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

In the Matter of	)	
	)	
Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements	)	MB Docket No. 24-211

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairwoman Rosenworcel and Commissioner Gomez issuing separate statements; Commissioners Carr and Simington dissenting and issuing separate statements.

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I. INTRODUCTION

1. Political advertising serves an important function in this country, providing information to assist voters in making informed decisions about candidates for public office and controversial issues of public importance. The use of emerging artificial intelligence (AI) technologies in political advertisements can serve the public interest in fostering an informed electorate by, for example, empowering smaller political campaigns with limited financial resources to reach larger audiences. The use of AI technologies in political advertising, however, also has the potential to produce "deepfakes"[1] and other deceptive and misleading information, sowing confusion and distrust among the voting public.

2. Recognizing the potentially beneficial use of AI in political advertisements while keeping in mind broadcasters and other regulated entities' statutory obligation to serve the public interest by taking responsibility for material—including false, misleading or deceptive material—disseminated to the public through their facilities, we initiate this Notice of Proposed Rulemaking (NPRM) to provide greater transparency regarding the use of AI-generated content in political advertising. Specifically, we propose to require radio and television broadcast stations; cable operators, Direct Broadcast Satellite (DBS) providers, and Satellite Digital Audio Radio Service (SDARS) licensees engaged in origination programming;[2] and permit holders transmitting programming pursuant to section 325(c) of the Act,[3] to provide an on-air announcement for all political ads[4] that include AI-generated content disclosing the use of such content in the ad. We also propose to require these licensees and regulatees to include a notice in their online political files for all political ads that include AI-generated content disclosing that the ad contains such content. To be clear, we are not proposing to ban or otherwise restrict the use of AI-generated content in political ads. Rather, we are simply seeking to ensure that listeners and viewers are informed when political ads include such content so that the public can evaluate such ads for themselves.

II. BACKGROUND

A. The FCC's Role

3. The presentation of political programming is considered an essential element of broadcasters' obligation to serve the public interest because of the critical role such programming plays in fostering an informed electorate, which in turn is vital to the effective operation of the democratic process.[5] In keeping with this critical role, the political programming and recordkeeping requirements

[1] *See infra* para. 10 (discussing "deepfakes").

[2] "Origination cablecasting" is "[p]rogramming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator." 47 CFR § 76.5(p). "DBS origination programming" is "programming (exclusive of broadcast signals) carried on a DBS facility over one or more channels and subject to the exclusive control of the DBS provider." *Id*. § 25.701(b)(2). Although the political file requirements applicable to SDARS licensees expressly apply to SDARS licensees "engaged in origination programming," the Commission's rules do not have a definition of "SDARS origination programming." *See id.* § 25.702(b)(1). As discussed below, we propose to add to the rules a definition of "SDARS origination programming" to mean "programming carried on a SDARS facility over one or more channels and subject to the exclusive control of the SDARS licensee." *See infra* para. 22.

[3] 47 U.S.C. § 325(c).

[4] For purposes of this proceeding, the term "political ads" includes both candidate advertisements (i.e., ads by or on behalf of legally qualified candidates for public office) and issue advertisements (i.e., paid political programming that communicates a message relating to any political matter or controversial issue of public importance, but does not include ads by or on behalf of legally qualified candidates for public office).

[5] *See, e.g.*, *Licensee Responsibility as to Political Broadcasts*, 15 FCC 2d 94 (1968) ("In short, the presentation of political broadcasts, while only one of many elements of service to the public, is an important facet, deserving the licensee's closest attention, because of the contribution broadcasting can thus make to an informed electorate—in

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established by Congress and implemented by the Commission ensure that candidates for elective office have access to broadcast facilities and certain other media platforms and promote transparency about the entities that sponsor political ads. Further, the Commission has long recognized that broadcasters "must assume responsibility for all material which is broadcast through their facilities," "includ[ing] all programs and advertising material which they present to the public," and "to take all reasonable measures to eliminate any false, misleading, or deceptive matter" and that "[t]his duty is personal to the licensee and may not be delegated."[6]

4. *Political Programming Requirements*. The relevant statutory political programming provisions applicable to broadcasters are set forth in sections 315 and 312(a)(7) of the Communications Act of 1934, as amended (Act).[7] Under section 315(a), if a broadcast licensee permits one legally qualified candidate for a public office to use its station, it must afford all other candidates for that office an "equal opportunity" to use the station.[8] In addition, section 315(a) prohibits broadcast licensees from censoring candidate ads.[9] The equal opportunities and no censorship requirements in section 315 also apply to cable system operators,[10] SDARS licensees,[11] and DBS service providers engaged in origination

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turn so vital to the proper functioning of our Republic.") (citations omitted); *Licensee Obligations in Political Campaigns*, 14 FCC 2d 765 (1968) ("The Commission recognizes the important contribution which licensees can make to an informed electorate by contributing broadcast time to election campaigns."). *See also* CBS v. FCC, 453 U.S. 367, 396 (1981) (stating that the reasonable access provision "make[s] a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process").

