Before the
Office of Management and Budget

In the Matter of	)	
	)	
Notice of Information Collections	)	OMB Control Numbers 3060-0174 and
Being Submitted for Review and Approval to	)	3060-0214
Office of Management and Budget	)	
	)	
	)	
	)	
	)	

To: Office of Management and Budget via RegInfo.Gov
Cathy Williams, Federal Communications Commission via Email

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters (NAB)[1] submits these comments in response to the Federal Register Notice concerning information collection requirements arising from the Commission's new foreign sponsorship identification rules.[2] In the *Notice,* as required by the Paperwork Reduction Act of 1995 (PRA),[3] the Commission seeks public comment on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize

[1] NAB is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[2] *Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission*, 87 FR 4019 (Jan. 26, 2022) (Notice).

[3] 44 U.S.C. §§ 3501-3520.

the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.[4] NAB submits that the proposed information collection does not comport with the PRA. The rule that undergirds the proposed information collection does not comport with the Communications Act, First Amendment, or the Administrative Procedure Act and therefore cannot be necessary to the proper performance of the functions of the Commission. Moreover, the Commission has significantly underestimated both the number of affected broadcast licensees and their burdens of compliance in terms of employee time and the cost of legal counsel. To reduce the burden of the collection of information on the respondents, the Commission should, at a minimum, eliminate from its rule and its proposed information collection the obligation to conduct independent investigations of parties that sponsor content on broadcast stations and the obligation to maintain records of those investigations. NAB urges OMB to approve the information collection only with modifications.

I. The Order and Related Information Collections Violate the Communications Act, the First Amendment, and the Administrative Procedure Act

The Order[5] that necessitates the proposed information collections exceeds the Commission's statutory authority, defies court precedent, violates the First Amendment, and is arbitrary and capricious. With these deficiencies, the information collections that follow from the Order cannot comport with the PRA because they cannot be "necessary for the proper performance of the functions of the Commission," nor do they have practical utility. The Notice does not discuss in detail the most burdensome aspect of the new requirements:

[4] *Notice* at 4020.

[5] Report and Order, *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, 36 FCC Rcd 7702 (2021) ("Order").

a new multi-step diligence process that every broadcast licensee that leases time must undertake. The Order requires all leasing broadcasters to investigate independently whether a lessee or other party in the programming production/distribution chain is a foreign governmental entity, even if the broadcaster has no reason to believe the sponsor is affiliated with a foreign government. Broadcasters that engage in any lease must undertake the following steps at every lease execution and renewal: 1) inform the lessee of the foreign sponsorship disclosure requirement; 2) inquire of the lessee whether it qualifies as any of the four types of "foreign governmental entity"; 3) inquire of the lessee whether it knows if anyone in the chain of producing/distributing the programming to be aired under the lease, or a sub-lease, is a foreign governmental entity and has provided any inducement to air the programming; 4) if the answer to those inquiries is no, independently investigate the lessee's status using the Department of Justice's ("DOJ's") Foreign Agents Registration Act ("FARA") database and the Commission's U.S.-based foreign media outlets reports; and 5) memorialize the inquiries and investigations to document compliance. *See* Order at ¶¶ 38-41, App. A (47 C.F.R. § 73.1212(j)).

First, the Order contravenes the Communications Act. The Commission posits that "[p]ursuant to section 317(c) of the Act, the licensee bears the responsibility to engage in 'reasonable diligence' to determine *the true source* of the programming aired on its station," Order at ¶ 37, (emphasis added), and thus mandates independent investigation of government websites. But the broadcaster's statutory duty is far narrower. Congress required only that each broadcaster "shall exercise reasonable diligence *to obtain from its employees, and from other persons with whom it deals directly*" information necessary to disclose to the public the person who paid for the programming. 47 U.S.C. § 317(c)

(emphasis added). The Commission cannot ignore the restrictions Congress has placed upon a broadcaster's duty of diligence.

A broadcaster's duty of diligence has been narrowly construed in court. In *Loveday v. FCC*, 707 F.2d 1443 (D.C. Cir. 1983), the court held that "the language of section 317" does not "impose any burden of independent investigation upon licensees," *id*. at 1454, and "is satisfied by appropriate inquiries made by the station to the party that pays it for the broadcast," *id*. at 1449. *Loveday* binds the Commission, and the statutory text compels its construction.

The Order also violates the First Amendment. Compelled speech is content-based regulation, and thus the Order survives only if narrowly tailored to further a sufficiently important governmental interest. The regulation's extraordinary reach and sheer pointlessness make the compulsion of speech not narrowly tailored. The Government cannot bear its burden of showing that the Order effectively redresses real harms without burdening more speech than necessary. The mandatory investigation redresses a phantom harm *never known to occur*: namely, a foreign governmental entity registered FARA or a U.S.-based foreign media outlet registered under Section 722 of the Communications Act who leased broadcast time without disclosure. And such harm also is *highly unlikely to occur* (since foreign agents, under threat of criminal penalties, must disclose their foreign principal in all programming and supply copies of that programming to the DOJ). Nonetheless, the Order requires broadcasters to conduct investigations of *every* programming lease, even infomercials and local programming. Virtually all lessees, who are overwhelmingly domestic, will deny truthfully that they or others in the programming production or distribution chain are foreign governmental entities, thus triggering the duty to investigate. There is a minuscule chance that a lessee will be found in the FARA or Section 722 databases. Even if

one were, the databases would not yield the information required for the announcement: namely, the identity of the foreign governmental entity sponsoring the programming on behalf of a particular foreign country. The Commission had multiple narrower, equally effective alternatives that would have burdened significantly less speech. For the same reasons that it violates the First Amendment, the Order is arbitrary and capricious under the Administrative Procedure Act ("APA"). It imposes substantial burdens on thousands of broadcasters to address a phantom harm. Moreover, since the mandatory investigation is burdensome while at the same time lacking in practical utility, it fails to comport with the PRA. The Commission could have limited the diligence requirements to making inquiries of lessees and accomplished its goal.

