

## Court Strikes Down Employment Report

The FCC's effort to reinstate annual employment reports for broadcasters has been terminated by the United States Court of Appeals for the Fifth Circuit in New Orleans. In 2024, the FCC adopted a new version of Form 395-B, which broadcast licensees were to use for reporting data about the race, ethnicity, and gender of station employees in ten job categories. The requirement to file the Form 395-B had been suspended since 2002. Petitions asking the court to review the Commission's action were filed in the Fifth Circuit by National Religious Broadcasters, American Family Association, and the Texas Association of Broadcasters.

The appellant-petitioners asked the court to vacate the FCC's Order for four reasons: (1) the FCC lacked statutory authority to require broadcasters to file Form 395-B; (2) the Order violated the Fifth Amendment's equal protection provision; (3) the Order violated the First Amendment by compelling speech; and (4) the Order was arbitrary and

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## News Media Subject to Compulsory Disclosure about Government Leaks

Attorney General Pam Bondi has issued a Memorandum for All Department [of Justice] Employees that sets out a new policy for obtaining information and/or records from members of the news media. The policy is intended to support investigations of the improper leaks of sensitive government information and is directed toward identifying and perhaps punishing the source(s) of such leaks. Bondi rescinded the policy in effect under former Attorney General Merrick Garland that she said precluded the Department of Justice ("DOJ") from seeking records and compelling testimony from members of the news media. The Garland-era policy statement of principles stated that "The Department views the use of certain law enforcement tools, including subpoenas, court orders . . . , and search warrants to seek information from, or records of, non-consenting members

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## FCC Fine Vacated for Lack of Jury Trial

The United States Court of Appeals for the Fifth Circuit, sitting in New Orleans, has vacated a decision by the FCC to levy a fine in excess of \$57 million against AT&T. The fine had resulted from the Commission's finding that AT&T had failed to meet its obligation to protect the confidentiality of customer proprietary network information ("CPNI"). The court ruled that the imposition of the fine was unconstitutional because AT&T was entitled to and was deprived of a jury trial. The FCC's administrative proceeding had been conducted entirely in-house, with the Commission acting as prosecutor, jury, and judge. The court followed the recent Supreme Court precedent in *SEC v. Jarkesy* in which the high Court vacated a fine imposed by another administrative agency, the Securities and Exchange Commission, for the same constitutional reason.

CPNI is information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the

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For more information about or help with any of the items reported in **Antenna**<sup>TM</sup> please contact:

**Donald E. Martin, P.C.**

P.O. Box 8433

Falls Church, Virginia 22041

Tel: (703) 642-2344

Fax: (703) 940-0473

E-mail: dempc@prodigy.net

# Audible Crawl Waiver Extended

In a *Memorandum Opinion and Order* (DA 25-406) in Docket 12-107, the FCC’s Media Bureau has extended the waiver for compliance with the so-called Audible Crawl Rule until the sooner of May 27, 2026, or resolution of an underlying Petition for Rulemaking filed by the National Association of Broadcasters (“NAB”).

The Audible Crawl Rule is codified in Section 79.2(b)(2) (ii) of the Commission’s rules. It requires that emergency information provided visually during non-newscast video programming be made audibly accessible to audience members who are blind or visually impaired through the use of a secondary audio stream. The original compliance deadline stated in the Rule was May 26, 2015. However, the Media Bureau has granted five successive waiver requests submitted by NAB due to the lack of a technical compliance solution.

In November 2024, NAB filed a Petition for Rulemaking to request modification of the Audible Crawl Rule. NAB asserted that strict compliance with the existing rule remains impossible. NAB explained that to convert information depicted in images into accessible speech, a station must first convert the video content into audio, integrate that audio into its facilities, route the audio through its systems, and

code the audio onto a secondary audio stream for broadcast. Technology currently exists to make this possible for textual material, such as crawls. However, converting visual, nontextual moving images like a radar map to speech is not currently feasible because the software that creates such graphics does not contain metadata text files that can be converted to text, which in turn can be used to generate spoken audio. Currently available applications lack sufficient reliability and accuracy to satisfy the need to deliver fast-moving emergency information.

NAB also asserted that the rule itself is unclear as to whether compliance can be accomplished when a station displays a visual image conveying information that is duplicated in text crawls which are then converted to speech for the aural secondary channel. Because of this ambiguity, NAB noted that some broadcasters presently do or will limit and/or refrain from offering emergency information in order to avoid the risk of FCC enforcement actions. NAB asked the FCC to clarify that such a practice would in fact satisfy the requirements of the rule.