[6] *Programming Inquiry*, Report and Statement of Policy, 44 FCC 2303, 2313 (1960) (*1960 Programming Inquiry*). While the Commission in 1986 eliminated certain policies specific to false and misleading advertising, it did so in light of the general responsibility of broadcasters for all material broadcast through their facilities and the obligation they have to take all reasonable measures to eliminate any false, misleading, or deceptive matter. *In the Matter of Elimination of Unnecessary Broad. Regulation*, 57 Rad. Reg.2d (P&F) 913 (1985) (citing *1960 Programming Inquiry*), *recon. denied,* 58 Rad. Reg.2d (P&F) 864 (1985), *aff'd, sub nom.*, *Telecomm Research and Action Center v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986). *See also Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, Notice of Proposed Rulemaking, Docket No. 20500, 53 FCC 2d 934, 934-35, paras. 2-4 (1975) (*Licensed-Conducted Contests NPRM*) (proposing contest rules, explaining that presentation of false and misleading program material, including advertising, violates a licensee's basic duty to deal honestly with its audience and is contrary to the public interest); Report and Order, 60 FCC 2d 1072 (1976) (*Licensed-Conducted Contests Report and Order*) (adopting a revised version of the proposed contest rules to prohibit "false, misleading, or deceptive contest descriptions"). Although the Commission's concern with false, misleading, or deceptive matter applies broadly, our focus in the instant proceeding is on AI when used in political advertising given recent reports about its anticipated widespread use in the creation of political advertising in the current and future election cycles, and its potential harm to the electoral process. *See infra* note 45.

[7] 47 U.S.C. §§ 312(a)(7), 315.

[8] *Id.* § 315(a) ("If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station."). *See* 47 CFR § 73.1941.

[9] 47 U.S.C. § 315(a) ("[S]uch licensee shall have no power of censorship over the material broadcast under the provisions of this section). *See* 47 CFR § 73.1941.

[10] Section 315(c) of the Act defines the term "broadcasting station" as including cable television systems and the terms "licensee" and "station licensee" as including cable operators. 47 U.S.C. § 315(c) ("For purposes of this section— (1) the term 'broadcasting station' includes a community antenna television system; and (2) the terms 'licensee' and 'station licensee' when used with respect to a community antenna television system mean the operator of such system."). *See* 47 CFR § 76.205.

[11] *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, IB Docket No. 95-91, Gen. Docket No. 90-357, Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5792, para. 92 (1997) (extending the political programming provisions in sections 312(a)(7) and 315 of the Act to SDARS licensees); 47 CFR § 25.702(a)-(b).

programming.[12] Section 312(a)(7) requires broadcast licensees to give legally qualified candidates for federal office the opportunity to purchase "reasonable amounts of time."[13] The reasonable access provisions of section 312(a)(7) also apply to SDARS licensees[14] and DBS service providers engaged in origination programming,[15] but are not applicable to cable system operators.[16]

5. *Political Recordkeeping Requirements*. The political recordkeeping requirements serve to reinforce the statutory protections for political programming. The Commission first adopted rules requiring broadcast stations to maintain public inspection files documenting requests for political advertising time more than 80 years ago,[17] and political file obligations have been embodied in section 315(e) of the Act since 2002.[18] Section 315(e)(1) requires broadcast licensees to maintain and make available for public inspection information about each request for the purchase of broadcast time that is made: (a) by or on behalf of a legally qualified candidate for public office,[19] or (b) by an issue advertiser whose advertisement communicates a message relating to a political matter of national importance.[20] It is crucial that stations maintain political files that are complete and up to date because the information in them directly affects, among other things, the statutory rights of opposing candidates to request equal opportunities under section 315(a) of the Act and present their positions to the public prior to an election.[21] In addition, as the Commission has stated, "the disclosures included in the political file further

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[12] *See Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, MM Docket No. 93-205, Report and Order, 13 FCC Rcd 23254 (1998) (*DBS Public Interest Obligations Report and Order*) (establishing rules applying the political programming rules in sections 312(a)(7) and 315 of the Act to DBS service providers, in accordance with section 335 of the Act), *recon. denied*, Memorandum Opinion and Order on Reconsideration of the First Report and Order, 19 FCC Rcd 5854 (2003) (*Order on Reconsideration*), *Order on Reconsideration vacated and superseded by* Second Order on Reconsideration of First Report and Order, 19 FCC Rcd 5647 (2004) (*DBS Public Interest Obligations Sua Sponte Reconsideration)*; 47 CFR § 25.701(b)-(d).