II. The Proposed Information Collection Underestimates the Costs and Burdens on Broadcast Licensees

The Commission's estimated number of affected broadcasters is based on its tally of time brokerage agreements in stations' public files. Supporting Statement at 7, n. 7. However, the Commission's definition of "lease" in the order is not limited to time brokerage agreements. Rather, the Commission defines a lease as "any arrangement in which a licensee makes a block of broadcast time on its station available to another party in return for some form of compensation" regardless of "what those agreements are called, how they are styled, and whether they are reduced to writing." Order at ¶¶ 24, 27. For example, the Order exempted from this definition only "traditional, short-form advertising," *Id*. at ¶ 28, and thus covers longer "infomercials." NAB believes that the Commission has significantly undercounted the number of leases covered by the rule.

Even if the Commission's estimated number of leases were correct, the Commission has developed an unrealistic estimate of the burden on broadcast stations in terms of time

and cost. The Supporting Statement estimates that it will take "no more than an hour per lessee" to complete its diligence standards. Supporting Statement at 7, n.8. The Commission makes no allowance for training or educating station personnel on the new rule, the diligence standard, or how to search governmental databases most station personnel would never have used in the past.[6] It also assumes, without evidence, that the vast majority of stations "will be able to take the necessary steps for compliance themselves" and anticipates that only 10 percent of leases will involve a station "choos[ing] to employ legal counsel to establish a compliance plan and/or draft form language for insertion into all of a station's lease agreements regarding the new rule." *Id.* at 8, n. 13.

To the contrary, as NAB and other broadcasters explained in their request for a stay of the rule pending judicial review,[7] broadcasters will be required to expend substantial resources (in some instances cumulatively amounting to hundreds of thousands of dollars in employee time and legal fees) to bring their leasing arrangements into compliance with the Order's requirements. Specifically, broadcasters with leasing arrangements will be forced to spend significant sums to hire and train employees to conduct the reasonable diligence prescribed by the Order, and will be forced to divert significant amounts of employee time to undertaking the diligence requirements, including making inquiries of their lessees, obtaining certifications or amendments to lease agreements, conducting research in the

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[6] *See, e.g.,* Joint Petition of NAB, MMTC and NABOB for Stay Pending Judicial Review, MB Docket No. 20-299 (Sept. 10, 2021) (Broadcaster Stay Request), attached hereto as Appendix A, at Ex. 1, McCoy Declaration, ¶ 6 ("The Circle City personnel who work with program sponsors have no experience with the Foreign Agents Registration Act (FARA), the Department of Justice (DOJ) FARA website, or the FCC's list of U.S.-based foreign media outlets. Circle City expects to devote significant time and resources to developing and implementing training and education for our employees to understand the relevant terms and definitions and become familiar with the required research tools.").

[7] Broadcaster Stay Request.

FARA and Commission databases, and documenting the results of that research.[8] Broadcasters will also need to hire outside legal counsel to advise on compliance and address questions that arise during research, develop amendments and/or certifications for all lease agreements and negotiate with programming partners.[9] The estimates in the Supporting Statement do not reflect the real-world impact on broadcasters.

III. CONCLUSION

NAB urges OMB not to approve this information collection without modifications to reduce the extensive burdens on broadcasters resulting from the extensive specific, multi-step diligence process in the Order. Only then can the proposed information collection comport with the PRA.

Respectfully submitted,

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/s/
_____
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February 25, 2022

[8] Broadcaster Stay Request, Ex. 1, McCoy Declaration, at ¶¶ 5-9; Ex. 2, Santrella Declaration, at ¶¶ 10-11; Ex. 3, Zimmer Declaration, at ¶¶ 5-9; Ex. 4, Neuhoff Declaration, at ¶¶ 5-9; Ex. 5, Wishart Declaration, at ¶¶ 5-9; Ex. 6, Bustos Declaration, at ¶¶ 7-10.

[9] Broadcaster Stay Request, Ex. 1 at ¶ 10; Ex. 2 at ¶ 11; Ex. 3 at ¶¶ 8-9; Ex. 4 at ¶¶ 8-9; Ex. 5 at ¶¶ 8-9. Broadcasters' estimates of the costs and burdens to modify their existing agreements are significantly greater than the Commission's assumption that legal counsel will only be needed to merely "draft a compliance plan or form language for insertion into a station's lease agreements." Supporting Statement at 8, n. 14.

