

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

In the Matter of)	
)	
Multicultural Radio Broadcasting Licensee, LLC	)	FRN: 0010215812
)	
WZRC (AM), New York, NY	)	Facility Id: 27398
	)	File #: 0000182573
)	
WHWH (AM), Princeton, NJ	)	Facility Id: 47426
	)	File #: 0000182604
)	
WPAT (AM), Paterson, NJ	)	Facility Id: 51661
	)	File #: 0000182686
)	
WKDM (AM), New York, NY	)	Facility Id: 71137
	)	File #: 0000182689
)	
WTTM (AM), Lindenwold, NJ	)	Facility Id: 87111
	)	File #: 0000182588
)	
WWRU (AM), Jersey City, NJ	)	Facility Id: 87123
	)	File #: 0000182675
To: The Commission		
Attn: Media Bureau		

MOTION TO STRIKE UNAUTHORIZED PLEADING

1. The Ukrainian Congress Committee of America, Inc. (“UCCA”), by counsel, hereby moves to strike the unauthorized pleading “Motion for Leave to File Supplement to Opposition to Petition to Deny and Revoke” (“Motion to Supplement”) which Multicultural Radio Broadcasting Licensee, LLC (“Multicultural Radio”) filed in this license renewal proceeding. As set forth in the Petition to Deny, Multicultural Radio, Way Broadcasting Licensee, LLC, (“Way Broadcasting”) and KALI-FM Licensee, LLC. (“KALI-FM Licensee”) are radio station groups whose controlling shareholders are Arthur Liu and Yvonne S. Liu. The Motion to Supplement demonstrates that Arthur and Yvonne Liu, as licensees, are either continuing to deliberately flout

the Commission's rules or are so irremediably incompetent that they cannot be relied on to operate their stations in the public interest.

The Commission Should Strike Multicultural Radio's Motion to Supplement

2. Section 73.3584 of the rules, which governs this proceeding, provides for the filing of a petition to deny, an opposition and a reply. No additional pleading may be filed unless the Commission grants permission, which, except in extraordinary circumstances, is not granted. There are no extraordinary circumstances in this case. In its Motion to Supplement, Multicultural Radio claims that its unauthorized pleading is justified because it is responding "to a new issue" set forth in UCCA's Reply. This statement is not true. There were no new issues raised in UCCA's Reply. UCCA, in its Reply, simply pointed out the obvious, that Multicultural Radio had failed to comply with the FCC's rules. Nor would its Supplement, even should the Commission accept it, bring Multicultural Radio into compliance with the rules. Multicultural Radio is still missing a competent affidavit and has failed to conform its pleading to the structural requirements of Section 1.49. Accordingly, its Motion to Supplement must be stricken.

The Russian Government, not Multicultural Radio, is the Real-Party-in-Interest Controlling the Day-to-Day Operations of WZHF

3. As set forth in UCCA's Reply, Section 73.3584(b) of the Rules requires allegations of fact or denials thereof in oppositions to be supported by affidavit of a person or persons with personal knowledge thereof. Section 309(d)(1) of the Communications Act states: "Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be

supported by affidavit.”¹ The Opposition at p.2, cites to Section 309(d)(1) and acknowledges that allegations of fact must be supported by an affidavit. Nonetheless, Arthur and Yvonne Liu chose not to support their Opposition with an affidavit under penalty of perjury. Tellingly, in the Motion to Supplement, neither they nor any officer or director of Multicultural Radio submitted an affidavit.

4. To remedy its failure to submit an affidavit of a person with personal knowledge of the alleged facts set forth in the Opposition, the Motion to Supplement includes the declaration of Arnold Ferolito, the sole owner and manager of RM Broadcasting, LLC. RM Broadcasting and Ferolito are registered agents of the Russian government. The U.S. Department of Justice sued RM Broadcasting to require it to register as a foreign agent under the Foreign Agents Registration Act of 1938 (FARA).² The Court’s 2019 Opinion, attached hereto, sets forth in detail the exact relationship between RM Broadcasting and Federal State Unitary Enterprise Rossiya Segodnya International Information Agency, a Russian government owned agency with which RM Broadcasting entered into a Services Agreement.