[13] 47 U.S.C. § 312(a)(7). Section 312(a)(7) states:

> The Commission may revoke any station license or construction permit —
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> (7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a non-commercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.

Id. *See* 47 CFR § 73.1944. The reasonable access provision does not apply to candidates for state and local elective offices.

[14] *See supra* note 11.

[15] *See supra* note 12.

[16] *See 1991 Political Programming Order*, 7 FCC Rcd at 679, para. 4.

[17] *See* 3 Fed. Reg. 1691 (1938).

[18] 47 U.S.C. § 315(e). *See* Bipartisan Campaign Reform Act of 2002, P.L. 107-155, 116 Stat. 81 (2002).

[19] 47 U.S.C. § 315(e)(1)(A); 47 CFR § 73.1943(a)(1).

[20] 47 U.S.C. § 315(e)(1)(B); 47 CFR § 73.1943(a)(2).

[21] Pursuant to section 73.1941(c) of the Rules, candidates have one week from an opponent's initial "use" to request equal opportunities. 47 CFR § 73.1941(c). The term "use" means a positive, identifiable appearance by voice or likeness of a legally qualified candidate for public office, lasting four or more seconds in any program that is not exempt under section 73.1941(a)(1)-(a)(4) of the Commission's rules. *See Codification of the Commission's Political Programming Policies*, Memorandum Opinion and Order, 9 FCC Rcd 651 (1994); *Request by Carter/Mondale Reelection Committee, Inc, for Interpretive Ruling*, Letter Ruling, 80 FCC 2d 285 (Broadcast Bur., 1980); *Request of Oliver Products for Declaratory Ruling*, Memorandum Opinion and Order, 4 FCC Rcd 5953 (1989). The failure by a station to promptly upload information about each "use" denies requesting candidates the

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the First Amendment's goal of an informed electorate that is able to evaluate the validity of messages and hold accountable the interests that disseminate political advocacy."[22] Section 315(e)(2) specifies the kinds of records that must be maintained in political files,[23] and section 315(e)(3) provides that these records must be placed in the political file "as soon as possible" and retained for a period of at least two years.[24] The Commission has also applied political file rules to cable television system operators,[25] DBS providers,[26] and SDARS licensees engaged in origination programming.[27]

6. *Sponsorship Identification Recordkeeping Requirements.* Pursuant to section 317 of the Act and section 73.1212 of the Commission's rules, broadcast stations are required to make on-air sponsorship identification announcements when any valuable consideration is paid or promised to them in exchange for the broadcast of program material.[28] Section 73.1212(e) also requires broadcast stations to comply with certain recordkeeping requirements when the material broadcast is "political matter or matter involving the discussion of a controversial issue of public importance."[29] Specifically, section 73.1212(e) provides, in relevant part:

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notice they need to assert their statutory rights to equal opportunities in a timely manner. *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket Nos. 00-168 and 00-44, Second Report and Order, 27 FCC Rcd 4535, 4562, para. 55 (2012) (*Standardized and Enhanced Disclosure Requirements*).

[22] *Standardized and Enhanced Disclosure Requirements*, 27 FCC Rcd at 4543-44, para. 16.

[23] 47 U.S.C. § 315(e)(2); 47 CFR § 73.1943(b).

[24] 47 U.S.C. § 315(e)(3); 47 CFR § 73.1943(d).

[25] *Amendment of Part 76 of the Commission's Rules and Regulations Relative to Obligations of Cable Television Systems to Maintain Public Inspection Files and Permit System Inspections*, Docket No. 19948, Report and Order, 48 FCC 2d 72, para. 1 (1974); 47 CFR § 76.1701.

[26] Section 335 of the Act imposes public interest obligations on DBS providers and requires the Commission, at a minimum, to apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to DBS providers. 47 U.S.C. § 335(a). The Commission adopted rules requiring DBS providers to abide by political file obligations similar to those requirements placed on terrestrial broadcasters and cable systems in order to assist in evaluations of compliance with the political programming rules and to enable competing candidates to review other candidates' advertising access and rates. *DBS Public Interest Obligations Report and Order*, 13 FCC Rcd at 23271, para. 41; *DBS Public Interest Obligations Sua Sponte Reconsideration*, 19 FCC Rcd at 5561, para. 35; 47 CFR § 25.701(d).

[27] *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, MB Docket No. 14-217, Report and Order, 31 FCC Rcd 526, 537-38, paras. 26-27 (2016) (*Expansion of Online Public File Obligations*); *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12415, para. 146 (2008); 47 CFR § 25.702(b).