APPENDIX A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

PETITION FOR STAY PENDING JUDICIAL REVIEW

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INTRODUCTION

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"),[1] pursuant to Sections 1.41 and 1.43 of the rules,[2] hereby request that the Commission stay the implementation of its Report and Order[3] requiring every television and radio broadcaster to, among other things, make specific inquiries of and independently investigate every lessee that it currently or will in the future have a lease agreement with to determine whether the sponsor of the programming is a foreign governmental entity or its agent, even where the leased programming poses no colorable risk of foreign sponsorship. Petitioners have filed a petition for review of the Order with the U.S. Court of Appeals for the District of Columbia Circuit.[4] The Commission should stay the Order's implementation pending the completion of judicial review.

This case satisfies the requirements for a stay. Petitioners are likely to succeed on the merits because the Order flatly contravenes Section 317 of the Communications Act, violates the Administrative Procedure Act (APA), and unduly burdens speech in contravention of the First

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[1] NAB is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission ("Commission" or "FCC") and other federal agencies, and the courts. MMTC is a national nonprofit and non-partisan organization dedicated to promoting and preserving equal opportunity and civil rights in the mass media, telecommunications and broadband industries. NABOB is a national not-for-profit organization dedicated to increasing ownership of broadcast radio and television stations and other media by African Americans and other people of color. Each of the Petitioners participated in the proceedings below.

[2] 47 C.F.R. §§ 1.41, 1.43.

[3] *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, MB Docket No. 20-299, FCC No. 21-42 (rel. Apr. 22, 2021) (the "Order").

[4] *Nat'l Ass'n of Broadcasters, et al. v. FCC,* No. 21-1171 (D.C. Cir. docketed Aug. 13, 2021).

Amendment. Petitioners' members and constituents will suffer irreparable harm absent a stay because the Order will require many of them to spend tens of thousands to hundreds of thousands of dollars to hire and train employees to conduct the required investigations, as well as engage counsel to review their lease agreements and negotiate with lessees to bring existing leases into compliance with the Order. These unrecoverable costs unreasonably and unnecessarily burden the operations, resources and programming arrangements of broadcast stations across the country. The balance of hardships and the public interest also favor a stay because the likely harm from requiring broadcasters to undertake these efforts for thousands of lease agreements—the vast majority of which have no possible connection to foreign governmental entities—outweighs the benefit of such a requirement.

BACKGROUND

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

2. On October 26, 2020, the Commission issued a Notice of Proposed Rulemaking ("Notice") to modify the sponsorship identification rules to require broadcasters to provide standardized on-air and public inspection file disclosures specifically identifying the foreign government involved when they air any programming sourced from certain foreign governmental entities or their representatives.[5] The proposed rule would be triggered if the

[5] *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, 35 FCC Rcd 12099 at ¶¶ 3, 35 (2020).

sponsor of the content is: 1) a "government of a foreign country" as defined by the Foreign Agents Registration Act ("FARA"); 2) a "foreign political party" as defined by FARA; 3) an entity or individual registered as an "agent of a foreign principal" under FARA, whose "foreign principal" has the meaning given such term in section 611(b)(1) of FARA and that is acting in its capacity as an agent of such "foreign principal"; 4) an entity designated as a "foreign mission" under the Foreign Missions Act; or 5) an entity meeting the definition of a "U.S. based foreign media outlet" pursuant to section 722 of the Communications Act that has filed a report with the Commission.[6] The Notice did not propose any similar requirements for foreign-sponsored programming appearing on cable and satellite television, satellite radio or online platforms.

3. The Notice further proposed that to meet the "reasonable diligence" standard set forth in Section 317 of the Communications Act, a broadcaster would need to, at a minimum, 1) inquire of the programming supplier whether it qualified as a "foreign governmental entity"; and 2) independently review the Department of Justice's FARA database and the Commission's list of U.S.-based foreign media outlets.[7]

4. Broadcasters explained in comments that the proposal was overbroad and threatened to sweep in innocuous programming not intended to influence the American public, and that such overbreadth, coupled with the fact that only broadcasters would be subject to these requirements, would chill protected speech and failed to adequately balance First Amendment

[6] *Id.* at ¶ 14.

[7] *Id.* at ¶ 37.

interests.[8] Broadcasters also explained that the proposed reasonable diligence standard would exceed the FCC's statutory authority, run afoul of the U.S. Court of Appeals for the D.C. Circuit's precedent in *Loveday v. FCC*[9] and impose an unreasonable burden on broadcasters who would be forced to invest significant time and resources hiring and training employees on the required diligence steps.[10]

5. Broadcasters therefore urged the Commission to, among other things, narrow the scope of programming subject to the requirements and to "implement the 'reasonable diligence' requirement in a manner consistent with the sponsorship identification statute by allowing stations to make inquiries of those with whom they 'deal directly' and that are likely to be foreign entities, rather than consulting governmental lists."[11]

6. On April 1, 2021, the Commission released a draft report and order ("Draft Order") where, for the first time, the Commission proposed to limit the foreign sponsorship identification requirements to those circumstances in which a foreign governmental entity programs a broadcast station pursuant to a lease of airtime.[12] The Draft Order's terms required all broadcasters with a leasing agreement to implement the proposed reasonable diligence

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

[9] 707 F.2d 1443 (D.C. Cir.), *cert. denied*, 464 U.S. 1008 (1983) ("*Loveday*").

[10] *See* NAB Comments at 14-17; NAB Reply Comments at 5-7; NPR Comments at 5-8; PTV Comments at 18-19.

[11] NAB Comments at 4, 15.