The Services Agreement contains various requirements of the contracting parties. See generally *id.* at 1-31. Among these requirements, Rossiya Segodnya must deliver, and RM Broadcasting must receive, the Radio Programs by satellite. *Id.* at 5-6. RM Broadcasting must “broadcast/transmit Radio Programs... without abridging them, or any additions, editing, duplicating or other actions detrimental to the integrity of Radio Programs.” *Id.* at 16.

RM Broadcasting must “provide uninterrupted quality operation of the Equipment/technical facilities used for the broadcasting/transmission of [Rossiya Segodnya’s] Radio Programs” and “take reasonable measures to eliminate any defects or failure of the Equipment/technical facilities.” *Id.* at 7-8. RM

¹ 47 U.S.C. § 309(d)(1).

² <https://www.justice.gov/opa/pr/court-finds-rm-broadcasting-must-register-foreign-agent>

Broadcasting must “perform scheduled maintenance work on the Equipment as needed . . . subject to prior coordination with [Rossiya Segodnya] in writing” and must “promptly inform [Rossiya Segodnya] in writing of any shutdown of the technical facilities and termination of Radio Program transmission.” Id. at 7-8. RM Broadcasting must immediately notify Rossiya Segodnya if RM Broadcasting “stop[s] the operation of the Equipment/technical facilities . . . in order to prevent an emergency and to perform any recovery work.” Id. at 8.

Rossiya Segodnya may refuse to pay for the Services “in the event of the unsatisfactory operation of the Equipment/technical facilities used for rendering the Services.” Id. at 7. Rossiya Segodnya is required to pay only for Services that are provided “properly,” “timely,” and “in full.” Id. at 5, 9, 12-13. RM Broadcasting may, with Rossiya Segodnya’s agreement, “engage third parties for the provision of Services under” the Services Agreement.

By failing to submit affidavits, Arthur and Yvonne Liu have made it clear that they have no knowledge of or interest in the programming or operations of WZHF. RM Broadcasting, likewise, has no control nor exercises any supervision over what is broadcast by the Russian government. Under the terms of its contract, RM Broadcasting must broadcast Russia’s programming without abridging, editing, or altering the content. Ferolito, the nominal programmer, does not exercise any control or supervision over the programming, but as he admits in his declaration, hires a “contractor to review the programming aired on WZHF...” His complete lack of knowledge did not prevent Ferolito from swearing under penalty of perjury that “the descriptions of WZHF programming included in the Opposition are true and correct...” Ferolito does not explain how it is he knows this to be true, as he lives in Jupiter, Florida³ and by his own admission does not monitor WZHF’s programming. Ferolito, like Arthur and Yvonne Liu, does not have the slightest idea of what is broadcast on WZHF. Like Arthur and Yvonne

³ See, e.g., <https://www.dailymail.co.uk/news/article-10637253/Florida-broadcaster-paid-millions-air-Russian-propaganda-radio.html>

Liu, his interest in broadcasting Russian government propaganda is limited to receiving a monthly payment.

5. Neither Ferolito nor Arthur and Yvonne Liu, appear to exercise any control or supervision over the operations of WZHF. The entity in control of WZHF's programming is the Russian government. Arthur and Yvonne Liu exercise no oversight functions at the station. For example, the Services Agreement provides that maintenance of equipment and facilities is the responsibility of Ferolito, an agent of the Russian government. No doubt, Ferolito has hired someone to oversee this part of the operation as well.

6. The evidence is clear and irrefutable, the real-party-in-interest controlling the day-to-day operations of WZHF is the Russian government. A Media Bureau order described the Commission's process for determining de facto control:⁴ Among the factors the Commission considers are:

- who controls daily operations;
- who carries out policy decisions;
- who is in charge of employment, supervision, and dismissal of personnel; and
- who is in charge of paying financial obligations, including operating expenses.⁵

The answer to each of these questions is the Russian government, in part, through its paid agent RM Broadcasting. Arthur and Yvonne Liu are no more than absentee landlords, renting their

⁴ *In the Matter of Entertainment Media Trust*, MB Docket No. 19-156, Hearing Designation Order and Notice of Opportunity for Hearing, 2019 FCC LEXIS 1481 (2019).

