCC's rules, at 47 CFR § 73.1212(j)(2)(i)-(iv), defines these terms in the following manner:

(i) The term "government of a foreign country" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(e);

(ii) The term "foreign political party" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(f);

(iii) The term "agent of a foreign principal" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose "foreign principal" is a "government of a foreign country," a "foreign political party," or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or a "foreign political party" as defined in subsection 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such "foreign principal,"

(iv) The term "United States-based foreign media outlet" has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

(3) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] knows if any individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a "foreign governmental entity," as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(4) [Lessee] certifies that it [is OR is not] a "foreign governmental entity," as that term is defined above;

(5) If applicable: [Lessee] certifies that to its knowledge [Individual/Entity] qualifies as a "foreign governmental entity," as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(6) If applicable: [Lessee] certifies that to its knowledge there is no individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a "foreign governmental entity," as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(7) If applicable: [Lessee] certifies that to its knowledge there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a “foreign governmental entity,” as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself. The name, address, phone number, and email address, if known, of such individual/entity is [individual/entity name, address, phone number, and email address, if known];

(8) To the extent applicable, [Lessee] has provided [Licensee] the information needed to append the following disclosure to lessee’s programming consistent with the FCC’s rules, found at 47 CFR § 73.1212(j)(1)(i):

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

(9) [Lessee] certifies that during the course of the lease agreement, [Lessee] commits to notify [Licensee] if [Lessee’s] status as a “foreign governmental entity” changes or if [Lessee] learns that there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a “foreign governmental entity,” as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself.

I, [insert name of individual/entity authorized to certify on behalf of Lessee] by my signature attest to the truth of the statements listed above.

24. We seek comment both on the utility of providing standardized language for licensees and lessees to use for their respective certifications and on the specific language laid out above. Should the standard certification language be modified in any way to better suit the needs of licensees or lessees, including licensees and lessees that are small entities?

C. Section 325(c) Permits

25. A section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S.-licensed station, transmits or delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country for broadcast by the foreign station into the United States.⁵⁰ Given the nature of the section 325(c) permits, pursuant to section 73.1212(k) of the Commission rules, the foreign sponsorship identification disclosure requirements apply to any programming permitted to be delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Act if the material has been (i) sponsored by a foreign governmental entity; (ii) paid for by a foreign governmental entity; (iii) furnished for free by a foreign governmental entity to the section 325(c) permit holder as an inducement to air the material on the foreign station; or (iv) provided by the section 325(c) permit holder to the foreign station where the section 325(c) permit holder is a foreign governmental entity. Where the section 325(c) permit holder itself is a foreign governmental entity, the disclosure requirements apply to all programming provided by the permit holder to a foreign station.

⁵⁰ See 47 U.S.C. § 325(c). Section 325(c) of the Act states: “No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor.” See also *NPRM*, 35 FCC Rcd 12126, para. 53.

26. In proposing section 73.1212(k), the Commission noted that applying foreign sponsorship identification disclosures to programs permitted to be delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Act would “level the playing field between programming aired by non-U.S. and U.S. broadcasters in the same geographic area within the United States and would eliminate any potential loophole in our regulatory framework with respect to the identification of foreign government-provided programming that may result from this proceeding.”⁵¹ Under section 73.1212(j), if a content provider, including one that also holds a section 325(c) permit, meets the definition of foreign governmental entity and provides its content to a U.S. broadcaster under a lease agreement, its content is subject to foreign sponsorship identification disclosures.⁵² If such a content provider provides the same content to a foreign broadcast station under its section 325(c) permit, such content also is subject to foreign sponsorship identification disclosures.⁵³ The disclosure requirements in that situation apply to materials permitted to be delivered to a foreign broadcast station under an authorization pursuant to section 325(c) of the Act regardless of the nature of the arrangement, if any, between the permit holder and the foreign broadcast station.⁵⁴ In the context of section 325(c) permits, leasing of airtime is not a relevant prerequisite for application of the foreign sponsorship identification rules because section 325(c) permit holders’ foreign broadcast arrangements can be struck in various ways, not just through leasing of airtime, under the laws of foreign countries. In this context, our rules ensure that no material provided by a permit holder that is a foreign governmental entity is broadcast into the United States through the use of section 325(c) permits without the appropriate disclosures. To provide greater clarity regarding the application of these disclosure requirements in the context of programming subject to a section 325(c) permit, we propose to modify section 73.1212(k) as shown in Appendix A.⁵⁵

27. We expect that a section 325(c) permit holder would have direct knowledge of whether it is a foreign governmental entity as that term is defined in section 73.1212(j) of the rules and whether disclosures are required on that basis. However, even if a permit holder is not itself a foreign governmental entity, the disclosure requirements apply to any part of its programming that is sponsored, paid for, or furnished for free by a foreign governmental entity either directly to the permit holder or to an entity farther back in the content production chain. We seek comment on whether there is a need to apply any due diligence requirements proposed in this *Second NPRM* to any programming permitted to be delivered to a foreign station pursuant to a section 325(c) permit and, if applicable, whether the proposed certifications or other due diligence documentation should be placed in the IBFS by section 325(c) permit holders and for how long.

D. Proposed Certification Requirement Is Consistent with the Act and *NAB v. FCC*

28. We tentatively conclude that the certification requirements we propose above are consistent with both the Act and the court’s decision in *NAB v. FCC*. Section 317(c) of the Act states that “[t]he licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for

⁵¹ *NPRM*, 35 FCC Rcd 12126, para. 53.

⁵² 47 C.F.R. § 73.1212(j).

⁵³ 47 C.F.R. § 73.1212(k).

⁵⁴ In processing a Section 325(c) application, the Commission does not apply a per se Section 310 citizenship requirement. The Commission considers on a case-by-case basis whether there are factors relating to the alien status which may be relevant to its determination that the grant is in the public interest under Section 309. See *Applications of Sin, Inc. 460 W. 42nd St. New York, New York 10036 for Auth. to Deliver Programming to Mexican Television Stations Pursuant to Section 325(b) of the Commc'ns Act*, 101 F.C.C.2d 823 (1985).