The FCC solicited public comment on NAB’s Petition. Three comments and one reply comment were filed – all of them supporting the Petition. The Petition remains pending.

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# Dormant Proceedings Designated for Termination

In the interest of ensuring agency efficiency, the FCC’s Consumer and Governmental Affairs Bureau has initiated the latest of its periodic reviews of dormant proceedings. The Bureau has released a Public Notice (DA 25-376) to propose the termination of some 2,057 dormant proceedings in which no further Commission action is required or contemplated, or in which no pleadings or other documents have been filed for several years. Proceedings in which petitions addressing the merits are pending will not be terminated absent the parties’ consent. The termination of a dormant proceeding also serves to dismiss as moot any

pending pleading that is procedural in nature or otherwise does not address the merits of the proceeding. A party with a pending petition or other pleading in any of these proceedings that wishes to maintain that pendency should file an additional pleading to keep the proceeding open.

The deadline for comments in Docket 25-165 will be 30 days after publication of notice of this proceeding is published in the Federal Register. Reply comments must be submitted within 45 days of that publication.

The following is a partial list of proceedings suggested for termination that may be of most interest to broadcasters.

DOCKET NUMBER	TOPIC
86-264	Review of Section 73.1690 re modification of transmitters
93-8	Home shopping station issues re Cable TV Consumer Protection Act
97-234	Competitive bidding for commercial broadcast stations
03-130	Definition of radio markets outside of Nielsen-rated markets
05-210	Procedures for amending FM Table of Allotments
07-294	Promoting diversity of broadcast ownership
11-131	Program carriage rules
12-68	Revision of program access rules
13-249	Revitalization of AM radio
21-293	Political broadcasting and record-keeping rules
21-422	FM directional antenna performance
21-501	Television Viewer Protection Act of 2019

# Refinements Proposed for Foreign Ownership Petitions

The FCC has proposed new rules intended to clarify and streamline the procedures for requesting consent for levels of foreign ownership in communications licenses that exceed the benchmarks specified in Section 310 of the Communications Act. These proposals are set out in a *Notice of Proposed Rulemaking* (FCC 25-26) in Docket 25-149.

Section 310(b)(3) of the Act prohibits foreign individuals, governments, and business entities from holding equity and/or voting interests of more than 20 percent in a U.S. broadcast station licensee. Section 310(b)(4) prohibits, without prior FCC approval, foreign individuals, governments, and business entities from holding equity and/or voting interests exceeding 25 percent in a U.S.-organized entity that directly or indirectly controls a U.S. broadcast station licensee. That foreign ownership element in the U.S. controlling parent entity can be increased to any level, up to 100 percent, with prior approval of the FCC. To obtain FCC approval for levels exceeding 25 percent, the licensee must file a petition for declaratory ruling. The Commission proposes to codify existing policies and refine the process for filing and evaluating such petitions.

**Controlling U.S. Parent.** The business entity requesting to increase its foreign ownership above 25 percent is identified as the “controlling U.S. parent.” Until now, most petitions for a declaratory ruling have identified the controlling U.S. parent at the lowest permissible level in the vertical ownership chain, while other petitions have placed it higher in the vertical chain. These different approaches often result in the need for supplemental filings and additional processing time. To clarify and streamline the process, the Commission proposes to define the controlling

U.S. parent as “the first controlling entity organized in the United States that is above the licensee(s) in the vertical chain of control and does not itself hold a license subject to Section 310(b).”

**Deemed Voting Interests.** In determining how much indirect foreign ownership constitutes control over a licensee, the Commission distinguishes between “deemed” voting interests and actual voting interests. If a limited partner or LLC member is insulated from active decision-making about daily management of the entity, the limited partner or LLC member is deemed to hold a voting interest equal to its equity interest. On the other hand, if the limited partnership or LLC is uninsulated, the limited partner or LLC member is considered to hold the same voting interest as the limited partnership or LLC holds in the next lower tier in the licensee’s vertical ownership chain.

The Commission proposes to codify this existing practice to provide petitioners with greater certainty concerning petitions involving limited partners and LLC members that have deemed voting interests. The proposed rule would explicitly state that a finding of a deemed voting interest of 50 percent or more is not ipso facto a finding of de jure or de facto control.