[12] *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, MB Docket No. 20-299, FCC-CIRC2104-06, at ¶¶ 2, 24-32 (rel. Apr. 1, 2021).

requirements, regardless of whether a broadcaster had any reason to believe it was dealing with a foreign governmental entity.[13]

7. Broadcasters noted in further submissions that the FCC's approach remained overbroad because it "appear[ed] to sweep in thousands of leasing agreements, forcing broadcasters who never have and never will contract to air foreign government-sponsored content to expend a great deal of time, energy and expense repeatedly (and needlessly) confirming that their program suppliers do not have foreign governmental affiliations."[14] NAB, NABOB and MMTC also pointed out that the proposed diligence standards would especially harm smaller, diverse broadcasters and potential new entrants.[15] NAB again urged the Commission to narrow the reasonable diligence requirements by "clarifying that broadcasters need only undertake the requisite notification, inquiries, and independent online research if they have reason to believe that a lessee is affiliated with a foreign governmental entity."[16]

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

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[13] *Id*. at ¶¶ 35-44.

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

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

[16] NAB April 13 Ex Parte at 4-6; Letter from Rick Kaplan (NAB) to Marlene Dortch (FCC), MB Docket No. 20-299, at 2-3 (Apr. 15, 2021)("NAB April 15 Ex Parte").

9. The Order rejected broadcasters' arguments that the proposed reasonable diligence requirements were unduly burdensome and contrary to the D.C. Circuit's holding in *Loveday*. *See id*. at ¶¶ 44-45. The Order accordingly requires broadcasters that engage in any leasing arrangement to: (i) inform the lessee at the time of agreement and at renewal of the foreign sponsorship disclosure requirement; (ii) 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"; (iii) 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; (iv) 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; and (v) memorialize the above-listed inquiries and investigations to track compliance in the event documentation is required to respond to any future Commission inquiry on the issue. *See id.* at ¶¶ 38-41. These diligence requirements must be undertaken at contract execution and renewal, and broadcasters must ensure that lease agreements already in existence at the time the rules take effect "come into compliance with the new requirements including undertaking reasonable diligence, within six-months [SIC]" of the rules becoming effective. *Id.* at ¶¶ 42-43, 48.

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

changes adopted in the Order pursuant to the Paperwork Reduction Act of 1995. *See* 86 Fed. Reg. 38482.

STANDARD OF REVIEW

The Commission will stay the effectiveness of an order pending judicial review when the petitioner demonstrates: (1) it is likely to prevail on the merits of its petition for review; (2) it will suffer irreparable harm in the absence of a stay; (3) a stay will not injure other parties; and (4) a stay is in the public interest. The Commission balances these factors, with no single factor being dispositive.[17]

ARGUMENT

I. Petitioners Are Likely to Prevail on the Merits

Petitioners satisfy the stay requirement of a reasonable likelihood of success in overturning the Order. First, the Order's imposition of a duty upon broadcasters to conduct an independent investigation into sponsor identity flatly contravenes the statute. Congress only requires that a broadcast station licensee "exercise reasonable diligence to obtain *from its employees, and from other persons with whom it deals directly* in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section." 47 U.S.C. § 317(c) (emphasis added). The D.C. Circuit, in which the petition for review is pending, has already held that this provision does "not impose any burden of independent investigation upon licensees," and "is satisfied by appropriate inquiries made by the station to the party that pays it for the broadcast." *Loveday*, 707 F.2d at 1449, 1453. The

[17] *See Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc*., 559 F.2d 841, 843 (D.C. Cir. 1977). The Commission applies the same standard applied by the courts. *See Rates for Interstate Inmate Calling Services*, Order Denying Stay Petition, 31 FCC Rcd 10936 ¶ 9 (2016).

Commission has no power to require independent investigations beyond what the statute requires. Even if the Commission believes its order complies with the statute, *Loveday* alone creates a reasonable likelihood that Petitioners may nonetheless succeed. Aside from a likely statutory violation, it is reasonably probable that the D.C. Circuit will find the Order to be arbitrary and capricious or a violation of broadcasters' First Amendment rights.

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

"When a statute speaks with clarity to an issue, judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished." *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). "All questions of government are ultimately questions of ends and means." *Nat'l Fed'n of Fed. Employees v. Greenberg*, 983 F.2d 286, 290 (D.C. Cir. 1993). "The extent of [the Commission's] powers can be decided only by considering the powers Congress specifically granted it in the light of the statutory language and background." *American Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 965 (D.C.Cir.1985) "Agencies are therefore 'bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes.'" *Colorado River Indian Tribes v. National Gaming Commission*, 466 F.3d 134, 139 (D.C. Cir. 2006) (quoting *MCI Telecomms. Corp. v. AT&T*, 512 U.S. 218, 231 n. 4 (1994)). If Congress declares that something should be done "in a particular way," an agency cannot proceed differently. *Id.* As the Supreme Court has "so often admonish[ed], only Congress can rewrite" the Communications Act. *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 376 (1986).

Here, Congress has spoken exactly to the disclosure that it intended broadcast licensees to make, and what information the station was required to gather to make that disclosure. When a station broadcasts any matter for "which any money, service or other valuable consideration is

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

The D.C. Circuit has interpreted section 317(c) in accord with its plain language, holding that that "the language of section 317, of itself, does not" "impose *any burden* of independent investigation upon licensees." *Loveday*, 767 F.2d at 1453 (emphasis added). The Court emphasized that (outside of the duty to gather information from its own employees) a licensee could rely strictly on information received from those with whom it dealt directly.

