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Foreign Government-Sponsored Broadcast Programming

Overview

Congress has enacted several laws to enable U.S. citizens and the federal government to monitor attempts by foreign governments to influence public opinion on political matters. Nevertheless, radio and television viewers may have difficulty distinguishing programs financed and distributed by foreign governments or their agents. In October 2020, the Federal Communications Commission (FCC) proposed new requirements for broadcast radio and television stations to identify foreign government-provided programming.

Statutory Background

For nearly 100 years, beginning with the passage of the Radio Act of 1927 (P.L. 69-632) and the Communications Act of 1934 (P.L. 73-416), Congress has required broadcast stations to label content supplied and paid for by third parties so viewers and listeners can distinguish it from content created by the stations themselves (47 U.S.C. §§317, 508).

In addition, Congress enacted the Foreign Agents Registration Act (FARA; P.L. 75-383) in 1938 initially to combat the influence of foreign propaganda. Today, FARA imposes registration, reporting, and record-keeping requirements on foreign agents acting to influence the U.S. government and public policy on behalf of foreign interests (22 U.S.C. §§611-623).

In 1982, Congress enacted the Foreign Missions Act (P.L. 97-241) in part to “to facilitate the secure and efficient operation in the United States of foreign missions ... and to require their observance of corresponding obligations in accordance with international law” (22 U.S.C. §4301(b)-(c)). Under this law, the U.S. Department of State may designate media organizations controlled by foreign governments as foreign missions. A designated foreign mission must register property leases or ownership with the State Department and must report all personnel. The State Department may limit the number of visas granted to employees of a foreign mission.

The FCC enforces the Communications Act of 1934; the U.S. Department of Justice (DOJ) enforces FARA, and the State Department enforces the Foreign Missions Act.

Radio Programming

U.S. federal agencies have characterized certain media organizations of both the People’s Republic of Russia and China (PRC or China) as extensions of those countries’ governments, contending that the organizations seek to advance those governments’ interests within the United States.

Radio Sputnik, a subsidiary of the Russian government-financed Rossiya Segodnya International Information Agency, airs programming on radio stations in Washington, DC, and Kansas City, MO. Rossiya Segodnya has contracts with two different U.S.-based entities to broadcast Radio Sputnik’s programming. One entity is a radio station licensee itself, while the other is an intermediary. DOJ has directed each entity to register under FARA. Copies of the Rossiya Segodnya’s contracts with both entities are available on both the FCC and DOJ websites.

FCC filings and a November 2015 report from the Reuters news agency indicate that China Radio International (CRI), an organization owned by the Chinese government, may have agreements to transmit programming to 10 full-power U.S. radio stations, but independent verification is not readily available.

Organizations that pay broadcast stations to air their content are covered by 47 U.S.C. §317 and §508, both of which apply to all sponsored programming. FCC documents indicate that Radio Sputnik and CRI paid radio stations, either directly or through intermediaries, to air their programming. A 2018 Asset Purchase Agreement—available on the FCC’s website—states in Section 7.18 “WCRW’s programming and revenue are obtained under a programmer contract with China Radio International (“CRI”) due to expire on December 31, 2018.” WCRW serves the Washington, DC market.

In 2020, the State Department announced that the Secretary had designated CRI as a foreign mission and limited its employment of PRC nationals in the United States to two people.

Television Programming

Until March 1, 2020, MHZ Networks, a for-profit media organization based in Virginia, packaged and distributed programming for television stations throughout the United States via its now-defunct broadcast television network, MHZ World. Information about the financial relationship between the programming sources, MHZ, and the television stations that aired its programs is not readily available to the public. MHZ’s programming sources included government-controlled entities in Russia (RT America), China (China Global Television Network [CGTN]), formerly known as China Central Television), Turkey (TRT World), and France (France 24).

In recent years, DOJ directed the following organizations that produce television programs to register as foreign agents: (1) T&R Productions, a Washington, DC-based firm that produces English-language programming for RT Media (in September 2017); (2) CGTN (in December 2018); and

(3) TRT World (in August 2019). DOJ also identified MHZ Worldwide as a registered agent of France (based on its work for France 24), but not of other countries. In its 2018 filings, MHZ stated that it had registered under FARA “despite concerns regarding the First Amendment implications of any requirement for registration.”