⁵⁵ Pending a determination as to whether the proposed due diligence modifications to 47 CFR §73.1212(j) should apply to section 325(c) permittees, our proposed revisions to subsection (k) reflect the subsection (j) duty to memorialize due diligence efforts.

broadcast, information to enable such licensee to make the announcement required by this section.”⁵⁶ Section 317(e), in turn, directs the Commission to prescribe appropriate rules and regulations to carry out the provisions of section 317.⁵⁷ We tentatively conclude that sections 317(c) and (e) together provide ample authority to implement our proposed requirement that a licensee make inquiries of a lessee in the form of a certification and seek a lessee’s response in the form of a reciprocal certification. We tentatively conclude that such an inquiry requirement for the licensee is entirely consistent with its statutory reasonable diligence obligation to discern the lessee’s status as a “foreign governmental entity” and what the lessee knows about those further back in the chain of producing and distributing the programming. The licensee must ask these questions of lessee to obtain the information needed “to enable such licensee to make the announcement required by [section 317(c)].”⁵⁸ We seek comment on these tentative conclusions.

29. Consistent with the court’s holding that section 317(c) imposes only a duty of inquiry for licensees,⁵⁹ rather than a duty to investigate and verify, the proposal contained in this *Second NPRM* merely requires licensees to certify to inquiries they must already undertake pursuant to the existing foreign sponsorship identification rules and formalizes the existing requirement to memorialize such inquiries. Accordingly, we tentatively conclude that our proposed certification requirements are consistent with the D.C. Circuit’s vacatur of the prior requirement that a licensee independently verify whether a lessee is a “foreign governmental entity” by consulting two federal government sources.⁶⁰ The court did not question the Commission’s authority to require inquiries and memorialize responses, as we propose to do more formally today. Further, the proposed certification requirements do not require, or have the effect of requiring, licensees to engage in any “investigation”⁶¹ regarding the lessee’s status nor to consult with any person or source other than that with whom it deals directly, namely, the lessee. We seek comment on these tentative conclusions.

30. With regard to the lessee specifically, we note that sections 507(b)-(c) impose an obligation on the lessee to disclose information relevant to determining whether a sponsorship identification is required.⁶² Section 507(c) states that “any person who supplies to any other person program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program.”⁶³ As the individual/entity providing the programming to the licensee, the lessee is subject to the strictures of section 507(c). Likewise, section 507(b) imposes the same obligations on those involved in the production or preparation of programming and would similarly apply to the lessee if the lessee were

⁵⁶ 47 U.S.C. § 317(c).

⁵⁷ 47 U.S.C. § 317(e).

⁵⁸ 47 U.S.C. § 317(c).

⁵⁹ *NAB v. FCC*, 39 F.4th at 820.

⁶⁰ *See id.* (holding that “the FCC cannot require radio broadcasters to check federal sources to verify sponsors’ identities. We therefore vacate that aspect of the challenged order.”).

⁶¹ *See id.* (stating that the “reasonable diligence” requirement contained in section 317(c) of the Act only imposes on licensees “a duty of inquiry, not a duty of investigation.”).

⁶² *See Order*, 36 FCC Rcd at 7726-27, paras. 46-48 (concluding that sections 507(b) and (c) of the Act impose a duty on the lessee to inform the licensee to the extent it is aware of any payments (or other valuable consideration) associated with the programming such as to trigger a disclosure); *see also* 47 U.S.C. § 508(b)-(c).

⁶³ 47 U.S.C. § 507(c).

involved in the production or preparation of the programming.⁶⁴ The significance of lessee’s transmission of relevant information is highlighted by the fact that section 317(b) of the Act requires the licensee to take note of information received pursuant to the section 507 disclosure requirement.⁶⁵ We seek comment on the analysis laid out above with regard to section 507 of the Act.

E. Alternative Approach

31. We also seek comment on an alternative approach raised by the D.C. Circuit. At oral argument, the court asked whether it would be consistent with the Act and accomplish the same goal as the requirement that the court ultimately vacated to instead require a licensee to ask its lessee to provide the licensee with appropriate documentation (e.g., the relevant FARA page showing that its sponsors are not listed there).⁶⁶ In accord with the court’s question, would it be consistent with the Commission’s authority under section 317 to define licensees’ reasonable diligence obligation by requiring them to seek or obtain such proof from lessees (e.g., by a screen shot)? Should a licensee have to seek or obtain from its lessee proof that the lessee’s name does not appear in either the FARA database or the Commission’s U.S.-based foreign media outlet reports? Would this approach accomplish the same purpose as the vacated rule requirement? What would be the burdens of this approach on licensees and lessees? Would it have any benefits or drawbacks as compared to requiring the licensee to obtain a certification from the lessee?

F. Petition for Clarification

32. As stated above, on July 19, 2021, the Affiliates filed a Petition for Clarification regarding the meaning of the phrase “traditional, short-form advertising” as it appeared in the *Order*.⁶⁷ In their Petition,⁶⁸ the Affiliates seek a clarification that the foreign sponsorship identification rules, and in particular the inquiries associated with these rules, do not apply when a station “sells time to advertisers in the normal course of business,”⁶⁹ in contrast to when it leases airtime on the station. According to the Affiliates, the reference to “traditional short-form advertising” as an exception to the foreign sponsorship identification requirements has caused confusion amongst the Affiliates’ members about what type of programming arrangements are subject to the requirements. As stated, the Affiliates’ Petition generated minimal response.⁷⁰ We seek comment on whether experience with these rules has provided licensees or others with additional insight regarding the issues raised in the Petition and specifically what criteria the Commission might adopt to distinguish between advertising and programming arrangements for the lease of airtime in a way that does not jeopardize the Commission’s goals in this proceeding. For example, we

⁶⁴ See *id.* (stating that “any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee’s employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.”).

⁶⁵ See 47 U.S.C. § 317(b) (emphasis added) (stating in “any case where a report has been made to a radio station, as required by section 507 of this Act, of circumstances which would have required an announcement under this section . . . an appropriate announcement shall be made by such radio station.”).

⁶⁶ Oral Argument at 24:05, *National Association of Broadcasters, et al., v. FCC*, 39 F.4th 817, 820 (D.C. Cir. July 12, 2022) (No. 21-1171), [https://www.cadc.uscourts.gov/recordings/recordings2021.nsf/BBAF4A6ABFCFB734852588220055C0EF/\\$file/21-1171.mp3](https://www.cadc.uscourts.gov/recordings/recordings2021.nsf/BBAF4A6ABFCFB734852588220055C0EF/$file/21-1171.mp3).

⁶⁷ See Petition for Clarification, MB Docket No. 20-299 (filed July 19, 2021).

⁶⁸ See *id.*

⁶⁹ See *id.* at 2.

