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

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

COMMENTS OF THE NATIONAL RELIGIOUS BROADCASTERS

NATIONAL RELIGIOUS BROADCASTERS
660 N Capitol St NW, Suite 210
Washington, D.C. 20001
(202) 543-0073
Michael P. Farris, General Counsel

I. Introduction and Summary

The National Religious Broadcasters (NRB) association[1] replies to the initial comments of the National Association of Broadcasters (NAB) on the FCC's proposed expansion of its rules requiring distinct sponsorship identification for broadcast programming aired pursuant to a lease and sourced from certain foreign governmental entities. The Commission proposes certain modifications to its foreign sponsorship identification rules, positing that its proposed certification and public file requirements will be less burdensome and costly for broadcasters than the recently enacted rules.

Our membership includes non-profit, for-profit, commercial, and non-commercial radio and television stations across the United States reaching nearly 200 million listeners and viewers. Both station owners and content vendors are among our members. Individual NRB member

[1] NRB is a non-profit membership association headquartered in Washington, D.C., that represents the interests of Christian broadcasters throughout the nation. Since 1944, the mission of NRB has been to help protect and defend the rights of Christian media and to maintain access for Christian communicators.

stations manage dozens to hundreds of lease agreements with content vendors, many of whom are local churches, and our members are lessees on a large number of local television and radio stations. In addition, as argued forcefully in the NAB submission, there are thousands of local churches (who are not official members of the NRB) that are lessees on both secular and religious stations and to whom the constitutional and statutory arguments we raise here are likewise fully applicable.

II. Endorsement of NAB Comments

NRB fully endorses the Comments of the National Association of Broadcasters and the Multicultural Media Telecom & Internet Council (January 9, 2023) (hereinafter NAB Comments.). We rely on the historical and factual matters contained therein without the need for repetition in this submission.

In particular, we endorse the approach of the NAB with reference to both religious licensees and lessees. As stated above, the membership of the NRB is composed of numerous entities and individuals in both categories. Their ability to conduct their mission of religious broadcasting is clearly chilled by the onerous and entirely unnecessary application of these rules to them.

III. Standardized Certification Language Is Not a Solution to Undue Compliance Burden

NRB reiterates and maintains its historic concerns about the practical impact of this regulation on the free flow of programming to broadcast outlets, whether it is supplied by program producers who are NRB members or by local churches.[2] The adoption of standardized certification language proposed by the Commission does not meaningfully mitigate the compliance burden to regulatees like our members. Not only will station owners who accept programming from program providers under leasing arrangements be expected to inquire into the lessee's status, even without any reason whatsoever to believe that the lessee may be a foreign governmental entity, but, if standardized certification language is now adopted, will have wasted time and resources that have already been spent developing certification language and must expend staff time in explaining the new FCC rules to lessees and obtaining updated certification.

Moreover, the complex standardized certification language itself may ultimately deter potential lessees from entering into leasing arrangements, making it more difficult for religious programmers to find broadcast platforms for their content, even if they have no foreign governmental affiliation.

---

[2] *See* Letter from Troy Miller, CEO, National Religious Broadcasters to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 3 (Apr. 15, 2021) (NRB 2021 Ex Parte) (expressing concern that FCC's proposals burdening leasing arrangements could deter station owners from entering into such arrangements, making it more difficult for religious programmers to find broadcast platforms for their content and impeding the flow of religious programming over the nation's airwaves).

IV. Freedom of Speech and the Free Exercise of Religion are Both Implicated by these Rules

Religious broadcasters, be they licensees or lessees, are engaged in quintessential First Amendment activities. They seek to deliver religiously-motivated messages and content to the listening public.

While fully endorsing the free speech arguments laid out by the NAB, we draw the Commission's attention to the following discussion of compelled disclosures in a free speech context in the recent Supreme Court decision of *National Institute of Family and Life Advocates v. Becerra,* 138 S.Ct. 2361, 2367 (2018):

> [A] disclosure requirement cannot be "unjustified or unduly burdensome." [*Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*,] 471 U. S. 626, 651 (1985). Disclosures must remedy a harm that is "potentially real not purely hypothetical," *Ibanez v. Florida Dept. of Business and Professional Regulation, Bd. of Accountancy*, 512 U.S. 136, 146, 114 S.Ct. 2084, 129 L.Ed.2d 118, and can extend "no broader than reasonably necessary," *In re R.M. J.*, 455 U.S. 191, 203, 102 S.Ct. 929, 71 L.Ed.2d 64.

Moreover, the FCC, as a federal agency, is subject to the jurisdiction of the Religious Freedom Restoration Act. 42 U.S.C. § 2000bb-3(a). This enactment prohibits any "substantial burden" on the free exercise of religion unless the federal government "demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest." § 2000bb-1(a)(b) (internal punctuation omitted).

V. These Rules Clearly Fail the Constitutional and Statutory Tests

The proper application of the aforesaid constitutional and statutory standards to the facts and historical record readily reveal that the FCC rules in question here must fail.

First, it is beyond debate that there is virtually no record of the kinds of foreign government propaganda over the American airwaves that the FCC claims it is seeking to unmask. Thus, in the words of the Supreme Court in *NIFLA,* the problem is hypothetical and not real.

Moreover, the language of *RFRA* requires that the FCC's rules be examined in light of the "application of the burden" imposed by the rule "upon the individual" in question. Thus, as to religious broadcasters the illegality of these rules is immediately apparent. There is no history whatsoever of any religious broadcaster, be they licensee or lessee, of having any connection with any foreign government.[3] It defies common sense to suggest that any such connection

[3] *See* Comments of the National Association of Broadcasters, MB Docket No. 20-299, at 41 (Jan. 9, 2023) (noting that there is no record of evidence that any religious broadcasters are foreign governmental entities or, if they were, that they would air political propaganda).

would ever realistically materialize. But, even if one is armed with an active imagination, the language of RFRA together with the teaching of *NIFLA,* make it clear that a future conjectural problem would never suffice. The problem must be real and pertinent to the person objecting to its application.

No such record exists vis-à-vis any class of broadcaster. But, at a minimum, the record supports the conclusion offered by the NAB, that all religious broadcasters should be exempt entirely because of the high level of protections, the undue burden imposed, and complete absence of a factual predicate for the application of the regulation in this context.

While it is equally clear that the FCC rules fail the requirement of being "narrowly tailored"—there is no need to examine that point at length. It is difficult to assess how these rules "solve the problem" in the narrowest method possible when the problem does not really exist in the context that is relevant.

VI. Conclusion

For the foregoing reasons, the NRB concurs with the recommendation of the NAB that the Commission should decline to adopt the rule modifications proposed in the Notice and exclude from application of its foreign sponsorship identification rules any leases involving faith-based programming.

Respectfully submitted,

NATIONAL RELIGIOUS
BROADCASTERS
660 N Capitol St NW, Suite 210
Washington, D.C. 20001
(202) 543-0073
Michael P. Farris, General Counsel

January 23, 2023