The Commission observes that it has found circumstances where a much smaller interest holder may have the ability to influence a licensee. Consequently, the foreign ownership rules have set a five percent equity or voting ownership level as the general benchmark for when a foreign individual or entity is required to obtain specific approval for its ownership interest in the controlling U.S. parent.

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## 5G Transmission Standard Proposed for LPTV

The FCC’s Media Bureau has issued a Public Notice (DA 25-382) inviting public comment in Docket 25-168 on a proposal to allow low power television stations to broadcast using the 5G Terrestrial Broadcast standard. The proposal was offered in a Petition for Rulemaking filed by HC2 Broadcasting Holdings, Inc., described as the owner and operator of more than 250 LPTV stations across the United States. Under this proposal, 5G Terrestrial would be a voluntary alternative to ATSC 1.0 and ATSC 3.0 for LPTV stations.

HC2 notes that 5G Broadcast has been approved as a global standard by the 3rd Generation Partnership Project. It has also been endorsed by the International Telecommunication Union-Radiocommunication Sector.

HC2 states that the 5G Broadcast standard permits an LPTV station to transmit a single 5G signal to its entire service area, using the 5G transmission protocol utilized

by mobile network operators. Such signals may be received by any 5G mobile device, including phones, tablets, and IoT devices equipped with a modem to receive 5G Band 108.

Under HC2’s proposal, LPTV stations that voluntarily choose to operate in the 5G Broadcast mode would be obligated to comply with all of the existing legal and technical requirements for LPTV stations in the FCC’s rules, including maximum power levels and emission requirements. They would also continue to offer one Standard Definition program stream with the remainder of the six megahertz channel available for 5G Broadcast. The 5G Broadcast stream could carry video programming or large-scale datacasting.

HC2 currently operates WODP-LD, Fort Wayne, Indiana, transmitting with the 5G Broadcast standard pursuant to an experimental authorization issued by the FCC. HC2 reports

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# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

June 1	Deadline to place EEO Public File Report in Public Inspection File and on station's Internet website for all nonexempt radio and television stations in <b>Arizona, District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia and Wyoming.</b>	June 2	Mid-Term EEO review begins for certain radio stations in <b>Arizona, Idaho, Nevada, New Mexico, Utah, and Wyoming</b> , and certain television stations in <b>Michigan and Ohio.</b>
June 2	Deadline for all broadcast licensees and permittees of stations in <b>Arizona, District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia and Wyoming</b> file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).	July 10	Deadline to place quarterly Issues and Programs List in Public Inspection File for all full service radio and television stations and Class A TV stations.
		July 10	Deadline for noncommercial stations to place quarterly report regarding third-party fundraising in Public Inspection File.
		July 10	Deadline for Class A TV stations to place certification of continuing eligibility for Class A status in Public Inspection File.

## Cut-Off Date for AM and FM Applications to Change Community of License

The FCC has accepted for filing the applications identified below proposing to change the community of license for each station. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is **June 20, 2025**. Informal objections may be filed any time prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
McNary, AZ	Wagon Wheel, AZ	KRXD	249	97.7
Willcox, AZ	Catalina, AZ	KAZK	209	89.7
Swainsboro, GA	Henderson, GA	WXRS (AM)	N / A	1590
Orange-Athol, MA	Paxton, MA	WQVD (AM)	N / A	700
Elizabethville, PA	Carroll Township, PA	WQBG	263	100.5
Sunbury, PA	Elizabethville, PA	WQRX	231	94.1
Junction, TX	Cherry Spring, TX	KCRQ	277	103.3

## Paperwork Reduction Act Proceedings

The FCC is required by the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its record-keeping requirements in connection with certain rules, policies, applications, and forms. Public comment has been invited about this aspect of the following matters by the filing deadlines indicated.

