

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Disclosure and Transparency of Artificial
Intelligence-Generated Content in Political
Advertisements

MB Docket No. 24-211

COMMENTS OF PUBLIC KNOWLEDGE

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September 19, 2024

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I. INTRODUCTION.

Public Knowledge submits these comments in response to the Federal Communications Commission’s (the “Commission” or “FCC”) Notice of Proposed Rulemaking on Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements (the “NPRM”) that was proposed on July 10, 2024.¹

The rapid advancement of AI technologies, particularly in generating realistic but fabricated content, poses new challenges to the transparency and fairness that are necessary for the electoral system. Realistic-seeming AI-generated content has the potential to mislead voters and further undermine trust in media, as it becomes impossible to distinguish real from artificial content. Yet as Politico recently reported, “Congress appears unlikely to pass any of the laws it has been promising to safeguard this year’s election from the threat of artificial intelligence.”² Thus, the Commission’s proposed rules are not only timely but also essential for preserving the integrity of our democratic processes. This is not just an “election year” issue, but a challenge that has to be considered and addressed for the long-term health of our democracy.

At the same time, while the challenges posed by AI might merit new policy responses, some of the harms that misuse of AI has caused, or has the potential to cause, can be addressed with existing law. Some proposals concerning AI may be disproportionate, restricting free expression, and potentially restricting the use of helpful technologies like grammar and spelling correction, or translation into foreign languages. By acting within its existing authority, the FCC has shown that policymakers can use existing legal tools to address challenges posed by new

¹ <https://docs.fcc.gov/public/attachments/FCC-24-74A1.pdf>

² Mohar Chatterjee, *Congress promised AI rules to protect elections. It’s not happening*, Politico (Sep. 17, 2024), <https://www.politico.com/news/2024/09/16/congress-ai-rules-elections-deepfakes-00179379>

technologies. Further, by proposing a disclosure requirement consistent with existing political disclosure requirements, the Commission has found an approach to the issue of the use of AI content in broadcast political ads that does not restrict a candidate’s message or prevent the use of certain tools, but simply gives voters the information and context they need to better understand and contextualize political messages.

As a joint statement from federal civil rights enforcers recently put it, “Existing legal authorities apply to the use of automated systems and innovative new technologies just as they apply to other practices.”³ Similarly, FTC Chair Lina Khan has noted of AI tools that “Although these tools are novel, they are not exempt from existing rules, and the F.T.C. will vigorously enforce the laws we are charged with administering, even in this new market.”⁴ In this context, existing statutes of general applicability—specifically Sections 303(r), 315, and 317 of the Communications Act—provide the Commission with ample authority to address AI-related matters without necessitating explicit mention of AI. This approach is consistent with historical precedents where the FCC has effectively regulated emerging technologies under its broad mandate to serve the public interest, convenience, and necessity.

II. THERE IS A NEED FOR RULES MANDATING DISCLOSURE OF POTENTIALLY DECEPTIVE AI-GENERATED CONTENT IN POLITICAL ADS.

Deepfakes and other AI-generated media can create realistic images, audio, and video that portray individuals saying or doing things that never occurred, and can be presented in misleading ways, often by design. There is real potential for AI-generated content to deceive voters, and deepfakes have already been deployed deceptively for political ends. This capability

³ Joint Statement on Enforcement of Civil Rights, Fair Competition, Consumer Protection, and Equal Opportunity Laws in Automated Systems, <https://www.eeoc.gov/joint-statement-enforcement-civil-rights-fair-competition-consumer-protection-and-equal-0>

⁴ Lina Khan, *We Must Regulate A.I. Here’s How* (May 3, 2023), <https://www.nytimes.com/2023/05/03/opinion/ai-lina-khan-ftc-technology.html>

can be weaponized to spread misinformation, manipulate voter perceptions, and disrupt the electoral process.

The FCC’s proposed rules aim to mitigate these risks by requiring disclosure when AI is used in broadcast political advertisements. Broadcast ads still surpass online ads in terms of campaign spending,⁵ and broadcasters are already subject to public interest, access, and transparency requirements when it comes to airing political ads by qualified candidates. Broadcast campaign ad requirements are intended to allow voters to evaluate the information presented to them and reduce the likelihood of deception, and the proposed rules are an extension of these existing policies.

At the same time, the proposed regulations are content-neutral, focusing on the manner of communication rather than the message itself. They do not restrict or favor any political viewpoints but require all broadcasters to disclose the use of AI in political ads uniformly. By imposing a minimal disclosure requirement, the FCC balances the need to inform the public with the rights of broadcasters and advertisers to disseminate political speech. These narrow disclosure regulations address the specific issue of potentially deceptive AI-generated content without imposing undue burdens on speech or expression.

III. THE PROPOSED DEFINITION OF AI-GENERATED CONTENT SHOULD BE NARROWED TO FOCUS ON “POTENTIALLY DECEPTIVE AI-GENERATED CONTENT.”