⁷⁰ Only two comments were filed in response to the Petition, and one of these comments was filed by the Affiliates, who were the initiating petitioners. See Meredith Comments at 3; see also Affiliates Comments at 2.

seek comment on whether there are key characteristics that could assist in distinguishing advertising spots from a lease of airtime on a station, such as duration, content, editorial control, or differences in the nature of the contractual relationship between the licensee and the entity that purchases an advertising spot versus leasing airtime for programming. What criteria might we adopt to ensure that the concept of “advertising” does not subsume “leased time” or vice versa? Might the establishment of a safe harbor assist in this regard? For example, could we establish a presumption that any broadcast matter that is two minutes or less in length, absent any other indicia, will be considered “short-form advertising” for purposes of the foreign sponsorship identification rules?

G. Digital Equity and Inclusion

33. Finally, the Commission, as part of its continuing effort to advance digital equity for all,⁷¹ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations⁷² and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

IV. PROCEDURAL MATTERS

34. *Ex Parte Rules - Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁷³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written in *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native

⁷¹ Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

⁷² The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

⁷³ 47 CFR §§ 1.1200 *et seq.*

format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

35. *Filing Requirements—Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.1415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.U.S.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁷⁴
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

36. *Initial Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."⁷⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁷⁶ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominated in its field of operations; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁷⁷

⁷⁴ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

⁷⁵ 5 U.S.C. § 603.

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

⁷⁷ 15 U.S.C. § 632.

37. With respect to this Second Notice of Proposed Rulemaking, an Initial Regulatory Flexibility Analysis (IRFA) under the RFA is contained in the Appendix. Written public comments are required on the IRFA and must be filed in accordance with the same filing deadlines as comments on this Notice of Proposed Rulemaking, with a distinct heading designating them as responses to the IRFA. In addition, a copy of this Notice of Proposed Rulemaking and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the Federal Register.

38. *Paperwork Reduction Act.* This document seeks comment on whether the Commission should adopt new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

39. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

40. *Additional Information.* For additional information on this proceeding, please contact Radhika Karmarkar of the Media Bureau, Industry Analysis Division, Radhika.Karmarkar@fcc.gov, 202-418-1523.

V. ORDERING CLAUSES

41. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 303(r), 307, 317, 325(c), 403, and 507 of the Communications Act, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303(r), 307, 317, 325(c), 403, and 508 this Second Notice of Proposed Rulemaking **IS ADOPTED**.

42. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Second Notice of Proposed Rulemaking in MB Docket No. 20-299 on or before thirty (30) days after publication in the Federal Register and reply comments on or before sixty (60) days after publication in the Federal Register.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Proposed Rules**

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

PART 73 – RADIO BROADCAST SERVICE

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

2. In § 73.1212(j)(3), replace current subparagraph (iv) with new subparagraphs (iv)-(vii) as to read as follows:

(j)

(1)

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

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

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

(2) The term “foreign governmental entity” shall include governments of foreign countries, foreign political parties, agents of foreign principals, and United States-based foreign media outlets.

(i) The term “government of a foreign country” has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(e)).

(ii) The term “foreign political party” has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(f)).

(iii) The term “agent of a foreign principal” has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose “foreign principal” is a “government of a foreign country,” a “foreign political party,” or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a “government of a foreign country” or a “foreign political party” as defined above in subsection 73.1212(j)(i) and ii, and that is acting in its capacity as an agent of such “foreign principal;”

(iv) The term “United States-based foreign media outlet” has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

(3) The licensee of each broadcast station shall exercise reasonable diligence to ascertain whether the foreign sponsorship disclosure requirements apply at the time of the lease agreement and at any renewal thereof, including:

(i) Informing the lessee of the foreign sponsorship disclosure requirement in section (j) above;

(ii) Inquiring of the lessee whether the lessee falls into any of the categories that qualify the lessee as a foreign governmental entity;

(iii) Inquiring of the lessee whether the lessee knows if anyone involved in the production or distribution of the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;

~~(iv) Memorializing the above-listed inquiries to track compliance therewith and retaining such documentation in the licensee's records for either the remainder of the then-current license term or one year, whichever is longer, so as to respond to any future Commission inquiry;~~

(iv) Certifying that it has informed lessee about the section (j)(1) foreign sponsorship disclosure requirement, and made inquiries of lessee in conformance with subparagraphs (3)(ii) and (iii). Licensee shall incorporate the following language in its certification:

(1) I am authorized on behalf of [Licensee] to certify the following: I certify that in accordance with 47 CFR § 73.1212(j), [Licensee] has:

a. Informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR § 73.1212(j);

b. Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR § 73.1212(j) such that the [Lessee] qualifies as a "foreign governmental entity,";

The FCC's rules state that term "foreign governmental entity" includes a "government of a foreign country," "foreign political party," an "agent of a foreign principal," and a "United States-based foreign media outlet." 47 CFR § 73.1212(j)(2). The FCC's rules, at 47 CFR § 73.1212(j)(2)(i)-(iv), define these terms in the following manner:

i. The term "government of a foreign country" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(e);

ii. The term "foreign political party" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(f);

iii. The term "agent of a foreign principal" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose "foreign principal" is a "government of a foreign country," a "foreign political party," or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or a "foreign political party" as defined in subsection 73.1212(j)(i) and (ii), and that is acting in its capacity as an agent of such "foreign principal;"

iv. The term "United States-based foreign media outlet" has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

c. Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a "foreign governmental entity," as that term is defined in 47 CFR § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

- d. Sought and obtained from [Lessee] a certification stating whether [Lessee] [is OR is not] a “foreign governmental entity,” as that term is defined in 47 CFR § 73.1212(j)(2);
- e. Sought and obtained from [Lessee] a certification about whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a “foreign governmental entity,” as that term is defined in 47 CFR § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself; and
- f. If [Lessee] qualifies, or knows of an individual/entity further back in the chain of producing or distributing the programming that qualifies, as a “foreign governmental entity,” pursuant to 47 CFR § 73.1212(j)(2), then [Licensee] obtained from [Lessee] the information needed to append the following disclosure to lessee’s programming consistent with 47 CFR § 73.1212(j)(1)(i):
“The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].”
- g. I, [insert name of individual/entity authorized to certify on behalf of Licensee] by my signature attest to the truth of the statements listed above.
- (v) Requesting that lessee provide a certification responding to the inquiries contained in subparagraphs (3)(ii) and (iii) above. Lessee shall incorporate the following language in its certification:
- (1) I am authorized on behalf of [Lessee] to certify to the following:
- a. [Licensee] has informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR § 73.1212(j);
- b. [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission’s (FCC) rules at 47 CFR § 73.1212(j) such that the [Lessee] qualifies as a “foreign governmental entity.”;
- i. The term “government of a foreign country” has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(e);
- ii. The term “foreign political party” has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(f);
- iii. The term “agent of a foreign principal” has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose “foreign principal” is a “government of a foreign country,” a “foreign political party,” or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a “government of a foreign country” or a “foreign political party” as defined in subsection 73.1212(j)(i) and (ii), and that is acting in its capacity as an agent of such “foreign principal.”;
- iv. The term “United States-based foreign media outlet” has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