TOPIC	COMMENT DEADLINE
FM booster station program origination notification, Section 74.1206, Form 2100, Schedule 336	June 2
Uncrewed aircraft communications, Sections 88.27, 88.31, 88.33, 88.35, 88.135, 88.137, 88.141	June 6
Satellite network nonduplication protection and syndicated program exclusivity, Sections 76.122, 76.123, 76.124	June 13
Commercial access leased rates, Sections 76.970, 76.971, 76.975	June 16
Emergency antennas, Section 73.1680	June 24
Low Power FM license application, Form 2100, Schedule 319	June 30
Children's television programming, Section 73.671	June 30
Public information about children's television programming, Section 73.673	June 30
Children's Television Programming Report, Form 2100, Schedule H	July 7
FM broadcast license application, Form 2100, Schedule 302-FM	July 7



# DEADLINES TO WATCH



## Deadlines for Comments in FCC and Other Proceedings

DOCKET

COMMENTS

REPLY COMMENTS

(All proceedings are before the FCC unless otherwise noted.)

Docket 25-168; Public Notice (DA 25-382) Petition re permissive 5G broadcast transmission standard for LPTV	June 2	July 1
Docket 16-142; Public Notice (DA 25-314) NAB Petition re mandatory ATSC 3.0		June 6
Docket 25-173; Public Notice (DA 25-405) EchoStar's use of 2 GHz spectrum		June 6
Copyright Royalty Board Docket 23-CRB-0012-WR (2026-2030) WEB VI NAB and SoundExchange Settlement	June 16	N/A
Copyright Royalty Board Docket 23-CRB-0012-WR (2026-2030) WEB VI public radio royalty rates	June 16	N/A
Docket 25-165; Public Notice (DA 25-376) Dormant proceedings	FR+30	FR+45
Docket 25-149; NPRM (FCC 25-26) Foreign ownership policies	FR+30	FR+60

FR+N means that the filing deadline is N days after publication of notice of the proceeding in the Federal Register.

## Refinements Proposed for Foreign Ownership Petitions continued from page 3

**Trust and Trustees.** Where a foreign trust holds an interest in a controlling U.S. parent entity, the Commission proposes a rule to require that the trustee(s) be identified as well as the trust itself. This would be codification of existing informal practice.

**Privately Held Entities.** In 2016, the Commission revised its methodology for publicly-traded companies to assess compliance with the foreign ownership rules. Elements of this revised methodology include: (1) the exercise of due diligence in identifying and determining the citizenship of known or reasonably known interest holders; (2) reliance on specific categories of information; and (3) elimination of the need for surveys or random samplings of interest holders. The Commission also adopted a safe-harbor process for public companies to cure inadvertent violations of the foreign ownership rules, where an after-the-fact filing is due solely to circumstances beyond the licensee's control and not reasonably known or foreseeable with the exercise of due diligence. The Commission now proposes to extend this methodology and the safe harbor for remedial filings to privately-held companies. The Commission observes that private companies have come to employ increasingly complex ownership structures in which ownership identity may become as opaque as it is for public companies.

**Broadcast Remedial Conditions.** The processing of remedial petitions can be time-consuming. The Commission asks for comment about whether it should process broadcast

applications for a licensee while a remedial petition is pending for its controlling U.S. parent. Such applications might include those for major or minor modifications, special temporary authorizations, assignments, or even construction permits for new stations.

**Noncommercial Stations.** The Commission invites comment about how its foreign ownership rules and procedures might operate in the context of noncommercial stations. Nonprofit entities typically do not have equity ownership. The entity's governing board members are usually considered to have voting control in equal amounts. The Commission proposes to consider the governing board subject to the 20 percent limitation on foreign voting control, and to consider whether that board is directly or indirectly under the control of any other entity, the board of which would be subject to the 25 percent limitations of Section 310(b)(4). The Commission asks how the foreign ownership rules can interface with the rules for filing windows and the processing of applications for new noncommercial stations. The Commission solicits comment about whether a competitive filing window applicant's petition for a declaratory ruling should be processed before or after it is identified as a tentative selectee.

Comments on these and other issues raised in the Notice must be filed within 30 days of publication of notice of this proceeding in the Federal Register. Reply comments will be due 60 days after that publication.

## Court Strikes Down Employment Report continued from page 1

capricious under the Administrative Procedure Act. The court's decision responds solely to the first argument – namely that the FCC has no statutory authority to collect the data requested on Form 395-B. Disposing of the case on that basis, the court did not address the other issues raised by the appellants.

The FCC asserted that the Communications Act's mandate to regulate broadcasters in the public interest gave it the authority to implement Form 395-B. The court said that although the public-interest authority is cast in broad terms, it is not unlimited. Public interest is merely the "touchstone" for FCC action, guiding the exercise of its discretion in carrying out its statutorily prescribed functions. The court opined that the touchstone does not grant freewheeling authority.