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

Id. at 1449 (emphasis added).

The Court buttressed its findings by noting that Congress, in enacting the original sponsorship identification requirement in the Radio Act of 1927, "imposed only a very limited obligation upon broadcasters: to announce that a program had been paid for or furnished to the station by a third-party and to identify that party." *Id.* at 1451. Nothing in either the legislative history or extrinsic evidence, the Court declared, "suggests that Congress or the legal community

believed that [the Act] required broadcasters to undertake investigations." *Id.* at 1451. Moreover, the Commission's regulations implementing the sponsorship identification requirement prior to the enactment of Section 317(c) did not impose any investigatory burden, and section 317(c) ratified those regulations. *Id.* at 1453. The legislative history of the 1960 Act indicated that the licensee would not be an insurer of the accuracy of the disclosure; in other words, "a licensee need not go behind the information it receives to guarantee its accuracy." *Loveday*, 707 F.2d at 1455 n.18; *see also* H.R. Rep 86-1800, at 21 (1960) ("The person who makes the announcement would not be held to have violated this section if the announcement so made is false, provided he establishes that he made the announcement in good faith i*n reliance upon information furnished by the person making the payment*.") (emphasis added). Finally, the Commission represented to the *Loveday* Court that no investigation was required under the statute or its then-current regulations: "The Commission interprets the statute and its own regulations to impose a much less stringent obligation: a licensee confronted with undocumented allegations and an undocumented rebuttal may safely accept the apparent sponsor's representations that he is the real party in interest." *Id.* at 1449.

In the Order, the Commission recites but does not analyze the statutory language or history of Section 317(c), and addresses *Loveday* only in a footnote. In paragraph 37, the Commission recites the statutory language limiting the licensee's duty of due diligence to inquiries of employees and persons with whom it deals directly, but then imposes the obligation that "the licensee … verify independently that the lessee does not qualify as a 'foreign government entity'" through "independent searches." *Id.* ¶ 40. The Commission never reconciles this newly minted obligation with the plain language of section 317(c).

With regard to *Loveday*, the Commission's footnote analysis falls short. The Commission first attempts to distinguish this binding D.C. Circuit precedent because "we are promulgating our foreign sponsorship identification rules in the context of congressional concern about undisclosed foreign government programming and on the heels of amendments to the Communications Act that link identification of foreign governmental actors to FARA, similar to the rules promulgated herein." Order ¶ 45 n.132. But *current* congressional concerns cannot change the scope of a statute passed more than 60 years ago, and they are not (as the Commission's footnote suggests) a form of legislative history. Indeed, the D.C. Circuit has dismissed the notion of "post-enactment legislative history" as "oxymoronic." *Cobell v. Norton*, 428 F.3d 1070, 1075 (D.C. Cir. 2005). *Accord Hazardous Waste Treatment Council v. U.S. EPA*, 886 F.2d 355, 365 (D.C. Cir. 1989) (emphasizing that "legislative history" "is just that: *history*") (emphasis in original).

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

licensees," and "is satisfied by appropriate inquiries made by the station to the party that pays it for the broadcast." *Loveday*, 707 F.2d at 1449, 1453.[18]

Because the Order runs afoul of both the plain language of Section 317(c) and its interpretation in *Loveday*, Petitioners have a reasonable likelihood of success in persuading the D.C. Circuit to overturn the Order.

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

Under the APA, agency actions must be "set aside" if they are "arbitrary" or "capricious." 5 U.S.C. § 706(2)(A). To avoid this, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (citing *Motor Vehicle Mfrs. Assn. of U.S., Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983)). Here, even if the Order survives the statutory challenge under Section 317(c), there is a strong (or at least reasonable) probability that Petitioners will succeed on the merits because the Order is arbitrary and capricious.

First, the Commission did not establish a problem warranting the nationwide regulation of *all* leased programming at *all* of the 1,324 commercial television stations and 11,288 commercial radio stations across the country (of which 92% and 99% are small businesses). Order, Appx. B, ¶¶ 13-17. The FCC relies on only three hyper-localized examples of foreign propaganda on U.S. airwaves to implement a nationwide rule. Specifically, the FCC relies on

[18] The independent searches are not as simple as the Commission suggests. For example, some FARA-registered agents (which include, among others, law firms, marketing agencies, and lobbyists) represent multiple foreign governments, and may also represent private as well as governmental clients. In many circumstances, a more extensive investigation may be required for the station to make a truthful statement as to whether the sponsor of particular programming is a foreign government entity, and from what country.

instances of Russian propaganda by Russia Today and Radio Sputnik on a couple of radio and television stations in Washington, D.C and Kansas City, Missouri. Order at nn.1, 9, 52, 71, 74, 75 and 178. Additionally, the Commission cites to China Radio International's (CRI) ability to lease airtime on a Washington, DC area station and "broadcast pro-Chinese government programming on this station without disclosing the linkage to the Chinese government." Order at nn.1, 74, 75, and 178. That hardly indicates a wave of foreign propaganda on radio and television stations that would justify a burdensome *nationwide* regulation applicable to all the leased programming of all the nation's broadcasters. Notably, the last of the scant examples cited by the Commission would not even be redressed by the independent searches mandated by the Order, since the Chinese sponsor was not an entity registered under FARA or a foreign media outlet disclosed to the Commission.