[28] 47 U.S.C. § 317(a)(1); 47 CFR § 73.1212(a). The Commission has extended to cable television system operators engaged in origination cablecasting sponsorship identification requirements that are largely the same as those applicable to broadcasters. *See* 47 CFR § 76.1615.

[29] 47 CFR § 73.1212(e). Although the Commission has not specifically defined the term "political" for purposes of section 73.1212, it has stated that fact should not deter licensees from making good faith determinations in this area. *Sonshine Family Television, Inc*., Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18686, 18695, n.45 (2007) (*Sonshine)*. Numerous examples of what constitutes "political matter" can be found in Commission and bureau decisions. *See, e.g.*, *id*. at 18695, para. 17 (finding a program consisting of partisan representatives and commentators analyzing and debating various issues central to the presidential campaign then underway, as well as clips of the candidates themselves making political statements at their respective parties' conventions, to be "political matter"); *Primer, Political Broadcasting*, 100 FCC 2d 1476, 1536-37, para. 97 (1984) (stating that "political matter" includes programs that deal with "political subjects," such as when members of Congress furnish

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> Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified under § 73.3526. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under § 73.3526. Such lists shall be kept and made available for a period of two years.[30]

The objective of the list retention requirement is to "preserv[e] the audience's right to know by whom it is being persuaded."[31] The Commission has extended to cable operators that engage in origination cablecasting sponsorship identification and recordkeeping requirements that are largely the same as those applicable to broadcasters.[32]

B. Other Federal and State Actions

7. The Federal Election Commission (FEC) currently is considering a petition for rulemaking filed by Public Citizen requesting that the FEC amend its rules to clarify that existing campaign law prohibiting fraudulent misrepresentation by candidates for federal office and their agents applies to deliberately deceptive AI-generated content in campaign ads or other campaign communications.[33] To date, eleven states—California, Idaho, Indiana, Michigan, Minnesota, New Mexico, Oregon, Texas, Utah, Washington, and Wisconsin—have enacted legislation regulating AI-generated "deepfakes" in political ads and other campaign communications.[34] In addition, similar legislation is awaiting governor signature or under consideration in 28 states.[35]

8. We note that there are distinctions between these federal and state actions and our proposals in the instant proceeding. For example, the FEC petition for rulemaking would clarify that a prohibition on fraudulent misrepresentation in campaign ads by or on behalf of candidates for federal office applies to deceptive AI-generated content in such ads,[36] while our proposal would require on-air

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stations with their weekly or monthly taped or filmed reports to their constituents); *Gary M. Sukow*, Letter, 36 FCC 2d 668 (Broadcast Bur. 1972) (finding that interviews with a political officeholder, whether or not in connection with a current election, constitute "political matter"). Given "the limitless number of potential controversial issues and the varying circumstances in which they might arise," the Commission makes determinations of whether a broadcast matter involves a controversial issue of public importance on a case-by-case basis, relying heavily on licensees' editorial judgment, and the scope of review is limited to determining whether a licensee has acted reasonably and in good faith in deciding whether material involves controversial issues of public importance. *Sonshine*, 22 FCC Rcd at 18689, para. 6.

[30] 47 CFR § 73.1212(e).

[31] *Amendment of the Commission's Sponsorship Identification Rules*, Docket No. 19513, Report and Order, 52 FCC 2d 701, 711, para. 30 (1975) (*1975 Sponsorship ID Report and Order*).

[32] *See* 47 CFR §§ 76.1615, 76.1701(e).

[33] *See* 88 FR 55606 (Aug. 16, 2023). As noted in the FEC proceeding, it is considering action pursuant to its own statutory authority. This proceeding is based upon our own statutory authority, and is meant to supplement, not supersede, any future actions taken by the FEC.

[34] *Tracker: State Legislation on Deepfakes in Elections*, Public Citizen (updated Apr. 5, 2024) (*Tracker: State Legislation*), https://www.citizen.org/article/tracker-legislation-on-deepfakes-in-elections/.

[35] *Id*.

[36] *See* 88 FR 55606 (Aug. 16, 2023).

disclosures in ads by or on behalf of candidates for both federal and state offices and issue ads that contain any AI-generated content. Our proposals today are meant to complement, not replace, this effort, which has the common goal of ensuring an informed public. The final and proposed state actions vary widely,[37] and some explicitly exempt ads aired by broadcast stations.[38] Our proposed on-air disclosure requirement would ensure that broadcast stations and other affected Commission licensees and regulatees face uniform requirements.

