

ALERT

FCC Seeks Comment on Petition for Clarification of Its Sponsorship ID Requirements for Foreign Government-Provided Programming

August 5, 2021

On August 3, the Federal Communications Commission (FCC or Commission) issued a Public Notice seeking comment on a Petition for Clarification (Petition) filed by the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, the Affiliates). The Petition requests clarification of the Commission's Report and Order establishing disclosure and recordkeeping requirements for broadcast programming aired on a radio or television station through a leased airtime agreement sponsored by a foreign entity or individual. Specifically, the Affiliates ask the FCC to clarify that the Report and Order does not cover advertising time sold by broadcast stations in their "normal course of business." Accordingly, the Commission's resolution of the Petition will be critical for determining whether the new sponsorship identification (ID) rules will cover not only leased airtime for programming, but also advertising time.

The Commission's New Sponsorship ID Report and Order

As we summarized here, the Report and Order requires that "programming aired on a station pursuant to a lease of airtime have a foreign sponsorship identification if the entity who has directly or indirectly provided the programming qualifies as a foreign governmental entity." The Report and Order defines a "foreign governmental entity" as (1) a "government of a foreign country" or a "foreign political party" as defined under the Foreign Agents

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Practice Areas

Foreign Agents Registration Act (FARA)
International Trade
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Registration Act (FARA); (2) an “agent of a foreign principal” that is acting as a registered agent of a “government of a foreign country” or a “foreign political party” under FARA; or (3) entities and individuals subject to Section 722 of the Communications Act that has filed a report with the Commission. When a broadcaster leases airtime to a foreign governmental entity, the Report and Order requires that the broadcaster air standardized language disclosing the entity at the beginning and end of the programming, and at least once every 60 minutes for programming longer than an hour. Broadcasters must also keep records of the disclosures in their online public inspection files.

While the Commission already regulates advertising under Section 73.1212 of its rules,^[1] the Report and Order explicitly states that it does not apply to “traditional, short-form advertising.”^[2] Section 73.1212 only requires that broadcast stations provide the name of any individual or entity in connection with paid programming, including paid political programming. However, Section 73.1212 does not address when and how broadcasters must disclose affiliations with foreign governmental entities that have paid for or provided programming for free.

The Affiliates’ Petition and the Commission’s Public Notice

In asking the Commission to clarify that the Report and Order does not apply to *any advertising* sold in a broadcaster’s “normal course of business,” the Petition notes that the term “traditional short-form advertising” is undefined in the item and is not “commonly understood in the industry.” The Affiliates state, moreover, that the sale of advertising time does not present “the same potential concerns regarding undisclosed foreign propaganda as “the lease of discrete blocks of time.” Additionally, the Affiliates argue that the FCC “has not provided any standard that would allow licensees to distinguish between a spot that constitutes a ‘short-form’ advertisement exempt from the new rules and some other type of advertisement that is covered by them.” Accordingly, the Affiliates express concern that the FCC may read the term ‘traditional short-form advertising’ narrowly, thus leaving other types of broadcast advertising – such as longer infomercials – subject to the new disclosure requirements.

The Commission’s Public Notice encourages commenters to “provide objective criteria that could distinguish between advertising and arrangements for the lease of airtime.” Specifically, the agency asks that commenters articulate concrete characteristics that distinguish between advertising and a lease of airtime, such as “duration, content, editorial control, or differences in the nature of the contractual relationship between the third-party and the station.” Comments on the Petition are due September 2 and reply comments are due September 17.

In light of the FCC’s history of strictly enforcing its sponsorship identification requirements in general and recent increased scrutiny regarding foreign governmental involvement in U.S. discourse, we expect rigorous enforcement of the new rules. Wiley is at the forefront of issues related to foreign involvement in U.S. communications businesses through our Telecom, Media & Technology (TMT), International Trade, National Security, and FARA Practices. If you have any questions or are interested in filing comments, please contact

one of the attorneys listed on the alert.