⁵ *See, Ronald Brasher*, 15 FCC Rcd 18462, para. 8 (2004) (citing *Intermountain Microwave*, 24 RR 983 (1963)). *See also, Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. for Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCW(TV) et al.*, Hearing Designation Order, 33 FCC Rcd 6830 (2018) (HDO).

FCC licenses and facilities to anyone willing to pay, regardless of programming content or qualifications. The available evidence suggests that their other stations are operated no differently. It appears that their business model is to purchase a radio station and then lease it out, without paying any attention to the programming broadcast on the station. The only monitoring the Arthur and Yvonne Liu do is to ensure that their monthly checks arrive on time.

7. Arthur and Yvonne Liu's lack of involvement and control violates the Commission's rules as to Time Brokerage/Local Marketing Agreements. FCC Section 73.3555(j)(3) provides:

j. "Time brokerage" (also known as "local marketing") is the sale by a licensee of discrete blocks of time to a "broker" that supplies the programming to fill that time and sells the commercial spot announcements in it.

3. Every time brokerage agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities including, specifically, control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraph (b) of this section if the brokering station is a television station or with paragraph (a) of this section if the brokering station is a radio station.

The Program Time/Commercial contract in the station's public file for WZHF expired on December 31, 2020 and has not been renewed. Even if it was still in effect, the contract does not contain the required details as to finances, personnel and programming and a certification from Multicultural Radio, all in violation of the Commission's rules and policies. The Commission's holding in *In Re Applications of Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713, 715 (1981) is instructive as to the facts of this case.

Section 310(d) of the Communications Act of 1934, as amended, provides that no transfer of a construction permit or station license or any rights thereunder is permitted without prior Commission consent. Traditionally, we have looked beyond legal title in determining whether a transfer of control has occurred; instead, we

have defined control as embracing any act vesting in a new entity or individual the right to determine the basic policies concerning the operation of the station. See *WHDH, Inc.*, 17 FCC 2d 856 (1969), *aff'd* 20 RR 2d 2052 (D.C. Cir. 1970), *cert. denied* June 14, 1971. In short, it has been held that Section 310(d) contemplates every form of control, actual or legal, direct or indirect, negative or affirmative, over basic operating policies. *Lorain Journal Company v. FCC*, 351 F. 2d 824, 5 RR 2d 2111 (D.C. Cir. 1965), *cert. denied* 383 U.S. 967 (1966), *petition to reopen denied* 4 FCC 608 (1966).

Beyond a doubt, due to their repeated failures to comply with the FCC's rules and their general disinterest in the operations of their stations, Arthur and Yvonne Liu have ceded control of WZHF to the Russian government.

8. Arthur and Yvonne Liu's other stations do not fare any better. For example, of the above captioned stations seeking renewal of their licenses, WZRC (AM) has no programming agreements in its public inspection file. The other stations WHWH (AM), WPAT (AM), WKDM (AM), WTTM (AM), and WWRU (AM) contain multiple one page programming agreements whose only material term is "MAKE CHECK PAYABLE TO: MULTICULTURAL RADIO BROADCASTING – PROGRAM MUST BE PAID IN ADVANCE BEFORE AIRING OR WILL NOT BE ABLE TO GO ON AIR." This is the only term, because this is all Arthur and Yvonne Liu care about. What is clear is that Arthur and Yvonne Liu exercise no oversight or control over what is broadcast on their stations. The operations of WZHF are not an exception, but standard operating procedure for Arthur and Yvonne Liu.

9. Arthur and Yvonne Liu take no interest in complying with even the most basic FCC rules. Section 73.3526(b)(2)(ii) states:

A station must provide a link to the public inspection file hosted on the Commission's website from the home page of its own website, if the station has a website, and provide contact information on its website for a station representative that can assist any person with disabilities with issues related to the content of the public files. A station also is required to include in the online public file the

station's address and telephone number, and the email address of the station's designated contact for questions about the public file.