III. DISCUSSION

A. Potential Public Interest Benefits and Harms of Using AI-Generated Content in Political Ads

9. With recent advancements and rapid growth in generative AI tools, the use of AI is expected to play a substantial role in the creation of political ads in 2024 and beyond.[39] We anticipate that the use of AI technologies in political ads could provide a number of benefits. The use of AI-generated content could help candidates and issue advertisers tailor their messages to specific communities.[40] For example, a campaign could use AI tools to generate messages targeted to the unique concerns of certain demographics or to produce content in the candidate's voice in multiple languages.[41] AI could also help to speed up and automate the generation of political ads, enabling campaigns and issue advertisers to

[37] *See generally Tracker: State Legislation*.

[38] *See, e.g.*, Cal. Assemb. B. 2355 (2023-2024), Chapter 1.5 (Cal. Stat. 2024) (exempting from compliance with the bill's AI-generated content disclosure requirements for certain political advertisements "a radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, when it is paid to broadcast a qualified political advertisement").

[39] *See, e.g.*, Adav Noti, *How Artificial Intelligence Influences Elections, And What We Can Do About It*, Campaign Legal Center (Feb. 28. 2024) (Noti, *How AI Influences Elections*), https://campaignlegal.org/update/how-artificial-intelligence-influences-elections-and-what-we-can-do-about-it (asserting that "2024 will be the first election year to feature the widespread influence of AI … in the making and distribution of public messages about candidates"); Rachel Curry, *How 2024 Presidential Candidates Are Using AI Inside Their Election Campaigns*, CNBC (Dec. 17, 2023) (Curry, *How 2024 Presidential Candidates Are Using AI*), https://www.cnbc.com/2023/12/17/how-2024-presidential-candidates-are-using-ai-in-election-campaigns.html (asserting that "[w]ith the 2024 presidential election less than a year away, AI is already an active participant in U.S. politics, largely in government agencies and the campaigning space of elected officials."); Christina LaChappelle and Catherine Tucker, *Generative AI in Political Advertising*, Brennan Center for Justice (Nov. 28, 2023) (LaChappelle and Tucker, *Generative AI in Political Advertising*), https://www.brennancenter.org/our-work/research-reports/generative-ai-political-advertising (asserting that "[g]enerative AI is poised to redefine modern campaigning"); David E. Clementson, *6 Ways AI Can Make Political Campaigns More Deceptive Than Ever*, The Conversation (July 21, 2023), https://theconversation.com/6-ways-ai-can-make-political-campaigns-more-deceptive-than-ever-209760 (asserting that "[c]ampaigns are now rapidly embracing artificial intelligence for composing and producing ads").

[40] *See, e.g.*, Curry, *How 2024 Presidential Candidates Are Using AI* (asserting that AI has the potential to create hyper-localized, hyper-personalized political campaigns); LaChappelle and Tucker, *Generative AI in Political Advertising* (noting that AI's ability to synthesize information about a target audience and generate a persuasive message tailored to that audience's interests holds great promise for microtargeting efforts); Darrel M. West, *How AI Will Transform the 2024 Elections*, The Brookings Institution (May 3, 2023) (West, *How AI Will Transform*), https://www.brookings.edu/articles/how-ai-will-transform-the-2024-elections/ (noting that "AI enables very precise audience targeting, which is crucial in political campaigns.").

[41] *See, e.g.*, Curry, *How 2024 Presidential Candidates Are Using AI* (noting that AI could allow diverse communities to get campaign messages in their own languages); LaChappelle and Tucker, *Generative AI in Political Advertising* (asserting that AI can assist in developing and targeting messages that address the unique concerns of different voters); Antoinette Siu, *Agencies Weigh the Pros and Cons of Generative AI As Political Advertising Grows*, Digiday (Aug. 15, 2023) (Siu, *Agencies Weigh the Pros and Cons*), https://digiday.com/media-buying/agencies-weigh-the-pros-and-cons-of-generative-ai-as-political-advertising-grows/ (stating that "AI can help political campaigns reach specific demographics with tailored messaging, maximizing the effectiveness of their ads").

create new content quickly in the final days leading up to an election.[42] Additionally, because new AI tools are inexpensive, require little training to use, and are capable of generating a large volume of content, such tools could be valuable to smaller campaigns with limited financial resources, allowing them to reach more voters and compete more effectively with larger, well-funded campaigns.[43] We seek comment on other benefits that the use of AI technologies in political ads could provide.

