The FCC's Foreign Sponsorship ID Rule Expansion

STATEMENT OF
COMMISSIONER NATHAN SIMINGTON, DISSENTING

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

. . .

I thought, and still think, we should require foreign sponsorship identification to leases of air time. Since this item now has practically nothing to do with that, I dissent.

Webinar Date: November 19, 2025

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Overview

Rule Background

- General Sponsorship ID Rule
- Initial FSID Rule Adoption
- Challenge/Further Rulemaking
- "Expanded" Rule Adoption
- Coming Effective Date

Rule Application

- ~~Commercial Products and Services~~
- ~~Candidate Advertisements~~
- ~~NCE stations~~
- Issue Advertisements
- "Paid PSAs"

Rule Requirements

- Due Diligence
- Disclosures
- Recordkeeping

Rule Background
73.1212 and Foreign Sponsorship ID

General Sponsorship ID Rule

- Sponsorship ID obligations predate the FCC!
- Section 317 of the Communications Act
- FCC Rule 73.1212
- Purpose underlying rule is—and has always been—that the public has a right to know who is seeking to persuade them.

Abbreviated First Portion of 73.1212

When a broadcast station transmits **any matter** for which **money, service, or other valuable consideration** is either directly or indirectly **paid or promised to**, **or charged or accepted by such station**, the station, at the time of the broadcast, shall **announce**:

(1) That such matter is **sponsored, paid for, or furnished**, either in whole or in part, and
(2) **By whom or on whose behalf** such consideration was supplied.

Rule Developments and Nuances Over the Years

- "Consideration" broadening (i.e., not just $)
- Political advertising (disclaimer specifications)
- True identity of the sponsor
- Payola / Plugola
- VNRs / Placements / Mentions

<u> FCC Forfeiture Guidelines: $4,000 per violation! **</u>**

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Foreign Sponsorship ID Rule
Initial Adoption

- **First FCC Report and Order:** April 2021.
  - Based primarily on news stories of two stations that had either ownership interests tracking back, or leased all the stations' air-time, to Chinese and Russian government entities.
  - Adopted "diligence," "disclosure," and "recordkeeping" requirements related to "foreign governmental entities."
  - Requirements applied **only** to "leases for airtime" and expressly did **not** apply to "traditional, short-form advertising."

Foreign Sponsorship ID Rule
What Happens After First Report and Order?

- **Appeal & Subsequent Further Rulemaking**
  - NAB appeals an aspect of the new "diligence" requirements to D.C. Circuit; wins.
  - FCC continues rulemaking.
  - Broadcasters request clarification that "traditional, short-form advertising" effectively means all content that is *not* a lease.
  - FCC folds clarification request into ongoing further rulemaking.

Foreign Sponsorship ID Rule
Second Report and Order

- **Second Report and Order:** June 2024
  - FCC "amends and clarifies" FSID Rule requirements.
  - Backtracks on common definition of word "lease" and reframes broadcaster request for clarification. Excepts only "commercial products and services" and "candidate advertising" from the scope of the rules.
  - Expressly states that FSID Rule **will** apply to political issue advertising and paid PSAs.
  - FSID Rule continues to apply to "leases."
  - *Vigorous dissents from then-Commissioners Carr and Simington*

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Letting Americans know when a foreign government has leased time on American airwaves is a good thing. That's why I voted to approve the Commission's first cut at these rules back in 2021. In the implementing Report and Order, we indicated that:

> "In describing a lease of time, however, we do not mean to suggest that traditional, short-form advertising time constitutes a lease of airtime for [the purposes of foreign sponsorship identification]."

Ha-ha. Just kidding. Apparently, according to today's decision: not only *yes*, we *did* mean that traditional, short-form advertising constitutes a "lease of airtime" for these purposes, but regulatees *knew that we meant that they did* when they asked us to clarify the bounds of the exemption. (By now, "clarify" is the Commission's euphemism for doing whatever it wants, precedent be damned.) This is, of

Foreign Sponsorship ID Rule
What Happens After Second Report and Order?

- **Appeal & Subsequent Rule Enforcement Delay**
  - NAB appeals "switcheroo" aspect of Second Report and Order to D.C. Circuit; loses.
  - FCC does, at least, informally agree with broadcasters that additional regulatory approvals are required before "expansion" of rules can be enforced.
  - Approvals for expansion come in June 2025, but FCC "defers requiring compliance" until **December 8, 2025**.*
  - The FSID rules never did and still do not apply to NCE stations.