The above captioned stations' websites, WZRC (AM), WHWH (AM), WTTM (AM) and WWRU (AM) provide no links to their public inspection files or in any way comply with the requirements of Section 73.3526(b)(2)(ii). The WPAT and WKDM websites have links to the FCC website, but do not meet the other requirements of Section 73.3526(b)(2)(ii). For example, there is no designated contact for questions about the public file.

10. In the above captioned renewal applications, Multicultural Radio certified under penalty of perjury:

Licensee certifies that, with respect to the station(s) for which renewal is requested, there have been no violations by the licensee of the Communications Act of 1934, as amended, or the rules or regulations of the Commission during the preceding license term.

When Multicultural Radio certified its renewal application it knew it was not in compliance with the FCC's rule concerning its programming agreements and the rule concerning properly maintaining links to its public inspection files. It knowingly and willfully misrepresented these facts to the FCC. Its numerous misrepresentations concerning its stations provides the FCC with a separate and independent basis for revoking all its broadcast licenses.

Multicultural Radio's Opposition Remains Procedurally Defective and Must Be Stricken

11. In its Reply, UCCA pointed out that Multicultural Radio's Opposition does not comply with Section 1.49 of the rules, specifically that the footnotes in the Reply were not 12 points or larger. The Motion to Supplement has attached a revised Opposition with footnotes in 12 point type. Unfortunately, this does not cure the defects in the Opposition and this revised Opposition must be stricken as well. In increasing the footnote type to comply with the FCC rules, the Opposition has gone from 10 pages to 11 pages in length. On this point Section 1.49 is

clear, pleadings that exceed 10 pages shall include a table of contents with page references and a summary of the pleading. Multicultural Radio's revised Reply contains neither a table of contents nor a summary as required by Section 1.49(b)-(c) of the rules. Multicultural Radio offers no explanation for its failure to comply with the simplest of the Commission's rules. Accordingly, its Reply as filed and as supplemented should be stricken.


Conclusion

12. Arthur and Yvonne Liu have repeatedly demonstrated a willingness to disregard the FCC's rules or at least an inability to follow the rules. They have made no effort to supervise the programming aired on WZHF's or their other stations, so much so, that they are unable to submit declarations as to the content of what is broadcast on the station. Arthur and Yvonne Liu are nothing more than absentee landlords collecting monthly fees. However, the FCC rules require more of them than just passive ownership. They have failed to comply with the Commission's rules and well-established policies that they be in active control of their stations. They have demonstrated an unwillingness to follow the FCC's rules. Despite two attempts, they have yet to provide a competent affidavit to support the factual allegations made in the Opposition.

13. They have failed to follow the FCC's simplest rules, such as that their web pages are linked to the FCC Public Inspection file page or that a pleading must be in 12 point or greater type or that pleadings over 10 pages must have a table of content and a summary. UCCA believes that these failures are because Arthur and Yvonne Liu are not actually in the broadcast business. Their goal is not to serve the public interest. Their goal is to acquire broadcast licenses and rent out airtime to anyone who will pay, including a hostile foreign interest, the Russian government. The FCC has designated licensees for hearing in cases suggesting that the licensee either deliberately flouted the Commission rules or was irremediably incompetent. See, *In re*

Applications of Faulkner Radio, Inc., 88 F.C.C.2d 612, 613 (1981) citing *United Broadcasting Company* 86 F.C.C.2d 452 (1981). This is such a case. What is clear is that Arthur and Yvonne Liu exercise no control over the programming or operations of their stations and care little for following the Commission's rules.

Respectfully Submitted,



By: _____

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June 10, 2022

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:18-CV-81418-ROSENBERG/REINHART

RM BROADCASTING, LLC,

Plaintiff/Counter-Defendant,

v.

UNITED STATES DEPARTMENT
OF JUSTICE,

Defendant/Counter-Plaintiff.