Second, the Order is wildly underinclusive. The Commission declined to impose *any* disclosure obligation on cable operators, satellite broadcasters, or online platforms, even though there are *no disclosure requirements* applicable to cable leased access channels, and even though the primary problems of disinformation or propaganda sponsored by foreign governments, as NAB pointed out,[19] have occurred over social media and the Internet.[20] A recent study found that

[19] NAB April 13 Ex Parte at 1-2 and notes 2-3.

[20] *See, e.g.,* William Marcellino, Christian Johnson, Marek N. Posard, & Too C. Helmus, *Foreign Interference in the 2020 Election: Tools for Detecting Online Election Interference*, RAND CORP. (2020), https://www.rand.org/pubs/research_reports/ RRA704-2.html.; Mike Isaac & Daisuke Wakabayashi, *Russian Influence Reached 126 Million Through Facebook Alone*, N.Y. TIMES (Oct. 30, 2017), https://www.nytimes.com/2017/10/30/ technology/facebook-google-russia.html; Laura Rosenberger, Foreign Influence Operations and their use of Social Media Platforms, ALLIANCE FOR SECURING DEMOCRACY (Jul. 31, 2018), https://securingdemocracy.gmfus.org/foreign-influence-operations-and-their-use-of-social-media-platforms/; Jeff Kao, ProPublica, and Raymond Zhong, Paul Mozur and Aaron Krolik, The New York Times, *How China Spreads Its Propaganda Version of Life for Uyghurs*, ProPublica, (June 23, 2021) (discussing propaganda distributed through Twitter and YouTube

YouTube carried 47 foreign-government channels without disclosure.[21] Ironically, when the Commission noted "an increase in the dissemination of programming in the United States by foreign governments and their representatives," it cited two articles discussing cable and Internet propaganda unaddressed by the order. *See* Order ¶ 4 & n. 10 (citing William J. Broad, *Putin's Long War Against American Science*, New York Times (Apr. 13, 2020) and Julian Barnes, Matthew Rosenberg and Edward Wong, *As Virus Spreads, China and Russia See Openings for Disinformation*, New York Times (Apr. 10, 2020)). So, the Commission has ordered the entirety of the nation's broadcasters to conduct cumulatively expensive investigations into foreign propaganda that barely exists on the airwaves, while letting the real problem fester. And if any lessee is troubled by the Order's disclosure obligations, it can simply shift to other competitive media to escape them, to the detriment of broadcasters.

Third, even if some regulation of broadcasters were permissible, the Order is also dramatically overinclusive. The Commission refused to impose any reasonable limit on the type of leased programming subject to the investigation requirements, such as matters of public controversy, or programming that the broadcaster would have reason to believe was sponsored by a foreign government. *See* Order ¶¶ 44-45. This means that a broadcaster must conduct the mandated inquiry into whether a foreign government has sponsored every infomercial (for Snuggies, a Beachbody workout program, or the latest cosmetic skin cream or hair treatment); a radio-call in program by a local financial planner to discuss retirement funding options; or a local

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videos), https://www.propublica.org/article/how-china-uses-youtube-and-twitter-to-spread-its-propaganda-version-of-life-for-uyghurs-in-xinjiang.

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

First Baptist Church broadcasting its Sunday Services. The absurd overkill of this regulation, for no predictable effect, underscores its unlawfulness.

C. The Order's Coercion of Investigation and Public Speech Is Not Narrowly Tailored to Serve a Sufficiently Important Government Interest and thus Violates the First Amendment

The Order compels speech. "And it does so in no small measure." *Wash. Post v. McManus*, 944 F.3d 506, 514 (4th Cir. 2019). The Order not only requires broadcasters to speak publicly but chooses certain words for them to use, dictates how often the speech must occur (at least once a program or at the beginning and end of every hour for programs sixty minutes or longer), and requires burdensome investigation into a sponsor's identity that are compelled to be documented and reported at least four times a year. *See* Order App. A (proposed 47 C.F.R. § 73.1212(j)). The government is as constrained in mandating speech as it is in prohibiting speech. *See Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

In determining the constitutionality of compelled disclosure requirements under the First Amendment, the Supreme Court applies at least "exacting scrutiny." *See Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373, 2383 (2021) (plurality); *id.* at 2390 (Op. of Thomas, J., concurring in part and concurring in judgment in part) (favoring strict scrutiny); *id.* at 2391-92 (Op. of Alito, J., concurring in part and concurring in the judgment, joined by Gorsuch J.) (not deciding whether strict or exacting scrutiny applies, but agreeing with plurality's exegesis of exacting scrutiny). Exacting scrutiny requires that the speech compulsion be "narrowly tailored" to "a sufficiently important" government interest, even if not the least restrictive means. *Id.* That is the same First Amendment standard that the Supreme Court has applied to certain regulations of broadcaster speech. *FCC v. League of Women Voters*, 468 U.S. 364, 380 (1984).