c. [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] knows if any individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a “foreign governmental entity,” as that term is defined in 47 CFR § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

d. [Lessee] certifies that it [is OR is not] a “foreign governmental entity,” as that term is defined in 47 CFR § 73.1212(j)(2);

e. If applicable: [Lessee] certifies that to its knowledge [Individual/Entity] qualifies as a “foreign governmental entity,” as that term is defined in 47 CFR § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

f. If applicable: [Lessee] certifies that to its knowledge there is no individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a “foreign governmental entity,” as that term is defined in 47 CFR § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

g. If applicable: [Lessee] certifies that to its knowledge there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a “foreign governmental entity,” as that term is defined in 47 CFR § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself. The name, address, phone number, and email address, if known, of such individual/entity is [individual/entity name, address, phone number, and email address, if known];

h. To the extent applicable, [Lessee] has provided [Licensee] the information needed to append the following disclosure to lessee’s programming consistent with the FCC’s rules, found at 47 CFR § 73.1212(j)(1)(i):

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

i. [Lessee] certifies that during the course of the lease agreement, [Lessee] commits to notify [Licensee] if [Lessee’s] status as a “foreign governmental entity” changes or if [Lessee] learns that there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a “foreign governmental entity,” as that term is defined in 47 CFR § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself.

j. I, [insert name of individual/entity authorized to certify on behalf of Lessee] by my signature attest to the truth of the statements listed above.

(vi) Retaining the certifications, described above in subparagraphs (3)(iv) and (v), within the station's online public inspection file for a period equal to the time that the lease agreement remains in force.

(vii) In the event lessee does not provide a certification responding to the inquiries contained in subparagraphs (3)(ii) and (iii) above and licensee proceeds with the lease agreement, notifying the Media Bureau at [email address] about lessee's failure to submit a certification and providing the Media Bureau with lessee's contact information, including, to the extent known, lessee's name, postal address, email address, and phone number.

(4) In the case of any video programming, the foreign governmental entity and the country represented shall be identified with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.

(5) At a minimum, the required announcement shall be made at both the beginning and conclusion of the programming. For programming of greater than sixty minutes in duration, an announcement shall be made at regular intervals during the broadcast, but no less frequently than once every sixty minutes.

(6) Where the primary language of the programming is other than English, the disclosure statement shall be made in the primary language of the programming. If the programming contains a "conspicuous statement" pursuant to the Foreign Agents Registration Act of 1938 (22 U.S.C. § 614(b)), and such conspicuous statement is in a language other than English so as to conform to the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611 et. seq.), an additional disclosure in English is not needed.

(7) A station shall place copies of the disclosures required by paragraph (j) and the name of the program to which the disclosures were appended in its online public inspection file on a quarterly basis in a standalone folder marked as "Foreign Government-Provided Programming Disclosures." The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the online public inspection file in the same manner.

(8) A station shall place copies of the certifications required by subparagraphs (3)(iv)-(v) in its online public inspection file within 30 days of the execution of the lease agreement with which the certifications are associated.

3. In § 73.1212(k), modify the current paragraph to read as follows:

(k) The requirements in paragraph (j) of this section shall apply to programs permitted to be Where any material delivered to foreign broadcast stations under an authorization pursuant to the section 325(c) of the Communications Act of 1934 (47 U.S.C. 325(e)) if any part of the material Communications Act (47 U.S.C. § 325(c)) has been sponsored, by a foreign governmental entity; paid for, or by a foreign governmental entity; furnished for free by a foreign governmental entity to the section 325(c) permit holder as an inducement to air the material on the foreign station by a foreign governmental entity; station; or provided by the section 325(c) permit holder to the foreign station where the section 325(c) permit holder is a foreign governmental entity, the material must include, at the time of broadcast, the following disclosure, in conformance with the terms of paragraphs (j)(4)-(6): "The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country]." A section 325(c) permit holder shall ensure that the foreign station will broadcast the disclosures along with the material and shall place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Bureau's public filing System (IBFS) under the relevant IBFS section 325(c) permit file. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement

was made, its contents must be reduced to writing and placed in the IBFS in the same manner. The section 325(c) permit holder shall exercise reasonable diligence to ascertain whether the foreign sponsorship disclosure requirements of paragraphs (j)(1) and (j)(4)-(6) apply to any material delivered to a foreign broadcast station, including obtaining from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, and in the same manner prescribed for broadcast stations in paragraph (j)(3), information to enable the permit holder to include the announcement required by this section; memorializing its conduct of such reasonable diligence; and retaining such documentation in its records for either the remainder of the then-current permit term or one year, whichever is longer, so as to respond to any future Commission inquiry. The term “foreign governmental entity” shall have the meaning set forth in paragraph (j)(2).

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

Foreign sponsorship disclosures and Certifications. Documentation sufficient to demonstrate that the station is continuing to meet the requirements set forth at § 73.1212(j)(7)-(8).

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

Foreign sponsorship disclosures and Certifications. Documentation sufficient to demonstrate that the station is continuing to meet requirements set forth at § 73.1212(j)(7)-(8).

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Second Notice of Proposed Rulemaking (*Second NPRM*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the *Second NPRM*. The Commission will send a copy of the *Second NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Second NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. On April 22, 2021, the Commission released a Report and Order (*Order*) adopting a requirement that radio and television stations broadcast clear disclosures for programming that is provided by a foreign governmental entity and setting forth the procedures whereby stations must exercise reasonable diligence to determine whether such a disclosure is required. The Commission promulgated these foreign sponsorship identification rules in response to reports of undisclosed foreign government programming being transmitted by U.S. broadcast stations.⁴ The Commission's rules established a definition of "foreign governmental entity" based on existing definitions, statutes, or determinations by the U.S. government.⁵ The Commission's requirements apply to leased programming because the record in the underlying proceeding identified leased airtime as the primary means by which foreign governmental entities are accessing U.S. airwaves to persuade the American public without adequately disclosing the true sponsor. The Commission promulgated the foreign sponsorship identification rules

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

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ See, e.g., *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702, 7702-03, para. 1 & n.1 (2021) (*Order*) (describing reports of undisclosed foreign government programming being transmitted over U.S. radio stations).

