

**STATEMENT OF
COMMISSIONER BRENDAN CARR, DISSENTING IN PART**

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

In 2021, the FCC unanimously adopted rules for broadcast television stations to identify and disclose “leases” of airtime sponsored by foreign governments.¹ The 2021 rules contained an exception for “short-form advertisements,” which were deemed to fall outside the meaning of “lease.” On appeal, the D.C. Circuit vacated a separate portion of the 2021 rules that required broadcasters to affirmatively investigate potential foreign sponsors.² Today’s Order fixes that defect—lawfully so, in my view. If the Order were limited to correcting this narrow issue on remand, I would have supported it in full.

But this Order goes further. It changes the 2021 definition of “lease” by eliminating the “short-form advertisement” exception. The Order now requires broadcasters to comply with the foreign sponsorship rule for all third-party use of airtime, with two key exceptions: (1) political candidate advertisements; and (2) advertisements that meet the commercial exemption provisions in section 73.1212(f) of our rules.

In my view, the FCC did not provide fair notice that it might redefine “lease” in this fundamental way. After the 2021 rules were adopted, broadcast interests filed a petition seeking clarification on the meaning of “short-form advertisement.”³ The petition asked for a clearer and less burdensome definition, not for the FCC to eliminate the exception altogether. A single paragraph in the *Second NPRM* seeks comment on this petition.⁴ As that paragraph makes clear, the FCC did not contemplate eliminating the “short-form advertisement” carveout. And to my knowledge, no party in this proceeding asked the FCC to do so. Adopting rule changes nobody could have reasonably anticipated is a textbook example of unfair surprise.

This was avoidable. If the FCC wanted to consider rule changes that were not teed up in the *Second NPRM*, it could have shored up the record through a Further Notice or a supplemental Public Notice. The FCC did not do so here. So, while this Order fixes one legal infirmity highlighted at the D.C. Circuit, it creates new problems that may require us to revisit our foreign sponsorship rules in a future proceeding following another appeal. I approve in part and dissent in part.

¹ *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021).

² *NAB v. FCC*, 39 F.4th 817 (D.C. Cir. 2022).

³ See Petition for Clarification, MB Docket No. 20-299 (filed July 19, 2021).

⁴ *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Second Notice of Proposed Rulemaking, 37 FCC Rcd 12004, para. 32 (2022).