/

**ORDER GRANTING THE UNITED STATES DEPARTMENT
OF JUSTICE'S MOTION FOR JUDGMENT ON THE PLEADINGS**

Before the Court is Plaintiff and Counter-Defendant RM Broadcasting, LLC's ("RM Broadcasting") Motion for Judgment on the Pleadings [DE 26] and Defendant and Counter-Plaintiff the United States Department of Justice's ("the Department") Cross-Motion for Judgment on the Pleadings [DE 30]. The Court has carefully considered both Motions, the Responses and Replies thereto [DE 32, 35, and 38], the arguments of the parties during the motion hearing held on May 1, 2019, and the record, and is otherwise fully advised in the premises. For the reasons stated below, the Department's Motion is **GRANTED**, and RM Broadcasting's Motion is **DENIED**.

FACTUAL BACKGROUND

The Federal State Unitary Enterprise Rossiya Segodnya International Information Agency ("Rossiya Segodnya") is a Russian, government-owned news agency. DE 1 at 4; DE 13 at 4; *see* DE 1-3 at 2. In November 2017, RM Broadcasting and Rossiya Segodnya entered into

a Services Agreement. DE 1 at 4; DE 13 at 4. RM Broadcasting and the Department have incorporated the Services Agreement into their respective pleadings. *See* DE 1 at 4; DE 13 at 14.

By entering into the Services Agreement, RM Broadcasting undertook “to provide the Services to [Rossiya Segodnya] for the broadcasting/transmission of Radio Programs” around-the-clock except for hourly station identification, on a daily basis, from December 1, 2017, through December 31, 2020, on Washington DC radio channel AM 1390. DE 1-3 at 3, 5-7. The Services Agreement defines “Services” as “services for the broadcasting/transmission of [Rossiya Segodnya’s] Radio Programs, being the reception from [Rossiya Segodnya] and transmission of a signal via which the Radio Programs will be broadcast, to be provided by [RM Broadcasting].” *Id.* at 3. Radio Programs are “Rossiya Segodnya’s audio communications and materials and/or packages for broadcasting.” *Id.*

The Services Agreement contains various requirements of the contracting parties. *See generally id.* at 1-31. Among these requirements, Rossiya Segodnya must deliver, and RM Broadcasting must receive, the Radio Programs by satellite. *Id.* at 5-6. RM Broadcasting must “broadcast/transmit Radio Programs . . . without abridging them, or any additions, editing, duplicating or other actions detrimental to the integrity of Radio Programs.” *Id.* at 16.

RM Broadcasting must “provide uninterrupted quality operation of the Equipment/technical facilities used for the broadcasting/transmission of [Rossiya Segodnya’s] Radio Programs” and “take reasonable measures to eliminate any defects or failure of the Equipment/technical facilities.” *Id.* at 7-8. RM Broadcasting must “perform scheduled maintenance work on the Equipment as needed . . . subject to prior coordination with [Rossiya Segodnya] in writing” and must “promptly inform [Rossiya Segodnya] in writing of any

shutdown of the technical facilities and termination of Radio Program transmission.” *Id.* at 7-8. RM Broadcasting must immediately notify Rossiya Segodnya if RM Broadcasting “stop[s] the operation of the Equipment/technical facilities . . . in order to prevent an emergency and to perform any recovery work.” *Id.* at 8.

Rossiya Segodnya may refuse to pay for the Services “in the event of the unsatisfactory operation of the Equipment/technical facilities used for rendering the Services.” *Id.* at 7. Rossiya Segodnya is required to pay only for Services that are provided “properly,” “timely,” and “in full.” *Id.* at 5, 9, 12-13. RM Broadcasting may, with Rossiya Segodnya’s agreement, “engage third parties for the provision of Services under” the Services Agreement. *Id.* at 8. The Services Agreement also contains the following provision:

Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties or to authorize either party to act as agent for the other. Furthermore, neither Party shall have authority to act for or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

Id. at 24.