⁵ Pursuant to section 73.1212(j)(2), the term a "foreign governmental entity" "shall include governments of foreign countries, foreign political parties, agents of foreign principals, and United States-based foreign media outlets." 47 CFR § 73.1212(j)(2). Subsections 73.1212(j)(2)(i)-(iv) of our rules, in turn, state:

- (i) The term "government of a foreign country" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. § 611(e);
- (ii) The term "foreign political party" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. § 611(f);
- (iii) The term "agent of a foreign principal" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose "foreign principal" is a "government of a foreign country," a "foreign political party," or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or a "foreign political party" as defined above in subsection 73.1212(j) (i) and ii, and that is acting in its capacity as an agent of such "foreign principal";
- (iv) The term "United States-based foreign media outlet" has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

based on a fundamental and long-standing tenet of broadcast regulation; namely, that the public has a right to know the identity of those soliciting their support.

3. On August 13, 2021, the National Association of Broadcasters (NAB) and two public interest groups (collectively, “Petitioners”) filed a Petition for Review of the Commission’s *Order* with the U.S. Court of Appeals for the District of Columbia Circuit challenging the Commission’s reasonable diligence requirements, alleging that the Commission lacked statutory authority to adopt such requirements. On July 12, 2022, the D.C. Circuit ruled on the Petition for Review,⁶ upholding the core of the foreign sponsorship identification rules but vacating the requirement that broadcasters check two federal sources to verify whether a lessee is a “foreign governmental entity,” as that term is defined in the Commission’s rules.⁷

4. The Second Notice of Proposed Rulemaking (*Second NPRM*) seeks to fortify the Commission’s rules in the wake of the court’s decision by proposing that, in order to comply with the “reasonable diligence” requirement regarding foreign sponsorship identification,⁸ a licensee must certify that it has informed its lessee of the foreign sponsorship identification rules and sought, or obtained, a certification from its lessee stating whether the lessee is or is not a foreign governmental entity pursuant to the rules. The *Second NPRM* also proposes that the lessee submit a certification in response to licensee’s request. These new certification requirements would subsume the duty of licensees under section 73.1212(j)(3)(v) of our rules to memorialize and retain their reasonable diligence inquiries.⁹ The *Second NPRM* also seeks comment on an alternative approach to the certification requirement. This alternative approach was raised as a hypothetical during the oral argument before the D.C. Circuit in *NAB v. FCC*.¹⁰ Under this approach, in the event that a lessee states it is not a “foreign governmental entity” a licensee must obtain from the lessee appropriate documentation (e.g., a screen shot(s)) showing that the lessee’s name does not appear on either of the two federal government websites which the Commission identified in the *Order* as reference points for determining whether a given individual/entity is a “foreign governmental entity.” Finally, the *Second NPRM* provides interested parties an additional opportunity to comment on a pending Petition for Clarification regarding the applicability of the foreign sponsorship identification rules to broadcast stations when they sell time to advertisers in the normal course of business.¹¹

B. Legal Basis

5. The proposed action is authorized under sections 1, 2, 4(i), 4(j), 303(r), 307, 317, 325(c), 403, and 507 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303(r), 307, 317, 325(c), 403, and 508.

⁶ *National Association of Broadcasters, et al., v. FCC*, 39 F.4th 817, 820 (D.C. Cir. July 12, 2022) (*NAB v. FCC*).

⁷ See *infra* paras. 19-20 (providing definition of “foreign governmental entity.”).

⁸ 47 U.S.C. § 317(c).

⁹ 47 CFR § 73.1212(j)(3)(v).

¹⁰ Oral Argument at 24:05, *National Association of Broadcasters, et al., v. FCC*, 39 F.4th 817, 820 (D.C. Cir. July 12, 2022) (No. 21-1171), [https://www.cadc.uscourts.gov/recordings/recordings2021.nsf/BBAF4A6ABFCFB734852588220055C0EF/\\$file/21-1171.mp3](https://www.cadc.uscourts.gov/recordings/recordings2021.nsf/BBAF4A6ABFCFB734852588220055C0EF/$file/21-1171.mp3).

¹¹ ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates’ *Petition for Clarification* (July 19, 2021), Sponsorship Identification Requirements for Foreign Government-Provided Programming, MB 20-299, FCC 21-42 (Petition for Clarification).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted.¹² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act (SBA).¹⁴ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁵ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

7. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”¹⁶ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹⁷ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.¹⁸ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.¹⁹ Of that number, 657 firms had revenue of less than \$25,000,000.²⁰ Based on this data we

¹² 5 U.S.C. § 603(b)(3).

¹³ 5 U.S.C. § 601(6); *see infra* note 14 (explaining the definition of “small business” under 5 U.S.C. § 601(3)); *see* 5 U.S.C. § 601(4) (defining “small organization” as “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register”); 5 U.S.C. § 601(5) (defining “small governmental jurisdiction” as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register”).

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

¹⁵ 15 U.S.C. § 632(a)(1)-(2)(A).

¹⁶ *See* U.S. Census Bureau, *2017 NAICS Definition, “515120 Television Broadcasting,”* <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

¹⁷ *Id.*

¹⁸ *See* 13 CFR § 121.201, NAICS Code 515120.

¹⁹ *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

²⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

8. As of June 2022, there were 1,373 licensed commercial television stations.²¹ Of this total, 1,280 stations (or 93.2%) had revenues of \$41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of June 2022, there were 384 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,865 LPTV stations and 3,224 TV translator stations.²² The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

9. *Radio Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting aural programs by radio to the public."²³ Programming may originate in their own studio, from an affiliated network, or from external sources.²⁴ The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small.²⁵ U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.²⁶ Of this number, 1,879 firms operated with revenue of less than \$25 million per year.²⁷ Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

10. The Commission estimates that as of June 30, 2022, there were 4,498 licensed commercial AM radio stations and 6,689 licensed commercial FM radio stations, for a combined total of 11,187 commercial radio stations.²⁸ Of this total, 11,185 stations (or 99.98 %) had revenues of \$41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of June 30, 2022, there were 4,184 licensed noncommercial (NCE) FM radio stations, 2,034 low power FM (LPFM) stations, and 8,951 FM

²¹ *Broadcast Station Totals as of June 30, 2022*, Public Notice, DA 22-721 (rel. July 7, 2022) (*July 2022 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-june-30-2022>.