10. The use of AI-generated content in political ads, however, also creates a potential for providing deceptive, misleading, or fraudulent information to voters. Of particular concern is the use of AI-generated "deepfakes"—altered images, videos, or audio recordings that depict people doing or saying things they did not actually do or say, or events that did not actually occur.[44] Such manipulated media could mislead the public about candidates' assertions or positions on particular issues or about whether certain events actually happened, creating confusion and distrust among potential voters.[45] Moreover, AI tools could be used to produce convincingly false messages about where or when to cast a ballot, or to discourage voters from showing up to their polling locations.[46] To be sure, deceptive political advertising is nothing new. Even before the emergence of AI technologies, tools such as Photoshop have been used to manipulate images used in political ads.[47] The advancement and widespread availability of AI tools, however, has made it easier, faster, and less expensive to make sophisticated and realistic "deepfakes" and other manipulated media, making it increasingly more difficult for voters to discern what is real and what is fake. We seek comment on these and other potentially harmful effects of using AI-generated content in political ads. Do these potentially harmful effects support Commission intervention in order to ensure that the public is informed of the presence of AI-generated content?

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[42] *See, e.g.*, Siu, *Agencies Weigh the Pros and Cons* (noting that AI can help speed up and automate content creation, testing, and ad generation); West, *How AI Will Transform* (noting that candidates can use generative AI to respond instantly to campaign developments).

[43] *See, e.g.*, LaChappelle and Tucker, *Generative AI in Political Advertising* (asserting that the multitude of low-cost and user-friendly AI tools that require no prior knowledge of coding or machine learning can be especially helpful to smaller political campaigns with fewer financial resources); Siu, *Agencies Weigh the Pros and Cons* (asserting that AI can lower costs for campaigns and level the playing field for candidates).

[44] *See, e.g.*, Curry, *How 2024 Presidential Candidates Are Using AI* (stating that AI is already being used to create "deepfakes" from the level of the presidential campaign to local races); LaChappelle and Tucker, *Generative AI in Political Advertising* (asserting that "[m]uch of the media debate surrounding artificial intelligence in politics focuses on AI's potential to generate false or misleading content").

[45] *See, e.g.*, Noti, *How AI Influences Elections*. *See also* Adam Edelman, *States Are Lagging in Tackling Political Deepfakes, Leaving Potential Threats Unchecked Heading into 2024*, NBC News (Dec. 16, 2023) (noting, for example, that a deepfake could be released shortly before Election Day showing a candidate drunk, or speaking incoherently, or consorting with a disreputable figure), https://www.nbcnews.com/politics/artificial-intelligence-deepfakes-2024-election-states-rcna129525.

[46] *See, e.g.*, Noti, *How AI Influences Elections.* For example, in January 2024, potential primary voters in New Hampshire received a robocall, which used an AI-generated voice that sounded like President Biden's, telling them to stay home and "save your vote" by skipping the state's primary. *Id*. *See* Letter from Loyaan A. Egal, Chief, Enforcement Bureau, to Alex Valencia, Chief Compliance Officer, Lingo Telecom, LLC (Feb. 2, 2024) (directing Lingo Telecom, the entity alleged to have originated robocall traffic using AI-generated voice cloning to spread misinformation to voters prior to New Hampshire's primary election, to immediately cease and desist from supporting unlawful robocall traffic on its networks), https://www.fcc.gov/document/fcc-issues-robocall-cease-and-desist-letter-lingo-telecom. While this example involved robocalls, AI tools could be used to create similar messages for political ads aired on the radio or television.

[47] *See, e.g.*, Daniel I. Weiner and Lawrence Nordon, *Regulating AI Deepfakes and Synthetic Media in the Political Arena*, Brennan Center for Justice (Dec. 5, 2023), https://www.brennancenter.org/our-work/research-reports/regulating-ai-deepfakes-and-synthetic-media-political-arena ("Doctored photos and manipulated video clips are nothing new in politics. Indeed, editing photos of one's opponent to make them look more sinister or unappealing has become a hallmark of American campaigning.").

B. Proposed Definition of "AI-Generated Content"

11. We seek comment on how to define "AI-generated content" for purposes of this proceeding. In general, AI can encompass a wide range of technologies and functions, and AI technologies include programs that emulate aspects of human intelligence, such as a human voice. While the Commission has not yet adopted a specific definition of "artificial intelligence," various organizations and statutes have defined AI. In October, 2023, President Biden's *Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence* drew upon a statutory definition of AI established by the National Artificial Intelligence Initiative in 2021:

> The term "artificial intelligence" or "AI" has the meaning set forth in 15 U.S.C. 9401(3): a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine- and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action.[48]

The Defense Authorization Act of 2019 provided similar definitions of artificial intelligence, including "an artificial system designed to act rationally, including a software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communication, decision making, and acting."[49]

12. We propose to define "AI-generated content" for purposes of this proceeding as "an image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual's appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors." We believe that this definition would adequately encompass content artificially created for use in political advertising.[50] We seek comment on this proposed definition. We also invite commenters to propose alternative definitions.