On June 21, 2018, the FARA Registration Unit of the National Security Division of the Department informed RM Broadcasting that it was acting as a “publicity agent” and an “information-service employee” of Rossiya Segodnya, a foreign principal, and was required to register as an agent of a foreign principal under the Foreign Agents Registration Act of 1938, 22 U.S.C. § 611 *et seq.* (“FARA”). DE 1 at 7; DE 13 at 6; *see* DE 1-7. RM Broadcasting disputed that it was required to register as an agent of a foreign principal. DE 1 at 7; DE 13 at 6; *see* DE 1-8.

BM Broadcasting subsequently initiated this proceeding, seeking a declaratory judgment that it need not register as an agent of a foreign principal. DE 1. The Department filed a Counterclaim, seeking an injunction requiring RM Broadcasting to register as an agent of a foreign principal. DE 13.

LEGAL STANDARD

Judgment on the pleadings is appropriate when no issues of material fact exist, and the movant is entitled to judgment as a matter of law. *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1335 (11th Cir. 2014). A court accepts the facts in the complaint as true and views them in the light most favorable to the nonmoving party. *Id.* A motion for judgment on the pleadings is governed by the same standard as a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345, 1350 (11th Cir. 2018); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (stating that a motion to dismiss should be granted only when the pleading fails to contain “enough facts to state a claim to relief that is plausible on its face”).

A court may consider documents attached to a complaint when ruling on a motion to dismiss. *Saunders v. Duke*, 766 F.3d 1262, 1270 (11th Cir. 2014) (stating that “documents attached to a complaint or incorporated in the complaint by reference can generally be considered by a federal district court in ruling on a motion to dismiss”); *see also* Fed. R. Civ. P. 10(c) (“A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.”). “[W]hen the exhibits contradict the general and conclusory allegations of the pleading, the exhibits govern.” *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1206 (11th Cir. 2007); *see also Celestine v. Capital One*, 741 F. App’x 712, 713 (11th Cir. 2018) (“Where

exhibits are submitted that contradict the alleged facts, the exhibits control, despite our construction of facts in favor of their truth.”).

FARA

The purpose of FARA is to

protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the identity of such persons and may apprise their statements and actions in the light of their associations and activities.

Meese v. Keene, 481 U.S. 465, 469 (1987).

FARA provides that “[n]o person shall act as an agent of a foreign principal” unless he has completed a registration with the Attorney General. 22 U.S.C. § 612(a); *see id.* § 611(a) (including business organizations within the definition of “person”). The parties have acknowledged that it is undisputed that Rossiya Segodnya is a “foreign principal.” *See id.* § 611(b) (defining “foreign principal” to include a corporation “organized under the laws of or having its principal place of business in a foreign country”); *see also* DE 1-3 at 2 (stating that Rossiya Segodnya is “incorporated and registered in the Russian Federation”).

The definition of “agent of a foreign principal” includes

any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person . . . acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal.

22 U.S.C. § 611(c)(1). This definition also includes “any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal.” *Id.* § 611(c)(2). “[T]he term control or any of its variants shall be deemed to include the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by contract, or otherwise.” 28 CFR § 5.100(b).

A “publicity agent” is “any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise.” 22 U.S.C. § 611(h). An “information-service employee” is

any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country.

Id. § 611(i).

ANALYSIS

The parties have incorporated the Services Agreement into their pleadings. Under the explicit terms of the Services Agreement, RM Broadcasting must, in addition to other requirements, (1) receive Rossiya Segodnya’s Radio Programs; (2) “broadcast/transmit” those Radio Programs “without abridging them, or any additions, editing, duplicating or other actions detrimental to the integrity of Radio Programs”; (3) “provide uninterrupted quality operation of

the Equipment/technical facilities used for the broadcasting/transmission of” the Radio Programs; (4) “take reasonable measures to eliminate any defects or failure of the Equipment/technical facilities”; (5) “perform scheduled maintenance work on the Equipment as needed” after coordinating with Rossiya Segodnya in writing; (6) “promptly inform [Rossiya Segodnya] in writing of any shutdown of the technical facilities and termination of Radio Program transmission”; and (7) immediately notify Rossiya Segodnya if RM Broadcasting “stop[s] the operation of the Equipment/technical facilities . . . in order to prevent an emergency and to perform any recovery work.” *See* DE 1-3 at 5-8, 16. Rossiya Segodnya need only pay for Services that are provided “properly,” “timely,” and “in full,” and may refuse to pay for the Services “in the event of the unsatisfactory operation of the Equipment/technical facilities used for rendering the Services.” *Id.* at 5, 7, 9, 12-13.