²² *Id.*

²³ See U.S. Census Bureau, *2017 NAICS Definition*, "515112 Radio Stations," <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

²⁴ *Id.*

²⁵ See 13 CFR § 121.201, NAICS Code 515112.

²⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

²⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²⁸ *Broadcast Station Totals as of June 30, 2022*, Public Notice, DA 22-721 (rel. July 7, 2022) (*July 2022 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-june-30-2022>.

translators and boosters.²⁹ The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

11. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations³⁰ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of "small business" is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

12. The *Order* had established certain requirements that licensees had to meet to comply with the "reasonable diligence" standard of section 317(c) of the Act, with regard to foreign government-provided programming. Specifically, pursuant to the *Order*, a licensee had to, at a minimum:

- (1) Inform the lessee at the time of agreement and at renewal of the foreign sponsorship disclosure requirement;
- (2) Inquire of the lessee at the time of agreement and at renewal whether it falls into any of the categories that qualify it as a "foreign governmental entity;"
- (3) Inquire of the lessee at the time of agreement and at renewal whether it knows if anyone further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;
- (4) Independently confirm the lessee's status, at the time of agreement and at renewal by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports for the lessee's name. This need not be done if the lessee has already disclosed that it falls into one of the covered categories and/or that there is a separate need for a disclosure because an entity/individual further back in the chain of producing/transmitting the programming falls into one of the covered categories and has provided some form of service, consideration, or, in the case of political programming the programming itself, as an inducement to broadcast the programming; and
- (5) Memorialize the above-listed inquiries and investigations and retain such memorialization in its records for the remainder of the then current license term or one year, whichever is longer.³¹

²⁹ *Id.*

³⁰ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR § 21.103(a)(1).

³¹ See *Order*, 36 FCC Rcd at 7719-26, paras. 35-45 (describing licensee's reasonable diligence requirements).

13. Following the Petitioners' challenge to the *Order*, the D.C. Circuit decision vacated the fourth reasonable diligence requirement itemized above, leaving all other elements of the Commission's rules in place.³² The *Second NPRM* seeks to fortify the rules in the wake of the court's decision by proposing that a licensee must certify it has informed its lessee of the foreign sponsorship identification rules and obtained, or sought to obtain, a certification from its lessee stating whether the lessee is or is not a "foreign governmental entity," as that term is defined in the Commission's rules.³³ The *Second NPRM* also proposes that the lessee submit a certification in response to the licensee's request. These new certification requirements, if adopted by the Commission, would replace the duty of a licensee, as laid out above in items (1), (2), and (3) to inquire of its lessee whether it, or anyone further back in the chain of distributing/producing the programming, qualifies as a "foreign governmental entity," and has provided some type of inducement (e.g., compensation) to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself. The proposed certifications themselves would replace the memorialization requirement contained in item (5) above.

14. The *Second NPRM* recognizes that there may be rare instances in which a lessee declines to make the necessary certification or fails to submit the certification regarding its status to the licensee. The *Second NPRM* seeks comment on whether, in these limited instances, the licensee's own certification is sufficient to demonstrate that the licensee has complied with its obligation to inform the lessee of the foreign sponsorship identification rules and to seek a certification from lessee. The *Second NPRM* asks whether requiring the licensee to notify the Commission about lessee's failure to certify would alleviate some of the concerns associated with lessee's lack of response. In the event that the licensee decides to proceed with the lease agreement, the *Second NPRM* seeks comment on whether to require the licensee to notify the Commission's Media Bureau, via a designated email box, about a lessee's failure to certify along with the lessee's full name and contact information (such as address, email address, and/or telephone number).

15. *Submission of Certifications to the Commission.* The *Second NPRM* tentatively concludes that submission of licensee's and lessee's certifications to the Commission provides an efficient and transparent means of verifying compliance with the certification requirement. Given that a licensee must already upload copies of its lease agreements to its online public inspection file (OPIF),³⁴ and that this certification process will essentially occur at the time of entering into, or renewing a lease, the *Second NPRM* tentatively concludes that the licensee should upload both its own and the lessee's certifications into the same public inspection file in which it places its lease agreements. While the *Second NPRM* does not propose to require that the certifications be incorporated into the lease agreement, it notes that incorporation into the lease, or attachment as an appendix to the lease, could be the most efficient means of ensuring the certification process is completed. The *Second NPRM* notes that a number of broadcasters already incorporate into their leases provisions concerning compliance with various Commission requirements.³⁵

³² *NAB v. FCC*, 39 F.4th at 820.

³³ See *infra* paras. 19-20 below providing the definition of "foreign governmental entity" as laid out in the Commission's rules.

³⁴ See 47 CFR § 73.3526(e)(14) (requiring licensees to place copies of every agreement or contract involving a time brokerage (i.e., a lease of airtime on a station) in the station's public file).

³⁵ See, e.g., Time Brokerage Agreement Between WWIN and Bibleway Community Church (filed Feb. 13, 2018), <https://publicfiles.fcc.gov/am-profile/wwin/time-brokerage-agreements/e3f75c5a-95b4-49ef-8415-08ecbf81a3a2/> (providing a section titled "Licensee's Regulatory Obligations," in which WWIN states how the contract shall not be construed "as limiting in any way Licensee's rights and obligations as an FCC licensee" and proceeding to list some of its obligations under federal rules); see also Time Brokerage Agreement Between WWIN AM and the Jean Alston Show (filed July 14, 2016), <https://publicfiles.fcc.gov/am-profile/wwin/time-brokerage-agreements/e3f75c5a-95b4-49ef-8415-08ecbf81a3a2/> (providing the same "Licensee's Regulatory Obligations" section in its

(continued....)

16. In accordance with the current requirements for licensees to place their lease agreements into their OPIFs within 30 days of execution, the *Second NPRM* proposes that licensees place the certifications into their OPIFs within 30 days of execution.³⁶ This filing period will impose minimal additional burden on licensees given that licensees should, under existing rules, be accustomed to placing copies of their agreements in their public files. For licensees that do not have obligations to maintain OPIFs, the *Second NPRM* proposes that such licensees retain a record of the certifications in their station files within 30 days of execution.³⁷

17. *Time Period for Retaining Certifications.* The *Second NPRM* proposes to align the time period for retaining the certifications with the current time period for retaining lease agreements in the licensees' OPIFs. Specifically, the *Second NPRM* proposes that, just as a licensee must retain its lease agreement in the public file for as long as the agreement is in force, the certifications should also be retained for this same time period. The *Second NPRM* tentatively concludes that such an alignment will simplify compliance for licensees by conforming the time period for retaining a lease with the time period for retaining the licensee's documentation of its inquiries of the lessee.

