

ALERT

D.C. Circuit Issues Opinion Vacating Independent Verification Requirement Under Foreign Sponsor ID Rule, Leaves Remaining Obligations Intact

July 12, 2022

On July 12, 2022, the United States Court of Appeals for the District of Columbia Circuit issued an opinion that vacated the requirement that broadcasters independently verify whether parties leasing time on their stations are “foreign governmental entities” by searching two federal databases. The opinion was issued in response to a challenge by the National Association of Broadcasters, which had argued that the independent verification requirement exceeded the statutory authority of the Federal Communications Commission (FCC). The court agreed, holding that the “FCC ha[d] no authority to impose th[e] verification requirement” and, thus, vacated that aspect of the rules. The verification requirement, however, remains effective until the D.C. Circuit issues its mandate, which we currently estimate will occur in late August or early September unless the FCC seeks rehearing of the court’s decision.

The other requirements under the foreign government-sponsored programming rule were not challenged, will remain in effect, and were summarized in greater detail here. In brief, despite the D.C. Circuit’s ruling, broadcasters are still required to take the following steps whenever they lease airtime to a sponsor:

- Tell the sponsor about the FCC’s foreign government-sponsored programming rules;
- Ask the sponsor whether it is a foreign governmental entity or an agent of one;

Authors

Kathleen A. Kirby
Partner
202.719.3360
kkirby@wiley.law

Ari Meltzer
Partner
202.719.7467
ameltzer@wiley.law

Eve Klindera Reed
Partner
202.719.7404
ereed@wiley.law

Practice Areas

Media
Telecom, Media & Technology

- Ask the sponsor whether anyone further back in the production or distribution chain is a foreign governmental entity or an agent of one;
- Document those inquiries and investigations.

As we explained previously, these obligations have applied with respect to new leases entered into after March 15, 2022, and become effective with respect to arrangements in existence prior to that date by September 15, 2022.

If you have any question about the D.C. Circuit's opinion or the FCC's foreign government-sponsored programming rule, please contact one of the authors of this alert or the attorney who regularly handles your station matters.