Citing precedent, the court noted that the FCC's public-interest authority must be interpreted in light of the targets of the Communications Act. That Act created the FCC and directed it to undertake several actions regulating broadcast networks, protecting of the public utility of those networks, issuing licenses to broadcasters, and other related tasks. The court said that the FCC failed to explain how compiling data on sex- and racial-employment trends in the broadcast industry serves any of those targets.

The FCC stated that collection of this data will allow for analysis and understanding of the broadcast industry workforce, and the preparation of reports to Congress. The court judged that collecting such data does not serve the Commission's legitimate licensing function. The applicable licensing statutes do not direct the FCC to condition the issuance of licenses on the submission of demographic data about station employees.

The court noted that the FCC's Order adopting Form

395-B included a claim to statutory authority in Section 151 of the Communications Act, which is Congress's general statement of purpose for creating the Commission. The FCC was directed, among other things, to make available communications services to all Americans, "without discrimination on the basis of race, color, religion, national origin, or sex." The court reasoned that this provision in the law does not support collection of employment data. It observed that the Commission has historically used Form 395-B to help it eradicate employment discrimination – not the discrimination in the provision of communications services to the American public.

The FCC argued that Congress had ratified its data collection practices in passing Section 334(a) of the Act which was enacted as part of the 1992 Cable Act. That provision mandated that the Commission shall not revise the forms used by broadcasters to submit employment data. However, those forms were to be used to report data "pertinent" to the equal employment opportunity regulations that were in effect on September 1, 1992. The referenced regulations were found in the version of Sections 73.2080(b) and (c) in effect on that date. Those rules were subsequently struck down as unconstitutional in 1998 by the D.C. Circuit Court of Appeals in *Lutheran Church-Missouri Synod v. FCC*. The court concluded that even if Congress had intended to ratify the Commission's data collection practices as of September 1, 1992, the basis for that ratification no longer exists because the underlying rules have been abolished.

The court granted the petitioners' request and vacated the FCC's Order requiring broadcasters to file the reinstated Form 395-B. The decision is *National Religious Broadcasters v. Federal Communications Commission*, 2025 U.S.App. LEXIS 12091.

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## 5G Transmission Standard Proposed for LPTV continued from page 3

that the station has produced strong signal reception as far as 20 miles away from the transmission site. It says that reception remained consistently strong while traveling on a highway at speeds up to 60 miles per hour, with clear audio and no macro blocking detected. According to HC2, the signal level consistently maintained an average of 34 to 36 dBmV. 5G Broadcast-enabled receivers were able to still show

a clear picture with carrier-to-noise ratios as low as 15 dB. Furthermore, no interference complaints have been received in connection with the experimental operations of WODP-LD.

The FCC solicits public comment about the Petition for Rulemaking. The deadline for comments is June 2. Reply comments will be due July 1.

# FCC Fine Vacated for Lack of Jury Trial continued from page 1

carrier-customer relationship. A carrier may use or disclose CPNI only with the customer's opt-in approval. The FCC's rules require the carrier to take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI.

The FCC proceeding concerned AT&T's location-based services program (which it discontinued in March 2019). Location-based services give users up-to-date information about their surroundings, such as maps and traffic information. To implement these services, AT&T contracted with third parties who collected customers' location data and sold it to service providers such as Life Alert or AAA. It came to light that some of these third parties were misusing or failing to protect customer location data. Upon learning about this, AT&T terminated its relationships with them. However, the damage had been done.

When news media began to report these abuses by the third parties, the FCC began to investigate. The Commission eventually issued a *Notice of Apparent Liability for Forfeiture* to AT&T, proposing a fine of \$57,265,625 for numerous incidents of rule violation. AT&T had 30 days to respond by either paying the fine or arguing why the fine should not be imposed. AT&T argued the Commission was misinterpreting the regulations, that it had acted reasonably, and that the Commission's enforcement regime was unconstitutional under Article III and the Seventh Amendment. The Commission rejected all of AT&T's arguments and levied the forfeiture.

AT&T then had a choice between (1) declining to pay the fine and awaiting being sued by the government in court in a trial *de novo*, or (2) paying the fine and appealing the FCC's decision to the court of appeals. The trial *de novo* would have been limited to an examination of the facts of the case with no opportunity to challenge the FCC's legal position. AT&T chose to pay the fine and appeal. This decision resulted.