18. *Standardized Language to be Included in Certification Requirement.* The *Second NPRM* tentatively concludes that establishing standardized certification language would both minimize the compliance burden on licensees and lessees and bring greater uniformity to the certification process. In this regard, the *Second NPRM* notes that, in previous filings in this proceeding, certain broadcaster groups had asserted that "they would have to expend extensive time and resources to alter their lease agreements so as to obtain certifications from lessees regarding their status."³⁸ Accordingly, the *Second NPRM* tentatively concludes that the adoption of standardized certification language should reduce any time and cost licensees have to expend on compliance.

19. *Proposed Licensee Certification.* The *Second NPRM* proposes that broadcast licensees use the following standardized language when making the required certifications:

I am authorized on behalf of [Licensee] to certify the following: I certify that in accordance with 47 CFR § 73.1212(j), [Licensee] has:

- (1) Informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR § 73.1212(j);
- (2) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communication's (FCC) rules at 47 CFR § 73.1212(j) such that the [Lessee] qualifies as a "foreign governmental entity,";

The FCC's rules state that term "foreign governmental entity" includes a "government of foreign country," "foreign political party," an "agent of a foreign principal," and a "United States-based foreign media outlet." 47 CFR § 73.1212(j)(2). The FCC's rules, at 47 CFR § 73.1212(j)(2)(i)-(iv), define these terms in the following manner:

(Continued from previous page) _____
agreement).

³⁶ See 47 CFR § 73.3526(e)(14) (requiring licensees to place copies of every agreement or contract involving a time brokerage (i.e., a lease of airtime on a station) in the station's public file within 30 days of execution and retain them in the file as long as the contract or agreement is in force).

³⁷ See *Order*, 36 FCC Rcd at 7730, para. 57 (citing *Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Applications*, Second Report and Order, 35 FCC Rcd 5094, 5115, para. 45 & n.152 (2020)).

³⁸ See *Petition for Stay Pending Judicial Review of the National Association of Broadcasters (NAB), the Multicultural Media, Telecom and Internet Council (MMTC), and the National Association of Black Owned Broadcasters (NABOB)*, MB Docket No. 20-299, at 18 (filed Sept. 10, 2021).

- (i) The term “government of a foreign country” has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. § 611(e);
- (ii) The term “foreign political party” has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. § 611(f);
- (iii) The term “agent of a foreign principal” has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose “foreign principal” is a “government of a foreign country,” a “foreign political party,” or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a “government of a foreign country” or a “foreign political party” as defined in subsection 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such “foreign principal;”
- (iv) The term “United States-based foreign media outlet” has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

(3) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a “foreign governmental entity,” as that term is defined in 47 U.S.C. § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(4) Sought and obtained from [Lessee] a certification stating whether [Lessee] [is OR is not] a “foreign governmental entity,” as that term is defined in 47 U.S.C. § 73.1212(j)(2);

(5) Sought and obtained from [Lessee] a certification about whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a “foreign governmental entity,” as that term is defined in 47 U.S.C. § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself; and

(6) If [Lessee] qualifies, or knows of an individual/entity further back in the chain of producing or distributing the programming that qualifies, as a “foreign governmental entity,” pursuant to 47 CFR § 73.1212(j)(2), then [Licensee] obtained from [Lessee] the information needed to append the following disclosure to lessee’s programming consistent with 47 CFR § 73.1212(j)(1)(i):

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

I, [insert name of individual/entity authorized to certify on behalf of Licensee] by my signature attest to the truth of the statements listed above.

20. *Proposed Lessee Certification.* The *Second NPRM* proposes that lessees use the following language when making the required certifications:

I am authorized on behalf of [Lessee] to certify to the following:

(1) [Licensee] has informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR § 73.1212(j);

(2) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR § 73.1212(j) such that the [Lessee] qualifies as a "foreign governmental entity,";

The FCC's rules state that the term "foreign governmental entity" includes a "government of foreign country," "foreign political party," an "agent of a foreign principal," and a "United States-based foreign media outlet." 47 CFR § 73.1212(j)(2). The FCC's rules, at 47 CFR § 73.1212(j)(2) (i)-(iv), defines these terms in the following manner:

(i) The term "government of a foreign country" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. § 611(e);

(ii) The term "foreign political party" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. § 611(f);

(iii) The term "agent of a foreign principal" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose "foreign principal" is a "government of a foreign country," a "foreign political party," or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or a "foreign political party" as defined in subsection 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such "foreign principal,"

(iv) The term "United States-based foreign media outlet" has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

(3) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] knows if any individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a "foreign governmental entity," as that term is defined in 47 CFR § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(4) [Lessee] certifies that it [is OR is not] a "foreign governmental entity," as that term is defined in 47 CFR § 73.1212(j)(2);

(5) If applicable: [Lessee] certifies that to its knowledge [Individual/Entity] qualifies as a "foreign governmental entity," as that term is defined in 47 CFR § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(6) If applicable: [Lessee] certifies that to its knowledge there is no individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a "foreign governmental entity," as that term is defined in 47 CFR § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(7) If applicable: [Lessee] certifies that to its knowledge there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a “foreign governmental entity,” as that term is defined in 47 CFR § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself. The name, address, phone number, and email address, if known, of such individual/entity is [individual/entity name, address, phone number, and email address, if known];

(8) To the extent applicable, [Lessee] has provided [Licensee] the information needed to append the following disclosure to lessee’s programming consistent with the FCC’s rules, found at 47 CFR § 73.1212(j)(1)(i):

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

(9) [Lessee] certifies that during the course of the lease agreement, [Lessee] commits to notify [Licensee] if [Lessee’s] status as a “foreign governmental entity” changes or if [Lessee] learns that there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a “foreign governmental entity,” as that term is defined in 47 CFR § 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself.

I, [insert name of individual/entity authorized to certify on behalf of Lessee] by my signature attest to the truth of the statements listed above.