Under the terms of the Services Agreement, RM Broadcasting acts “under the direction or control” of Rossiya Segodnya. *See* 22 U.S.C. § 611(c)(1) (defining “agent of a foreign principal” to include “any person who acts in any other capacity . . . under the direction or control, of a foreign principal”); *see also* 28 CFR § 5.100(b) (defining “control” to include “the possession or the exercise of the power, directly or indirectly, to determine . . . the activities of a person, whether . . . by contract, or otherwise”). RM Broadcasting is required to perform various acts for Rossiya Segodnya for the purpose of broadcasting Rossiya Segodnya’s Radio Programs. Rossiya Segodnya may withhold payment if these acts are not performed properly or satisfactorily.

In addition, RM Broadcasting acts as a “publicity agent” for Rossiya Segodnya under the terms of the Services Agreement. *See* 22 U.S.C. § 611(h) (defining “publicity agent” to include

“any person who engages directly or indirectly in the publication or dissemination or oral . . . information or matter of any kind, including publication by means of . . . broadcasts”). RM Broadcasting is required to “broadcast/transmit” Rossiya Segodnya’s Radio Programs without change, with the Radio Programs consisting of “Rossiya Segodnya’s audio communications and materials and/or packages.” DE 1-3 at 3, 16.

Thus, under the terms of the Services Agreement, RM Broadcasting acts under Rossiya Segodnya’s direction or control and acts as a publicity agent for Rossiya Segodnya. RM Broadcasting qualifies as an agent of a foreign principal under FARA. *See* 22 U.S.C. § 611(c), (h).¹ RM Broadcasting makes several arguments in support of its position that it does not qualify as an agent of a foreign principal, which the Court will now address.

RM Broadcasting contends throughout its Complaint and its Motion for Judgment on the Pleadings that it simply buys and resells radio airtime and has resold some of that airtime to Rossiya Segodnya. RM Broadcasting disclaims that it broadcasts any radio programs. However, under the explicit language of the Services Agreement that the Court has quoted above, RM Broadcasting is required to do much more than resell radio airtime to Rossiya Segodnya. Notably, RM Broadcasting is required to “broadcast/transmit Radio Programs.” DE 1-3 at 16. The language of the Services Agreement contradicts RM Broadcasting’s assertion that it only buys and resells radio airtime. *See Celestine*, 741 F. App’x at 713 (“Where exhibits are submitted that contradict the alleged facts, the exhibits control, despite our construction of facts in favor of their truth.”).

¹ Because the Court concludes that RM Broadcasting qualifies as a publicity agent, the Court need not consider whether RM Broadcasting also qualifies as an “information-service employee.” *See* 22 U.S.C. § 611(c), (i).

RM Broadcasting then argues that it has not actually broadcast Rossiya Segodnya's Radio Programs and that its contractual obligations may be different than its actual conduct. RM Broadcasting asserts that the Department has not alleged that RM Broadcasting actually has broadcast the Radio Programs and, thus, has not alleged that RM Broadcasting actually has acted as a publicity agent for Rossiya Segodnya. FARA's definition of "agent of a foreign principal" includes, however, "any person who agrees . . . to act as, . . . whether or not pursuant to contractual relationship, an agent of a foreign principal." 22 U.S.C. § 611(c)(2). RM Broadcasting satisfies the definition of an agent of a foreign principal by agreeing, though the Services Agreement, to act in a manner by which it qualifies as an agent of a foreign principal.