C. Proposal to Require Broadcasters to Disclose Use of AI-Generated Content in Political Ads

13. We propose to require that all radio and television broadcast stations that air political ads inquire whether political ads scheduled to be aired on their stations contain AI-generated content and

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[48] Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, Sec. 3(b), Oct. 30, 2023, https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/. The definition of AI in the National Artificial Intelligence Initiative is codified at 15 U.S.C. § 9401(3). *See* Pub. L. 116–283, div. E, § 5001, 134 Stat. 4523 (2021).

[49] John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636, 1695 (Aug. 13, 2018). In this statute, the term "artificial intelligence" is defined as follows:

(1) Any artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight, or that can learn from experience and improve performance when exposed to data sets.
(2) An artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action.
(3) An artificial system designed to think or act like a human, including cognitive architectures and neural networks.
(4) A set of techniques, including machine learning, that is designed to approximate a cognitive task.
(5) An artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communication, decision making, and acting.

[50] *See supra* paras. 9-10 (discussing some of the ways AI could be used to generate content for political ads).

provide an on-air announcement for all such ads disclosing the use of AI-generated content in the ad. We further propose to require all broadcast stations that air political ads to include in their online political files a notice disclosing the use of AI-generated content for each political ad that contains such content. As discussed above, broadcasters have an obligation under the Communications Act to operate in the public interest.[51] Given the potential for AI-generated content in political ads to provide false, misleading, and/or deceptive information to the public, we seek comment on whether requiring broadcasters to disclose the use of AI-generated content in political ads is consistent with their statutory obligation to serve the public interest[52] by ensuring that listeners and viewers have the necessary information to evaluate such ads for themselves.

14. Notably, we are not proposing to ban or restrict the use of AI-generated content in producing political ads. Instead, we are merely proposing that listeners and viewers be informed when a political ad contains such content. As we explain above, the use of AI could help political advertisers provide timely, accurate, and relevant information to potential voters, or AI tools could be used to provide potential voters misleading or deceptive information.[53] We believe that disclosing that a political ad contains AI-generated content could help the listening or viewing audience make informed decisions about the information in that ad. We seek comment on this view.

1. Proposal to Require Broadcasters to Inquire Whether Political Ads Contain AI-Generated Content

15. We propose to require that all broadcast stations that air political ads inquire whether political ads scheduled to be aired on their stations contain any AI-generated content, as defined in this proceeding. Under this proposal, a broadcast station would fulfill its obligation by making a simple inquiry to the person or entity making the request for the purchase of airtime as to whether a political ad includes AI-generated content, as defined herein. Specifically, a broadcast station would be required to inform the person or entity requesting airtime, at the time an agreement is reached to air a political ad, that the station is required to make an on-air disclosure for any political ad that includes such AI-generated content and inquire whether the ad does in fact include such AI-generated content. We seek comment on this proposal. Would such an inquiry be expected to identify all political ads that use AI-generated content (that is, would the person or entity making the request for airtime generally be expected to know whether the ad was created using AI-generated content)? Are there any additional or alternative actions that we should require broadcast stations to take to inquire whether a political ad uses AI-generated content? We also seek comment on how stations should go about making the inquiry. For example, should we require that the station's inquiry to the person or entity making the request for the purchase of airtime be made in writing so that there is a record of the request? What if the person or entity requesting airtime fails to respond to a station's inquiry? Should a station that makes a simple inquiry consistent with the Commission's rules be deemed to have satisfied its obligations even if there is no response to the inquiry? Additionally, there may be instances where a station is informed by a third party that a political ad contains AI-generated content where there was no previous affirmative response to the station's inquiry. In these cases, should a station be required to re-inquire with the person or entity making the request for the purchase of airtime?

2. Proposal to Require Broadcasters to Make On-Air Announcement Disclosing the Use of AI-Generated Content in Political Ads

16. In cases where a political ad scheduled to be aired on a broadcast station contains AI-generated content, we propose to require the station to make an on-air announcement disclosing that the

[51] *See supra* para. 3.

[52] *Id*. *See also infra* para. 27.

[53] *See supra* paras. 9-10.

ad contains AI-generated content.[54] The station would be required to make the on-air announcement immediately preceding or during the broadcast of any ad by or on behalf of a legally qualified candidate for public office[55] and any issue ad[56] that contains AI-generated content. We seek comment on this proposal. We seek comment on whether a disclosure immediately preceding or during the ad would be more prominent and bring greater awareness of the fact that the ad contains AI-generated content than a disclosure immediately following the ad. Alternatively, we seek comment on whether broadcasters should be permitted to air the disclosure at any time immediately preceding, during, or immediately following the ad.