The proposed definition of AI-generated content is not linked to any existing definitions of AI and seems to be overly inclusive of any computer-generated imagery. The proposed rules do not seek to define AI generally, or adopt a definition for the Commission more generally—the

⁵ Zharmer Hardimon, *U.S. political ad spend on digital projected to jump 156 percent over last presidential election year*, The Current (Jan. 25, 2024), <https://www.thecurrent.com/digital-political-ad-spending-streaming>.

proposed rules only define “AI-generated content.”⁶ Given the focus of the proposed rules on addressing potentially deceptive AI-generated content, the Commission should adopt a definition more narrowly focused on that class of problematic content.

The Commission should require disclosures for “potentially deceptive AI-generated content” defined as “an image, audio, or video that depicts an individual’s appearance, speech, conduct, or an event, circumstance, or situation that has been generated, in whole or in part, using computational technology or other machine-based system that emulates the structure and characteristics of input data in order to generate derived synthetic content.”

This revised scope and definition incorporates aspects of the definition of generative AI from Executive Order 14110, which has also been adopted by the National Institute of Standards and Technology (NIST) for use in developing the Generative AI Profile for NIST’s AI Risk Management Framework.⁷ This focuses the applicability to AI-based technologies without needing the Commission to adopt a definition of AI, or reference it specifically. In addition, the revised definition removes two references to things as being “AI-generated” which create potential circularity or ambiguity.

These modifications are important to prevent both under- and over-disclosure. Broadly scoping in all computational technology could create confusion in reporting from advertisers, who may not know if, for example, the ordinary video editing or audio enhancement software they used requires disclosure, especially considering AI features are being integrated in many

⁶ NPRM ¶ 11.

⁷ NIST, Artificial Intelligence Risk Management Framework: Generative Artificial Intelligence Profile (Jul. 2024), <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.600-1.pdf>, at 1 n.1

places. A broad scope could lead to under-reporting—meaning uneven reporting and disclosure—or risk-averse over-reporting.

A significant risk with over-reporting, and then over-disclosure, is that ads without true AI-generated content receive a disclosure, thereby creating audience fatigue and watering-down the effectiveness of the disclosures. Frequent disclosures, especially if the audience cannot easily ascertain how AI was used in the ad, may drive increasing cynicism about the authenticity of communications more broadly.

IV. COMMENTS ON THE PROPOSED RULES FOR ON-AIR DISCLOSURE OF THE USE OF AI-GENERATED CONTENT IN POLITICAL ADS.

Overall, the Commission’s proposed rules for reporting and disclosure are timely, necessary, and balanced. This section offers comment in response to some of the open questions posed by the NPRM as well as suggestions for how to ensure the disclosures are as effective as possible.

The wording of the required disclosures should be standardized, but should be changed slightly to better inform audiences. Changing the word “information” to “material” or “content” will make the message of the disclosure more clear. The term “information” may give the incorrect impression that the factual content or message of the ad is the part that is AI-generated, whereas “material” or “content” more broadly expresses that the images, video, or audio itself requires additional scrutiny.

The Commission has inquired about how to make the disclosures most accessible, with questions about what spoken language the disclosures should appear in and the need for text disclosures.⁸ The Commission should seek to maximize accessibility and clarity with its disclosures. The disclosures should be made in the primary language of the broadcast, whether

⁸ NPRM ¶ 17.

that be English or another language. In addition, the Commission should require television broadcasters to make the on-air disclosure both visually and orally.

The Commission should gather more information about how to handle “credible third party” reports to broadcasters. On the one hand, third parties may be well-positioned to identify AI-generated content that was undisclosed, and using these reports to append disclosures would be important for protecting the public interest. However, on the other hand, third party reports could also be weaponized to force disclosures to appear on ads in a manner that undermines their credibility. There may be different, and better, remedies for addressing failure to disclose the use of AI-generated content in an ad than asking third parties to persuade broadcasters to append a disclosure.

V. THE COMMISSION HAS LEGAL AUTHORITY TO ADOPT THE PROPOSED REQUIREMENTS.

Section 303(r) of the Communications Act grants the FCC the authority to “make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter.” This provision has historically enabled the FCC to adapt its regulatory framework to encompass new and evolving technologies that impact the communications ecosystem.

The courts have consistently affirmed the FCC’s broad discretionary powers under Section 303(r). In *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943), the Supreme Court upheld the FCC’s authority to regulate chain broadcasting, emphasizing that the Commission’s role is to ensure that broadcasting serves the “public interest, convenience, or necessity.” In *FCC v. National Citizens Comm. for Broadcasting*, the Court noted that “it is now well established that this general rulemaking authority [303(r)] supplies a statutory basis for the Commission to issue regulations codifying its view of the public-interest licensing standard, so

long as that view is based on consideration of permissible factors and is otherwise reasonable.” 436 US 775, 793 (1978). This authority has been applied to various technological advancements, including the transition from analog to digital broadcasting and the introduction of satellite radio services. AI-generated content significantly affects the nature of broadcast services provided to the public. The use of AI in creating political advertisements can alter the way information is presented to voters. Therefore, regulating AI-generated political ads falls well within the FCC’s mandate under Section 303(r) to ensure that broadcasting serves the public interest.