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FSID Rule Application
Types of Programming Subject to Rule

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Prior to December 8, 2025
Programming Categories Where Rule **IS TRIGGERED:**

(1) TBAs / LMAs and (2) "Long-Form" Paid

- "Any agreement in which a licensee makes a **discrete block of broadcast time on its station available to be programmed by another party**"—i.e., via **"programming provided or selected by the programmer"**—"in return for some form of compensation"
- "Agreements by which a **third party controls and programs a discrete block of time** on a broadcast station"
- "**Leasing agreements**, regardless of what those agreements are called, how they are styled, and whether they are reduced to writing"
- Any agreement that gives a "**brokering party or programmer** . . . the **right and obligation to program** the station licensed to the other party"

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Beginning December 8, 2025
Programming Categories Where Rule **IS TRIGGERED:**

(1) TBAs / LMAs and (2) "Long-Form" Paid
AND
(3) Issue Ads and (4) Paid PSAs

- Per the Second Report and Order, an "issue ad" is "any paid political matter or matter involving the discussion of a controversial issue of public importance, regardless of the length of the programming."
- *Note: The Second Report and Order does not define "Paid PSA." However, an underlying commenter submission in the proceeding characterized a "Paid PSA" as where a nonprofit entity partners with a corporate entity to undertake a paid public service announcement campaign.*

Programming Categories Where Rule **IS NOT TRIGGERED:**

(1) Candidate Ads and (2) Commercial Products or Services

(also (3) "archival, stock, or supplemental video footage" and (4) "preferential access to filming locations")

- A "candidate ad" is "the purchase of broadcast time by or on behalf of legally qualified candidates or their authorized committees pursuant to section 315 of the Act." There must be a "use" (i.e., candidate voice or likeness).
- The "commercial products and services" exemption is the same as for traditional sponsorship ID:

> In the case of broadcast matter advertising **commercial products or services**, an announcement stating **the sponsor's corporate or trade name**, **<u>or</u>** the **name of the sponsor's product**, when it is **clear that the mention of the name of the product constitutes a sponsorship identification**, shall be deemed sufficient [sponsorship ID] and only one such announcement need be made at any time during the course of the broadcast.

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Takeaways

- **TBAs, LMAs, and similar "true" lease agreements remain subject to the FSID Rule.** You need to keep the rule front-of-mind when you enter into the programming agreement and at regular intervals throughout the programming relationship (more on this in later slides). Note that religious programming and locally-produced third-party programming are *not* categorically exempt.

- **The "expanded" categories—especially issue ads—will require heightened understanding and engagement from your sales teams.** Because issue ad buys occur much more frequently, and typically last for a much shorter duration than a typical TBA or LMA term, your station is likely to continually trigger FSID compliance obligations during political seasons.

- **Certain categories of programming will likely still need to be individually evaluated.** E.g., "long-form" paid programming, relationships with U.S. governmental entities, etc.

- Any "political program or any program involving the discussion of a controversial issue, if it has been furnished for free as an inducement to air by a foreign entity" remains subject to the FSID Rule.

FSID Rule Requirements
Diligence, Disclosure, and Recordkeeping

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“Core” FSID Requirements

- **Due Diligence**
  - Inform advertiser of FSID rule and inquire whether subject to the rule.
  - Obtain certifications (or, potentially, other proof as specified in rule).
- **Disclosures**
  - Triggered **only if** a “foreign governmental entity” is actually involved in the programming to an extent sufficient to implicate the rule. If so, both (1) on-air and (2) OPIF disclosures required.
- **Recordkeeping**
  - Due diligence materials.
  - OPIF uploads.

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FSID: *Due Diligence*

****TRIGGERED AT TIME OF ENTERING INTO AGREEMENT TO AIR PROGRAMMING****

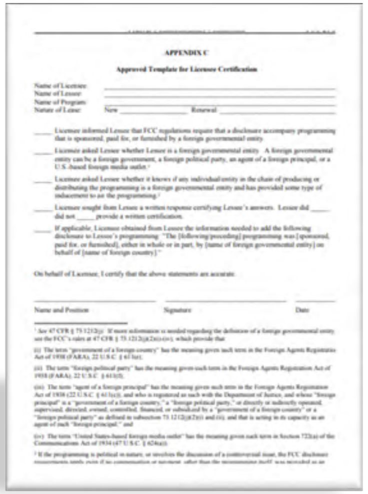
(And, for leases, at any renewal and at least annually)

- Inform the Advertiser of the foreign sponsorship disclosure requirement.
- Inquire of the Advertiser whether it falls into any of the FSID rule categories that qualify it as a "foreign governmental entity."
- Inquire of the Advertiser whether it knows if anyone further back in the chain of producing/distributing the programming qualifies as a foreign governmental entity and has provided some type of inducement to air the programming.
- Memorialize compliance with the requirements above and seek to obtain a response from the Advertiser with the information needed to determine if a disclosure is necessary (and if necessary, the information to make the disclosure) by either:
  - Executing a written certification attesting to the station's compliance and by seeking a written certification from the Advertiser.; or
  - Informing the Advertiser of the disclosure requirements and asking the Advertiser to provide screenshots of certain governmental websites.