For all the same reasons the Order is arbitrary and capricious, *supra* at 12-15, it is also not narrowly tailored to serve a sufficiently important government interest. Because there is no widespread, much less national, problem of foreign propaganda on radio and television broadcast channels, there is no "sufficiently important" governmental interest that justifies compelled investigations and speech. Moreover, a regulation coercing speech that is both dramatically underinclusive and dramatically overinclusive is by definition not narrowly tailored. *Ruggiero v. FCC*, 317 F.3d 239, 244 (D.C. Cir. 2003) (characterizing *FCC v. League of Women Voters*, 468 U.S. 364 (1984) as having found that a statute "failed" the narrow-tailoring "test twice over" because it was "both overinclusive and underinclusive"); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 , 546 (1993) (finding no narrow tailoring because the "four ordinances are overbroad or underinclusive in substantial respects," for "[t]he proffered objectives are not pursued with respect to analogous non-religious conduct, and those interests could be achieved by narrower ordinances that burdened religion to a far lesser degree"); *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 502 U.S. 105, 121 (1991) ("significantly overinclusive" statute not narrowly tailored). While the Commission could lawfully adopt a regulation that is narrowly tailored to a sufficiently important governmental interest and meet the applicable legal standard, it has not done so here.

Petitioners also have explained that the overly burdensome regulations may deter broadcasters from airing some sponsored content, thereby chilling protected speech and reducing the quantity, quality and diversity of programming aired by local stations.[22] Programmers seeking to gain experience through leasing arrangements with the ultimate goal of purchasing

[22] NAB April 13 Ex Parte at 4-6; NAB April 15 Ex Parte at 2-3; NABOB Ex Parte at 2-3; MMTC Ex Parte at 1-2.

broadcast stations may find it more difficult to identify broadcasters willing to enter leasing arrangements, impeding their ability to disseminate their content and become broadcast station owners.[23]

Here, moreover, the Commission could easily have achieved its purported objectives and then some with a less burdensome approach: namely, by requiring the sponsor itself to provide the desired information for the licensee to include when airing the leased programming. The Order is only addressed to those foreign governmental sponsors that are above board and compliant with the law: *i.e.*, those are already registered under FARA or have disclosed their status as a foreign media outlet to the Commission under 47 U.S.C. § 624. As the Commission concedes, FARA registrants are already required to disclose their identity in programming, Order ¶ 51, and the Commission could easily have required the lessees to disclose any additional information (such as the country) that the Order requires. And it could have required FARA registrants (and disclosed foreign media outlets) to make that disclosure in all media within the Commission's jurisdiction, including cable systems and satellite broadcasters. This narrower alternative not only would have avoided the unnecessary and ineffective investigatory burdens on broadcasters, but perhaps actually addressed the asserted governmental interest. The Order as written is unconstitutional.

II. Petitioners' Members Will Suffer Irreparable Harm Absent a Stay

Although economic harms do not normally constitute irreparable injury, "where economic loss will be unrecoverable, such as in a case against a Government defendant where sovereign immunity will bar recovery, economic loss can be irreparable." *Everglades Harvesting & Hauling, Inc. v. Scalia*, 427 F. Supp. 3d 101, 115 (D.D.C. 2019). *See also Robertson v.*

[23] *Id.*

Cartinhour, 429 F. App'x 1, 3 (D.C. Cir. 2011); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669 (D.C. Cir. 1985) (per curiam) (unrecoverable economic loss may constitute irreparable injury); *cf. Chamber of Commerce of U.S. v. Edmondson*, 594 F.3d 742, 770–71 (10th Cir. 2010) ("Imposition of monetary damages that cannot later be recovered for reasons such as sovereign immunity constitutes irreparable injury."). As described below, Petitioners' members will not be able to recover from the government the substantial economic losses they will suffer to bring their leasing arrangements into compliance with the Order's requirements. Accordingly, Petitioners' members will suffer irreparable harm if a stay is not entered pending appeal.

Absent a stay, Petitioners' members will be required to expend substantial resources (in some instances cumulatively amounting to hundreds of thousands of dollars in employee time and legal fees) to bring their leasing arrangements into compliance with the Order's requirements. Specifically, broadcasters with leasing arrangements will be forced to spend significant sums to hire and train employees to conduct the reasonable diligence prescribed by the Order, and will be forced to divert significant amounts of employee time to undertaking the diligence requirements, including making inquiries of their lessees, obtaining certifications or amendments to lease agreements, conducting research in the FARA and Commission databases, and documenting the results of that research.[24] Broadcasters will also need to hire outside legal counsel to advise on compliance and address questions that arise during research, develop amendments and/or certifications for all lease agreements and negotiate with programming partners.[25] In addition, broadcasters may ultimately lose sponsored programming to platforms

[24] *See* Ex. 1, McCoy Declaration, at ¶¶ 5-9; Ex. 2, Santrella Declaration, at ¶¶ 10-11; Ex. 3, Zimmer Declaration, at ¶¶ 5-9; Ex. 4, Neuhoff Declaration, at ¶¶ 5-9; Ex. 5, Wishart Declaration, at ¶¶ 5-9; Ex. 6, Bustos Declaration, at ¶¶ 7-10.

[25] *See* Ex. 1 at ¶ 10; Ex. 2 at ¶ 11; Ex. 3 at ¶¶ 8-9; Ex. 4 at ¶¶ 8-9; Ex. 5 at ¶¶ 8-9.

where such inquiries are not required, as the diligence requirements may open the door to negotiations with long-standing partners on other agreement terms and introduce an element of distrust in these relationships, to the detriment of broadcasters' bottom lines.[26] Because Petitioners' members will not be able to recoup the substantial costs of compliance, Petitioners have demonstrated that they will suffer irreparable harm.