Some U.S. public television stations broadcast programming produced by Japan Broadcasting Corporation (NHK), which states in its corporate profile that while it is funded by the Japanese government, it is editorially independent. Its U.S. subsidiary, NHK Cosmomedia America Inc. has registered as an agent “because [the DOJ] may view [its] operation ... as political activity within the meaning of FARA.”

In September 2020, the State Department designated CGTN as a foreign mission and limited its employment of PRC nationals in the United States to 30 people.

FCC’s Proposed Rules

In October 2020, the FCC proposed new requirements for broadcast radio and television stations to identify foreign government-provided programming. **Table 1** summarizes the categories of entities covered by the proposed rules and the public data sources that the FCC states broadcasters can use to determine whether a program they are transmitting falls into those categories.

Table 1. Entities Triggering Sponsorship Disclosure

Category	Category Definition Source	Public Data Source
Government of a foreign country	FARA 22 U.S.C. §611(e)	DOJ database and DOJ reports to Congress ^a
Foreign political party	FARA 22 U.S.C. §611(f)	DOJ database and DOJ reports to Congress ^a
Agent of foreign principal that has registered with DOJ	FARA 22 U.S.C. §§611(b)(1), (c), (d)	DOJ database and DOJ reports to Congress ^a
Foreign mission	Foreign Mission Act 22 U.S.C. §4302(a)(3)	State Department public notices in <i>Federal Register</i>
U.S.-based foreign media outlet that has filed report with FCC	Communications Act ^b 47 U.S.C. §624(d)(2)	FCC reports to Congress

Source: Federal Communications Commission, 35 *FCC Record* 12099, “Sponsorship Identification Requirements for Foreign-Government Provided Programming, Notice of Proposed Rulemaking, FCC 20-146,” October 26, 2020. Some organizations may fall into multiple categories.

Notes:

- The FCC seeks comments on whether to apply rules as soon as individuals register with DOJ under FARA or, once individuals appear on public lists, in recognition of lag time.

- The FCC’s proposal would apply to entities whose programming is transmitted by a broadcaster, rather than a cable or satellite operator, and therefore is inspired by, but not based on, this statutory definition.

Standards of Review

Judicial Review. The FCC acknowledged that its proposed disclosure requirements implicated the First Amendment’s Free Speech Clause and could trigger heightened judicial scrutiny. The agency argued that its proposal ultimately comports with constitutional free speech requirements, and could satisfy even the strictest level of judicial review. It added that the government has a compelling and long-standing interest in ensuring accuracy and transparency about broadcast programming sponsors, particularly foreign government sponsors. The FCC claimed that it narrowly tailored the proposed rules to achieve this interest.

FCC Review. In November 2020, the FCC’s Offices of Economics and Analytics and General Counsel jointly released a memorandum that formalizes the agency’s procedures for incorporating economic analysis into its decisionmaking.

Issues for Policymakers’ Consideration

In comments filed with the FCC, groups representing broadcasters contend that the FCC’s proposed rules do not comply with these standards of review.

Entities Affected. The National Association of Broadcasters (NAB) asserts that to address First Amendment considerations “more appropriately,” the FCC could also require cable operators to transmit disclosures. While the Communications Act’s sponsorship requirements apply to broadcasters only, the FCC’s regulations concerning sponsorship disclosure apply to both broadcasters and cable operators (47 C.F.R. §73.1212(a) and 47 C.F.R. §76.1615, respectively). Four of the entities that might be subject to the FCC’s proposed broadcast disclosure rules, RT America, CGTN, France 24, and NHK, have distribution agreements with U.S. cable operators.

Implementation by Broadcasters. NAB, National Public Radio (NPR), the Public Broadcasting Service (PBS), and the organization America’s Public Television Stations (APTS) all dispute the FCC’s claim that broadcasters would “not be burdened unnecessarily in determining when [its] proposed disclosures are required.” APTS and PBS state that the FCC’s proposed rules “would impose due diligence and implementation costs on broadcasters that are far higher than necessary to achieve the narrow purpose of shining a light on foreign propaganda.”

APTS and PBS note that the State Department does not maintain a database of foreign missions, and suggest that the FCC exclude this category. In addition, NPR states that the “user interface [of DOJ’s FARA database] does not facilitate relevant searches.” APTS and PBS suggest the FCC create its own database.

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