STATEMENT OF
COMMISSIONER NATHAN SIMINGTON, DISSENTING

Re: *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Second Report and Order, MB Docket No. 20-299.

Letting Americans know when a foreign government has leased time on American airwaves is a good thing. That's why I voted to approve the Commission's first cut at these rules back in 2021. In the implementing Report and Order, we indicated that:

> "In describing a lease of time, however, we do not mean to suggest that traditional, short-form advertising time constitutes a lease of airtime for [the purposes of foreign sponsorship identification]."

Ha-ha. Just kidding. Apparently, according to today's decision: not only *yes*, we *did* mean that traditional, short-form advertising constitutes a "lease of airtime" for these purposes, but regulatees *knew that we meant that they did* when they asked us to clarify the bounds of the exemption. (By now, "clarify" is the Commission's euphemism for doing whatever it wants, precedent be damned.) This is, of course, news to the regulatees, who maybe recently drew inspiration in their understanding of whether the Commission considers short-form advertising the same as a lease of airtime from the Second NPRM in this proceeding, in which we sought comment:

> ". . . on whether experience with these rules has provided licensees or others with additional insight regarding the issues raised in the Petition and specifically what criteria the Commission might adopt to *distinguish between advertising and programming arrangements for the lease of airtime* in a way that does not jeopardize the Commission's goals in this proceeding." (Emphasis mine.)

What did we mean by this? I do not know. Maybe no one does. I *do* know that spontaneous self-reversal is an Administrative Procedure Act violation, though. We have nowhere noticed that, by the terms "lease of airtime" and "short-form advertising" we meant the *exact opposite* of what we said in 2021 *and* 2022.

But, not to worry, regulatees, because though yes, lease of airtime *does* include short-form advertising, you can seek shelter under the rocksteady safe harbors the Commission has invented in the last few weeks. And what are those?

First: any ad for a commercial good or service, provided that the ad is constructed in such a way as to satisfy the Commission's definition for a commercial advertisement. (Incidentally: though a "lease of airtime" is definitionally *not* short-form advertising and we have prior acknowledged as much, why does the Commission not now consider it important for Americans to know whether, for instance, the PRC has purchased broadcast advertising on behalf of TikTok? A head scratcher! To be clear, I am not here *endorsing* the idea that commercial advertisements on *any* platform should *ever* require foreign sponsorship identification, I am merely acknowledging that the rules we enunciate today fail even to meet our own half-baked policy justifications.)

Second: any ad purchased by a legally qualified candidate for office or their authorized committees (so-called "political candidate advertisements"). Notably, part of our justification for this carveout—besides, presumably, the fact that a fair few of them have taken a constitutional oath of office or have bled in service to our country which may render the question of whether their ad was furnished by a foreign agent insulting—is that:

> "We recognize that there are statutory restrictions as well as Federal Election Commission rules

> prohibiting contributions to federal, state, and local candidates by "foreign nationals," a term that is defined to include certain of the entities covered by our foreign sponsorship identification rules, specifically a "government of a foreign country" and a "foreign political party." Because of these restrictions, the likelihood that political candidate advertisements would require disclosures under the foreign sponsorship identification rules is greatly limited. Accordingly, we are persuaded to exempt political candidate advertisements from the foreign sponsorship identification requirements."

Okay. Well, as the Commission discovered when crafting this safe harbor, those same FEC prohibitions pertain to a category of issue advertisements *mentioning* candidates for office called "electioneering communications." Will *those* ads enjoy a safe harbor for identical reasons? No! But don't worry, it's a distinction *with* a difference, we swear:

> "While NAB notes that foreign nationals also are prohibited from funding certain types of issue advertisements related to elections, our definition of issue advertisements for purposes of these rules is broader in scope than the advertisements that NAB references in that our definition encompasses issue advertisements unrelated to elections. Therefore, we cannot be as assured of foreign noninvolvement with respect to issue advertisements. Rather than adopt a definition that attempts to parse the different types of issue advertisements, and to ensure maximum transparency for viewers and listeners, we will apply the foreign sponsorship identification rules to all issue advertisements and paid PSAs."

This is senseless. To ensure maximum transparency for viewers and listeners, we *are* requiring foreign sponsorship identification for a subset of issue ads *already covered by the same FEC rules* prohibiting foreign sponsorship that we deemed justification to exclude candidate ads from foreign sponsorship identification? Huh? I am astonished that an already discursive item, we could not draw one further distinction, if only to create justificatory consistency *within the same item*. I gather that consistency is the sort of thing a reviewing court might look upon favorably—especially in a proceeding where we've already been successfully appealed—but hey, what do I know?

I thought, and still think, we should require foreign sponsorship identification to leases of air time. Since this item now has practically nothing to do with that, I dissent.