Petitioners' members and constituents also will suffer irreparable harm arising from the First Amendment burdens imposed by the Order. As discussed above, the Order unlawfully compels and chills speech, *see supra* at 15-17, and "the loss of First Amendment freedom for even minimal periods of time unquestionably constitutes irreparable injury," *Elrod v. Burns*, 427 U.S. 347, 374 (1976); *Archdiocese of Washington v. Washington Metropolitan Area Transit Auth.*, 897 F.3d 314, 334 (D.C. Cir. 2018). A broadcaster that complies with the compelled investigation and speech requirements arising from this regulation has suffered irreparable harm. Further, some broadcasters may determine that the heavy compliance burdens imposed by the Order outweigh the benefits of airing certain sponsored content. Broadcasters curtailing their use of leasing arrangements as a result of the Order have suffered irreparable harm.

III. The Balance of Hardships and Public Interest Weigh in Favor of a Stay

The balance of hardships and public interest also favor a stay. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) ("These factors merge when the Government is the opposing party."). A stay would leave the FCC's current sponsorship identification rules in effect pending Petitioners' appeal. Under those long-standing rules, broadcasters still must disclose the sponsors of their programming and exercise reasonable diligence to determine the identity of the

[26] *See* Ex. 1 at ¶ 11; Ex. 2 at ¶ 13; Ex. 3 at ¶ 10; Ex. 4 at ¶ 10; Ex. 5 at ¶¶ 11-12; Ex. 6 at ¶¶ 10-11.

sponsor to facilitate the required disclosure. Given that the Commission has identified only a small handful of instances over the course of several years in which broadcasters had even aired programming sponsored by a foreign governmental entity, any additional incremental public benefit the Order's requirements may provide beyond what the current sponsorship identification rules already provide are far outweighed by the economic harms to broadcasters that would result from imposing such requirements on thousands of radio and television stations.[27]

Furthermore, Petitioners have demonstrated that they are likely to succeed on the merits of their claims. The public interest is not served by implementing a rule that violates the Communications Act, the Administrative Procedure Act, and the First Amendment. Because Petitioners have shown a likelihood of success on the merits, the public interest weighs in favor of injunctive relief. *See Catholic Legal Immigration Network, Inc. v. Exec. Office for Immigration Review*, No. 20-cv-03812 (APM), 2021 U.S. Dist. LEXIS 8954, at *48 (D.D.C. Jan. 18, 2021) ("There is generally no public interest in the perpetuation of unlawful agency action.") (internal quotations and citations omitted).

CONCLUSION

For the foregoing reasons, the Commission should stay the effective date of the Order

[27] Notably, the Order did not find that broadcasters had failed to identify the sponsor of the programming pursuant to the rules in effect at the time in the very small number of cases in which broadcasters aired foreign governmental programming.

pending the completion of judicial review.

September 10, 2021

Respectfully submitted,

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Exhibit 1

Declaration of DuJuan McCoy,

Circle City Broadcasting, LLC

DECLARATION OF DUJUAN MCCOY

I, DuJuan McCoy, declare as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

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

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

September 7, 2021

Exhibit 2

Declaration of David Santrella,

Salem Media Group, Inc.

DECLARATION OF DAVID SANTRELLA

I, David Santrella, declare as follows:

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

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

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

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

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

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

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

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

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

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

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

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

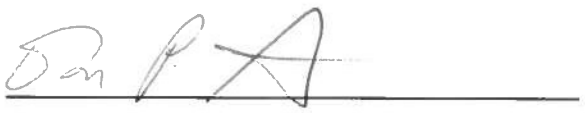
12. I further estimate that Salem's annual compliance costs and burdens to comply with the diligence standards with respect to new agreements and renewals of existing arrangements may require approximately five hours of employee time per contract at an average cost of $25.00 per hour. Based on our usual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

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

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

* * *

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



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

Exhibit 3

Declaration of John Zimmer,

Zimmer Midwest Communications, Inc.

DECLARATION OF JOHN ZIMMER

I, John Zimmer, hereby declare as follows:

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

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

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

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

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

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

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

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

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

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

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

* * *

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

John Zimmer
President
Zimmer Midwest Communications, Inc.

September 8, 2021

Exhibit 4

Declaration of Elizabeth Neuhoff,

Neuhoff Communications

DECLARATION OF ELIZABETH NEUHOFF

I, Elizabeth Neuhoff, declare as follows:

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

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

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

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

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

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

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

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

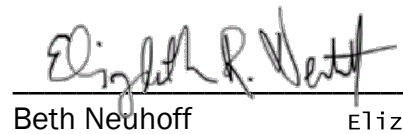
8. It is difficult to estimate the costs of compliance because we have no experience under the new rules. Nonetheless, I estimate that the initial compliance effort, which must be completed within just six months of the effective date of the new rules, may require approximately 100 hours of employee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

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

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

* * *

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



Beth Neuhoff Elizabeth R. Neuhoff

August __, 2021 9/4/2021

Exhibit 5

Declaration of Karen Wishart,

Urban One, Inc.

DECLARATION OF KAREN WISHART

I, Karen Wishart, declare as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

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

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

September 7, 2021

Exhibit A
Urban One Stations

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

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

Exhibit 6

Declaration of Amador Bustos,

Bustos Media Holdings, LLC

DECLARATION OF AMADOR S. BUSTOS

I, Amador S. Bustos, declare as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

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

Amador S. Bustos

September 7, 2021