RM Broadcasting maintains that it has disclaimed an agency relationship with Rossiya Segodnya through the Services Agreement. RM Broadcasting points to the provision of the Services Agreement stating that nothing in the Agreement "is intended to or shall operate to create a partnership between the Parties or to authorize either party to act as agent for the other" and that "neither Party shall have authority to act for or on behalf of or otherwise to bind the other in any way." DE 1-3 at 24. To the extent that this provision disclaims a common-law agency relationship, the Court notes that a common-law agency relationship is unnecessary to satisfy FARA's definition of "agent of a foreign principal." *See Att'y Gen v. Irish N. Aid Comm.*, 668 F.2d 159, 161 (2d Cir. 1982) ("We agree that the agency relationship sufficient to require registration need not . . . meet the standard of the Restatement (Second) of Agency with its focus on 'control' of the agent by the principal. Control is an appropriate criterion for a determination of common law agency because the agent contemplated by the Restatement has the power to bind his principal. In determining agency for purposes of the Foreign Agents Registration Act,

however, our concern is not whether the agent can impose liability upon his principal but whether the relationship warrants registration by the agent to carry out the informative purposes of the Act.”). Moreover, it goes without saying that a party contracting to act in a way by which the party, in fact, qualifies as an agent of a foreign principal could not avoid FARA’s registration requirement by including within the contract a disclaimer that it is not an agent of a foreign principal.

RM Broadcasting asserts that it has no knowledge of the content of Rossiya Segodnya’s Radio Programs, no input in that content, and no intent to advance the interests of Rossiya Segodnya or Russia. FARA’s definitions of “agent of a foreign principal” and “publicity agent” lack any requirement of such knowledge, input, or intent. *See generally* 22 U.S.C. § 611(c), (h).

Finally, RM Broadcasting expresses concern over how broadly FARA may be applied. This Court acknowledges, as have others, that the language of FARA is broad. *See, e.g., United States v. McGoff*, 831 F.2d 1071, 1074 (D.C. Cir. 1987) (“The scope of persons subject to FARA is broad. Section 611 defines the critical terms ‘agents of foreign principals,’ to include almost anyone who undertakes any public-related or financial activity on behalf of a foreign principal.” (alterations omitted)). Nevertheless, the Court must apply the statutory language as written; it is not for the Court to rewrite the statute. *See, e.g., Harris v. Garner*, 216 F.3d 970, 976 (11th Cir. 2000) (stating that “the role of the judicial branch is to apply statutory language, not to rewrite it”).

CONCLUSION

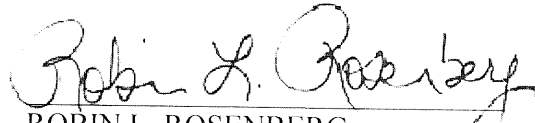
For the foregoing reasons, the Court concludes that the pleadings and the incorporated Services Agreement establish that RM Broadcasting is an agent of a foreign principal and is

required to register pursuant to FARA. Thus, the Department's Cross-Motion for Judgment on the Pleadings [DE 30] is **GRANTED**. RM Broadcasting's Motion for Judgment on the Pleadings [DE 26] is **DENIED**.

By no later than **May 17, 2019**, the Department shall submit to the Court, in Word format, a proposed Order granting Final Judgment. The proposed Order shall be sent to: Rosenberg@flsd.uscourts.gov.

The Clerk of Court is instructed to **CLOSE THIS CASE**. All hearings are **CANCELED** and all deadlines are **TERMINATED**.

DONE and ORDERED in Chambers, West Palm Beach, Florida, this 6th day of May, 2019.

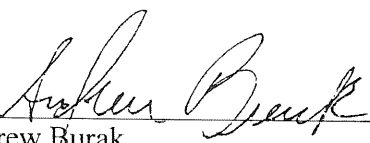

ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

Copies furnished to Counsel of Record

Declaration of Andrew Burak

I, Andrew Burak, declare under penalty of perjury, that the following information is true and correct:

I have read the foregoing Motion to Strike. The statements made in the Motion to Strike are true and correct to the best of my personal knowledge, information and belief.



Andrew Burak

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via email to the following:

Mark Lipp, Esq.
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street
Suite 1100
Arlington, VA 22209

lipp@FHHLAW.com

A handwritten signature in cursive script, reading "Arthur V. Belendiuk".

Arthur V. Belendiuk