In *Jarkesy*, the Supreme Court explained that it is well established that claims recognized under the common law must be heard by a jury in a proceeding where an Article III judge is presiding. The reference is to federal judges who have been nominated by the president and confirmed by the Senate pursuant to Article III of the Constitution. An administrative law judge operating within an administrative agency does not qualify as an Article III judge. Furthermore,

proceedings before administrative agencies do not involve a jury.

The Supreme Court recognized that there is a class of cases concerning "public rights," which are excluded from the Seventh Amendment requirement for an Article III judge and a jury trial. These are matters that historically could have been determined exclusively by the executive and legislative branches of government and are aside from the common law. Such public rights have involved matters such as collection of revenue, aspects of customs law, immigration law, relations with Indian tribes, the administration of public lands, patents, and the granting of public benefits.

The Court of Appeals opined that the FCC's penalties "are the prototypical common law remedy." They are money damages designed to punish or deter violators of the agency's rules and/or the underlying statutory requirements. The Commission raised a variety of arguments as to why its imposition of the fine should fall within the "public rights" exception to Article III requirements. The court rejected all of them.

The Commission also asserted that the target of an FCC fine that chose to wait to be sued would have the opportunity to present its case to a jury in the trial *de novo*. However, the defendant in such a case cannot challenge the legal conclusions of the forfeiture order. Such a trial therefore would not satisfy the Constitutional requirement.

The court concluded by vacating the FCC's forfeiture order. The ruling is *AT&T v. Federal Communications Commission*, 135 F.4th 230 (5th Cir. 2025).

After the Supreme Court handed down the *Jarkesy* decision last year, Commissioner Nathan Symington began dissenting to FCC actions in which a fine was imposed. He asserted that the parties being fined were being deprived of their Constitutional right to a jury trial. He suggested that the Commission should initiate a Notice of Inquiry proceeding to examine the scope the agency's authority to levy fines. The court has now applied the *Jarkesy* ruling specifically to an FCC forfeiture action. Presumably, if the FCC wants to continue to prosecute fines in cases not involving "public rights," it will need to sue the violator in federal court. Although this case involved a common carrier, AT&T, the court's ruling would be applicable with respect to all entities regulated by the FCC, including broadcasters.



# News Media Subject to Compulsory Disclosure about Government Leaks

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of the news media as extraordinary measures, not standard investigatory practices.”

Bondi observed that, “Without question, it is a bedrock principle that a free and independent press is vital to the functioning of our democracy. The Department of Justice will defend that principle, despite the lack of independence of certain members of the legacy news media.”

Quoting a recently released Presidential Memorandum, Bondi noted that under the Biden administration, “elitist leaders in Government . . . weaponized their undeserved influence to silence political opponents and advance their preferred, and often erroneous, narrative about significant matters of public debate.” She said that the Biden administration abused Garland’s overly broad procedural protections for media allies by engaging in selective leaks in support of failed lawfare claims.

Conversely, Bondi wrote that the current DOJ will not tolerate unauthorized disclosures that undermine President Trump’s policies, victimize government agencies, or cause harm to the American people. Quoting again from another recent Presidential Memorandum, “Where a Government employee improperly discloses sensitive information for the purposes of personal enrichment and undermining our foreign policy, national security, and Government effectiveness – all ultimately designed to sow chaos and distrust in Government – this conduct could properly be

characterized as treasonous.” Hence, in the investigation and prosecution of such activities, the newly implemented DOJ policy contemplates the use of subpoenas, court orders, and search warrants to compel production of records and testimony by members of the news media who may have relevant information.

Bondi acknowledges that members of the news media are presumptively entitled to advance notice of such investigative activities. According to the policy memo, subpoenas are to be narrowly drawn, and warrants must include protocols designed to limit the scope of intrusion into potentially protected materials and activities. The use of such techniques are subject to the approval of the Attorney General upon consideration, among other things, of the following criteria:

- Whether there are reasonable grounds to believe that a crime has occurred and the information sought is essential to a successful prosecution.
- Whether prosecutors have made all reasonable attempts to obtain the information from alternative sources.
- Whether, absent a threat to national security, the integrity of the investigation, or bodily harm, the government has pursued negotiations with the affected member of the news media.

An effort to question or arrest members of the news media must be approved by the Attorney General.