

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

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

**PETITION FOR CLARIFICATION**

The ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, the “Affiliates Associations”)<sup>1</sup> hereby submit this request for clarification of certain rules governing the leasing of broadcast time to foreign government entities adopted by the Commission in its recent *Report and Order* in the above-captioned proceeding.<sup>2</sup>

**I. INTRODUCTION**

The Affiliates Associations seek clarification regarding the applicability of the new foreign sponsorship identification rules to advertisements sold by local broadcast stations. The *Report and Order* states that “traditional short-form advertising” is already subject to sponsorship identification requirements under Section 73.1212, and that the *Report and Order*’s

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<sup>1</sup> Each of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates is a non-profit trade association whose members consist of local television broadcast stations throughout the country that are each affiliated with its respective broadcast television network. Collectively, the Affiliates Associations represent more than 600 local television stations that are affiliated with the four major broadcast networks. The Affiliates Associations’ member stations provide local news, weather, sports, entertainment, and other valuable, highly desired video content to virtually every community in the country, whether large or small, urban or rural.

<sup>2</sup> Sponsorship Identification Requirements for Foreign Government-Provided Programming, *Report and Order*, MB Docket No. 20-299, FCC 21-42 (rel. Apr. 22, 2021) (the “*Report and Order*”).

heightened diligence and disclosure requirements that apply to leases for discrete blocks of program time do not apply to such advertisements.<sup>3</sup>

The Affiliates Associations are concerned, however, about possible interpretations of the term “traditional short-form advertising,” which is not defined in the *Report and Order*, and therefore seek clarity regarding the coverage of the rules. Specifically, the Affiliates Associations are concerned that the term “traditional short-form advertising” could be read narrowly, leaving various common forms of broadcast advertising subject to the new rules. This result is foreseeable but would be contrary to the Commission’s intent because traditional broadcast advertising does not raise the Commission’s stated concerns regarding foreign government-generated content. As a practical matter, broadcasters sell a great many advertisements of varying lengths to a wide array of businesses seeking to promote their goods and services. The determination whether the enhanced disclosure requirements apply should not be based on the length of the advertisement, but the term “traditional short-form advertising” could be read to suggest otherwise.

Instead, the Commission should clarify that the new foreign sponsorship ID rules do not apply when a station sells time to advertisers in the normal course of business, no matter the length of the advertisement. This clarification is consistent with the Commission’s purpose in adopting the new rules and would greatly reduce the uncertainty surrounding their application to advertisements, in turn reducing the compliance burden faced by local television stations.

## **II. THE COMMISSION SHOULD CLARIFY THAT THE NEW RULES DO NOT COVER ADVERTISING SEGMENTS, REGARDLESS OF THEIR LENGTH.**

The *Report and Order* clearly conveys the requirement that broadcasters who lease discrete blocks of time to programmers must perform enhanced investigation of potential lessees

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<sup>3</sup> *Report and Order* at para. 28 & n.85.

to ensure that such leased time is not used for foreign government propaganda purposes. The Affiliates Associations are confident that all local broadcasters stand behind the laudable goal of ensuring that foreign government-generated propaganda is properly identified at the time of airing. The Commission recognized, however, that not all sales of airtime by broadcasters to third parties present the same potential concerns as the lease of discrete blocks of time. Indeed, the Commission specifically noted that the sale of advertising spots, whether they air during a Station's programming or during programming leased to a third party, is not covered by the new rules because the existing sponsorship identification requirements under Section 73.1212 provide sufficient protection with respect to such content.<sup>4</sup>

In exempting advertising from the requirements of the new foreign sponsorship ID rules, however, the Commission's reference to "traditional, short-form advertising" has already caused confusion among the Affiliates Associations' members and threatens to lead to long-term, unnecessary disputes over compliance. The problem is that the phrase "traditional, short-form advertising" is not defined in the *Report and Order* and is not a term commonly understood in the industry. Broadcast stations sell advertisements of various lengths – advertising spots as short as fifteen seconds and as long as one or more hours are common. The Commission has not provided any standard that would allow licensees to distinguish between a spot that constitutes a "short-form" advertisement exempt from the new rules and some other type of advertisement that is covered by them. Moreover, while commercial matter colloquially known as "infomercials" are sometimes referred to as "long-form" advertisements, the marketplace does not adhere to any bright-line distinction between "short-form" and non-"short form" advertisements. This puts broadcast licensees in an impossible position. The only way they can

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<sup>4</sup> See *id.*; see also 47 C.F.R. §73.1212.

be sure to comply is to assume the rules cover all advertisements, even though the *Report and Order* is quite clear that this is not the case.

In fact, the Affiliates Associations believe the Commission intended the opposite result. It appears from Paragraph 28 and footnote 85 of the *Report and Order* that the Commission meant generally to *exempt* broadcast advertisements (regardless of their duration) from a rule designed to cover non-advertising programming. The Affiliates Associations therefore request that the Commission clarify its intention by explicitly confirming that the new rules do not apply to advertisements of any length.

In nearly all cases, the distinction between advertising and non-advertising content is an easy one for licensees to make. A spot for the George Forman Grill is an advertisement, regardless of length. Such advertisements are covered by the traditional provisions of Section 73.1212 – not the new foreign sponsorship ID rules. In contrast, a lease of a multicast channel to a third-party programmer to air programming of the programmer’s choice (with appropriate limitations to preserve licensee control) clearly is a lease of time for programming purposes.<sup>5</sup> Clearly drawing this delineation between advertisements and leased programming time will greatly simplify both compliance with and enforcement of the new foreign sponsorship identification rules.

The Affiliates Associations recognize that cases could arise in which it is difficult to determine the difference between an advertisement and a lease of time for programming content. Such cases must be handled in good faith by licensees and the Commission, but the question certainly will not turn on the length of the programming segment alone. It will turn on the relationship between the licensee and the purchaser of the airtime and the purpose of the content

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<sup>5</sup> And, it’s worth noting, that would be the case even if the programmer intended to air the “infomercial channel.” Such leases should be covered by the enhanced requirements of the new rules.

itself. In any event, the Commission did not have examples of leased capacity content masquerading as advertising before it in this proceeding, and it need not try to fashion a rule today that will resolve every future question licensees, advertisers, and programmers might have about the applicability of the new rules in individual cases.

For now, it is enough that the Commission clarify that traditional broadcast advertisements of any length are subject to the basic disclosure requirements Section 73.1212 but not the enhanced requirements of the new rules.

### III. CONCLUSION

For the reasons set forth above, the Affiliates Associations urge the Commission to issue to clarification requested herein.

Respectfully submitted,

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/s/

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