The Communications Act and similar regulatory statutes are intentionally designed to be technology-neutral. This design allows regulatory bodies like the FCC to adapt to technological advancements without the need for Congress to pass new legislation for each innovation. The rapid pace of technological change makes it impractical for statutes to explicitly mention every new technology that emerges. Additionally, the Supreme Court has confirmed that the Commission has the authority to regulate new technologies under its general authorities, provided that such regulation is “reasonably ancillary to the effective performance of the Commission’s various responsibilities.” *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968). Here, in addition to the direct authority granted by Congress in Section 303(r), the proposed rules are consistent with, and reasonably ancillary to, other sources of Commission authority.

For example, Section 315 of the Communications Act outlines the obligations of broadcasters regarding political candidates, including the “equal opportunities” provision and restrictions on censorship. The section is designed to promote fairness and prevent broadcasters from manipulating political discourse. The FCC has long used Section 315 to enforce principles of equal opportunity and transparency in political advertising. By extending these principles to

AI-generated content, the FCC will guard against broadcast political ads that use deceptive AI content from undermining the principle of equal opportunity for qualified candidates. Ensuring that all candidates have the opportunity to have their messages heard by voters means that voters must be able to know if what they are hearing and seeing is genuine. The disclosure of AI-generated content ensures that the electorate receives accurate information, upholding Section 315's intent.

Section 317 mandates that broadcasters disclose when content has been paid for or furnished by an entity, ensuring transparency about the origins of broadcast material. This requirement helps audiences understand who is attempting to influence them, a cornerstone of informed decision-making in a democracy. AI-generated political ads are likely to be funded by specific entities aiming to influence voter behavior. Requiring broadcasters to disclose the use of AI in such ads thus aligns with the objectives of Section 317. It ensures that viewers are aware not only of who is sponsoring the content, but whether its sponsors are using AI technology deceptively.

VI. THE PROPOSED RULES COMPORT WITH THE FIRST AMENDMENT.

The Commission's proposed on-air disclosure and political file requirements align with the First Amendment and withstand constitutional scrutiny. The First Amendment protects freedom of speech and expression, but it does not provide absolute immunity from regulations that serve significant governmental interests and are narrowly tailored to achieve those interests without unnecessarily restricting speech.

The proposed disclosure requirements are content-neutral because they regulate the manner of communication rather than its content. They apply uniformly to all broadcast political advertisements that use AI-generated content, regardless of the political viewpoint or message conveyed. As content-neutral regulations, the FCC's proposed rules are subject at most to

intermediate scrutiny, which assesses whether the regulation advances a significant governmental interest and is narrowly tailored to serve that interest.

In *Ward v. Rock Against Racism*, the Supreme Court held that regulations are content-neutral if they are “justified without reference to the content of the regulated speech, [and] that they are narrowly tailored to serve a significant governmental interest.” 491 U.S. 781, 791 (1989) (citing *Clark v. Community for Creative Non-Violence*, 468 US 288, 293 (1984)). The Commission’s focus on the use of AI-generated content—rather than the message itself—ensures the proposed rules are content-neutral.

In *Turner Broadcasting System v. FCC*, 512 U.S. 622 (1994), the Court held that a content-neutral regulation is valid if it advances important governmental interests and does not burden substantially more speech than necessary. The Commission’s proposal meets this standard by directly targeting the potential for deception without restricting the overall ability of candidates to communicate their messages.

Mandatory disclosure requirements have been upheld in various contexts as a means of informing the electorate. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Court recognized that disclosure provisions serve substantial governmental interests by providing the electorate with information and deterring corruption. The proposed rules are consistent with these principles, as they aim to inform voters without restricting the content of political speech.

The government has a compelling interest in preserving the integrity of the electoral process and ensuring that voters are well-informed. The Supreme Court has recognized the government’s interest in preventing fraud and ensuring fair elections. In *Burson v. Freeman*, 504 U.S. 191 (1992), the Court upheld restrictions on campaign activities near polling places, acknowledging the government’s compelling interest in preventing voter intimidation and

election fraud. Similarly, the proposed rules seek to prevent the manipulation of voter perceptions through undisclosed AI-generated content.

Finally, by promoting transparency, the proposed rules enhance the electorate's ability to make informed decisions by providing them with more information. The proposed rules prevent no one from speaking, and promote the free flow of information—a core First Amendment interest. *Cf. First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). Requiring disclosures about AI-generated content ensures that voters are not misled and can critically evaluate the messages presented to them.

VII. CONCLUSION.

For the foregoing reasons, Public Knowledge supports the FCC's proposed rules mandating disclosure of potentially deceptive AI-generated content in political advertisements as a vital measure to protect democratic processes. However, we urge the Commission to refine the definitions—particularly by narrowing the scope to focus on truly deceptive content—to avoid overbroad regulations that could lead to confusion or over-disclosure, thereby ensuring the rules are both effective and balanced.

Respectfully submitted,

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