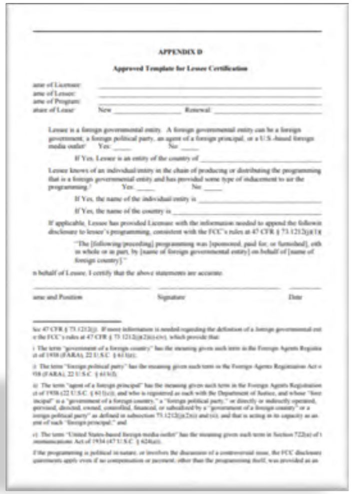
FSID: *Due Diligence*

As a practical matter, certifications will likely be easiest for most stations.

FCC has provided template certifications.


APPENDIX C

Approved Template for Licensee Certification


APPENDIX D

Approved Template for Lessee Certification

And NAB is updating its Political Advertising (PB) Form for Issue Ads.

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FSID: *Disclosures*

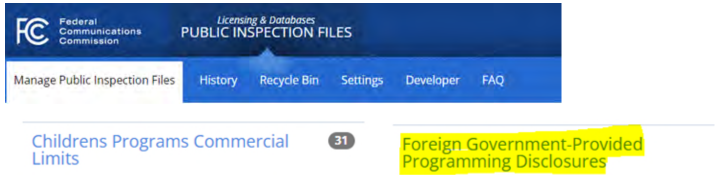
****TRIGGERED ONLY IF PROGRAMMING IS SPONSORED BY "FOREIGN GOVERNMENTAL ENTITY"****

(1) <u>ON-AIR Disclosure</u> must air with programming:

- Generally must use following language: **The [following/preceding] programming was [sponsored, paid for, or furnished,] either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].**
- For **radio**, must be "audible"; for **TV**, must be visible for at least four seconds and with foreign governmental entity and country identified via letters at least 4% of vertical picture height.
- Frequency and timing requirements:
  - o **5 minutes or less:** One announcement; beginning or end of broadcast.
  - o **Greater than 5 minutes but no greater than one hour:** Two announcements; one at beginning and one at end of broadcast.
  - o **Greater than one hour:** "At regular intervals" during the broadcast, and no less frequently than once every sixty minutes.

(2) <u>OPIF Disclosure</u> (Upload):

- Due by 10th of month following calendar quarter in which programming aired (same as, e.g., I/P list upload)
- Must contain text of disclosure.
- Must list name of program in which disclosure appeared.
- Must list dates and times program aired.
- Must be uploaded to "Foreign Government-Provided Programming Disclosures" folder.



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FSID: *Recordkeeping*

****TRIGGERED WHENEVER DUE DILIGENCE AND/OR DISCLOSURES REQUIRED****

(1) DUE DILIGENCE MATERIALS

- **Retention period:**
  - Remainder of current license term or one year, whichever is longer.
- **Retention location:**
  - Up to station's discretion. May be kept in private business files or uploaded to OPIF, so long as the station is able to access it in the event of "any future Commission inquiry."

(1) OPIF DISCLOSURES

- **Retention period:**
  - Two years.
  - Neither rules nor adopting order specify from when to calculate the two-year period. *Safest approach is likely from date of upload.*
- **Retention location:**
  - OPIF.

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Top Three FAQs

Q: What do I do if the Advertiser doesn't send the certification or screenshots back?

A: The Second R&O makes clear that stations are not prohibited from airing the program. However, "if a question arises later about whether a disclosure was needed, the licensee must be able to demonstrate, in the event of a fact-specific inquiry by the Commission, that it exercised reasonable diligence in seeking the information."

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Q: Should I upload my due diligence materials to the OPIF?

A: Your station should make a strategic business decision on this point. Uploading to the OPIF may initially be administratively simpler, especially in a busy political season, but may also generate potential exposure risks by making such materials publicly accessible (including to FCC Staff!) as well as due to the differing retention periods for such materials as compared to political file materials (2 years).

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Q: I have a longstanding programming arrangement with a local business through which the business airs a weekly program on the station. They're clearly not a "foreign governmental entity"—does the FSID Rule apply to that situation?

A: Although the answer will depend in part on the specifics of how the arrangement is structured, it is very likely that this type of programming relationship would fall under the FSID Rule and thus, at minimum, trigger the station's obligations under the "due diligence" component of the rule.

QUESTIONS?

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