21. *Section 325(c) Permits.* A section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S.-licensed station, transmits or delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country for broadcast by the foreign station into the United States. The *Second NPRM* seeks to clarify under section 73.1212 of the Commission’s rules that the foreign sponsorship identification disclosure requirements apply to any programming permitted to be delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Act if the material has been (i) sponsored by a foreign governmental entity; (ii) paid for by a foreign governmental entity; (iii) furnished for free by a foreign governmental entity to the section 325(c) permit holder as an inducement to air the material on the foreign station; or (iv) provided by the section 325(c) permit holder to the foreign station where the section 325(c) permit holder is a foreign governmental entity. Where the section 325(c) permit holder itself is a foreign governmental entity, the disclosure requirements apply to all programming provided by the permit holder to a foreign station. The *Second NPRM* also seeks comment on whether there is a need to apply any reasonable diligence requirements proposed in this *Second NPRM* to any programming permitted to be delivered to a foreign station pursuant to a section 325(c) permit and if applicable whether the proposed certifications or other due diligence documentation should be placed in the IBFS by section 325(c) permit holders.

22. The *Second NPRM* proposes the following language to replace the existing language of section 73.1212(k):

Where any material delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Communications Act (47 U.S.C. § 325(c)) has been sponsored by a foreign governmental entity; paid for by a foreign governmental entity; furnished for free by a foreign governmental entity to the section 325(c) permit holder as an inducement to air the material on the foreign station; or provided by the section 325(c) permit holder to the foreign station where the section 325(c) permit holder is a foreign governmental entity, the material must include, at the time of broadcast, the following disclosure, in conformance with the terms of paragraphs (j)(4)-

(6): “The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].” A section 325(c) permit holder shall ensure that the foreign station will broadcast the disclosures along with the material and shall place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Bureau's public filing system (IBFS) under the relevant IBFS section 325(c) permit file. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the IBFS in the same manner. The section 325(c) permit holder shall exercise reasonable diligence to ascertain whether the foreign sponsorship disclosure requirements of paragraphs (j)(1) and (j)(4)-(6) apply to any material delivered to a foreign broadcast station, including obtaining from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, and in the same manner prescribed for broadcast stations in paragraph (j)(3), information to enable the permit holder to include the announcement required by this section; memorializing its conduct of such reasonable diligence; and retaining such documentation in its records for either the remainder of the then-current permit term or one year, whichever is longer, so as to respond to any future Commission inquiry. The term “foreign governmental entity” shall have the meaning set forth in paragraph (j)(2).

23. *Alternative Approach.* The *Second NPRM* also seeks comment on an alternative approach raised by the D.C. Circuit. At oral argument, the court asked whether it would be consistent with the Act and accomplish the same goal as the requirement that the court ultimately vacated to instead require licensees to ask lessees to provide appropriate documentation (e.g., the relevant FARA page showing that their sponsors are not listed there).³⁹ In accord with the court's question, the *Second NPRM* asks whether would it be consistent with the Commission's authority under section 317 of the Act to require licensees to seek or obtain such proof from lessees (e.g., by a screen shot)? Should a licensee have to seek or obtain from its lessee proof that the lessee's name does not appear in either the FARA database or the Commission's U.S.-based foreign media outlet reports? Would this approach accomplish the same purpose as the vacated rule requirement? What would be the burdens of this approach on licensees and lessees? Would it provide greater assurance of ensuring identification of any foreign governmental entity sponsorship of the programming at issue compared to requiring the licensee to obtain a certification from the lessee?

24. *Petition for Clarification.* Finally, the *Second NPRM* provides interested parties an additional opportunity to comment on a pending Petition for Clarification “regarding the applicability of the foreign sponsorship identification rules to advertisements sold by local broadcast stations.”⁴⁰ The *Second NPRM* seeks comment on whether experience with these rules has provided broadcasters or others with additional insight regarding the issues raised in the Petition and specifically what criteria the Commission might adopt to distinguish between advertising and programming arrangements for the lease of airtime. For example, are there key characteristics that could assist in distinguishing advertising spots from a lease of airtime on a station, such as duration, content, editorial control, or differences in the nature of the contractual relationship between the licensee and the entity that purchases an advertising spot versus leasing airtime for programming. What criteria might the Commission adopt to ensure that the

³⁹ Oral Argument at 24:05, *National Association of Broadcasters, et al., v. FCC*, 39 F.4th 817, 820 (D.C. Cir. July 12, 2022) (No. 21-1171), [https://www.cadc.uscourts.gov/recordings/recordings2021.nsf/BBAF4A6ABFCFB734852588220055C0EF/\\$file/21-1171.mp3](https://www.cadc.uscourts.gov/recordings/recordings2021.nsf/BBAF4A6ABFCFB734852588220055C0EF/$file/21-1171.mp3).

⁴⁰ ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates' *Petition for Clarification* (July 19, 2021), Sponsorship Identification Requirements for Foreign Government-Provided Programming, MB 20-299, FCC 21-42 (Petition for Clarification).

concept of “advertising” does not subsume “leased time” or vice versa? Additionally, might the establishment of a safe harbor assist in this regard? For example, could the Commission establish a presumption that any broadcast matter that is two minutes or less in length, absent any other indicia, will be considered “short-form advertising” for purposes of the foreign sponsorship identification rules?

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

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁴¹

26. In proposing certification requirements, the Commission has carefully considered the resources available to radio and television broadcast stations, many of which are small entities. The *Second NPRM* proposes a certification process for licensees and lessees using proposed standardized certification language, which should significantly reduce the cost, time, and effort that licensees and lessees have to expend to comply with the “reasonable diligence” standard contained in section 317(c) of the Act with regard to foreign government-provided programming. The establishment of standardized certification language would eviscerate any need for licenses or lessees to seek outside assistance in crafting or reviewing certifications. Licensees and lessees can cut and paste the standardized certification language into the relevant documents and fill in simple details such as the name of the licensee or lessee, whether the lessee is or is not a foreign governmental entity, and the name of any foreign governmental sponsor further back in the programming chain. Separately, by seeking comment on the alternative approach offered by the D.C. Circuit, as described in paragraph 22, we seek feedback on other mechanisms that could potentially streamline the process for small broadcasters tasked with satisfying their reasonable diligence requirements under the Commission’s rules. Additionally, the *Second NPRM* proposes and seeks comment on the harmonization of the time period for retaining certifications within the licensee’s OPIF and the time period for retaining lease agreements. As stated in the *Second NPRM*, such an alignment can further simplify compliance for licensees.

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

27. None.

⁴¹ See 5 U.S.C. § 603(c).