17. We further propose that broadcasters use standardized language for the on-air disclosure. For radio ads, we propose that broadcasters provide an on-air announcement orally in a voice that is clear, conspicuous, and a speed that is understandable, stating that: "The following message contains information generated in whole or in part by artificial intelligence." For television ads, we propose that broadcasters provide an on-air announcement immediately preceding or during the ad either (i) orally in a voice that is clear, conspicuous, and at a speed that is understandable, stating that: "The following message contains information generated in whole or in part by artificial intelligence" or "This message contains information generated in whole or in part by artificial intelligence,"; or (ii) visually with letters equal to or greater than four percent of the vertical picture height for at least four seconds, stating that: "The following message contains information generated in whole or in part by artificial intelligence" or "This message contains information generated in whole or in part by artificial intelligence." To the extent that we conclude that broadcasters should have the option to air the disclosure immediately following the ad, this language could be modified as appropriate to state: "The preceding message contains information generated in whole or in part by artificial intelligence." We seek comment on the proposal to require standardized language and on the specific language that we have proposed. Is the proposed language sufficient to inform listeners and viewers that an ad's content may require further evaluation to determine whether it contains misleading or inaccurate information? Should the disclosure be in English, in the primary language of the broadcast if other than English, or both? Should television broadcasters have the option to make the on-air disclosure either orally or visually, or should they be required to make the disclosure both orally and visually to ensure that it is accessible to individuals with visual or hearing impairments? In instances where a simple inquiry to the candidate or other entity requesting airtime reveals that there is no AI-generated content in a political ad, the broadcaster would not be required to make any on-air disclosure. However, we seek comment on the appropriate actions for stations to take in cases where a station is informed by a credible third party[57] that a political ad contains AI-generated content where there was no previous affirmative response to the station's inquiry or the station received a negative response to its inquiry. In these circumstances, should a station be required to follow up with the purchaser of the ad and/or insert the required disclosure? We note that candidate ads are already required

[54] As noted above, section 315(a) of the Communications Act prohibits broadcast stations from censoring candidate ads. However, there is prior Bureau-level precedent that indicates "content-neutral disclaimers" in candidate ads are permissible and do not violate the no censorship provisions in section 315(a). *See South Arkansas Radio Co*., Notice of Apparent Liability for Forfeiture, 5 FCC Rcd 4643, 4644 (MB 1990). We tentatively conclude that "content-neutral disclaimers," including the disclaimers proposed in this NPRM, are consistent with section 315(a) and do not constitute censorship. We seek comment on this tentative conclusion.

[55] 47 CFR § 73.1940.

[56] As noted in note 4, *supra,* for purposes of the proposed rules, we propose to define the term "issue ad" as "paid political programming that communicates a message relating to any political matter or controversial issue of public importance, but does not include advertising that is made by or on behalf of a legally qualified candidate for public office." *See also* Proposed Rules App. A, § 73.1945(b), *supra*. We seek comment on this proposed definition.

[57] A "credible third party" could, for example, be defined to include the individual depicted in the advertisement or an individual officially associated with the event depicted in the advertisement. We seek comment on other third parties who would likely be able to provide credible information as to whether a political ad contains AI-generated content.

to include an on-air disclosure that the candidate has approved the ad.[58] We seek comment on where the proposed on-air disclosure regarding AI-generated content would be placed in the audio or video feed relative to the existing disclosure.

3. Proposal to Require Broadcasters to Include in Their Political Files a Notice Disclosing Use of AI-Generated Content in Political Ads

18. We also propose to require all broadcast stations to include in their online political files a notice disclosing the use of AI-generated content for each political ad that contains such content. Under this proposal, broadcasters would include a notice for each political ad that contains AI-generated content using the same standardized language discussed above: "This message contains information generated in whole or in part by artificial intelligence." We seek comment on this proposal. We believe that this requirement would help to foster greater transparency regarding the use of AI-generated content in political ads by, for example, allowing listeners, viewers, and other interested parties to confirm which ads aired by a station contained AI-generated content. Nevertheless, we seek comment on whether it would be sufficient for the broadcaster to provide only an on-air disclosure.

19. We also seek comment on whether notices of AI-generated content included in broadcasters' political file would be "data assets" potentially subject to the requirements of the OPEN Government Data Act. The OPEN Government Data Act,[59] requires agencies to make "public data assets" available under an open license and as "open Government data assets," i.e., in machine-readable, open format, unencumbered by use restrictions other than intellectual property rights, and based on an open standard that is maintained by a standards organization.[60] This requirement is to be implemented "in accordance with guidance by the Director" of the OMB.[61]

20. We tentatively conclude that notices of AI-generated content included in broadcasters' political files would not constitute "data assets" as defined in 44 U.S.C. § 3502(17). A "data asset" is defined as "a collection of data elements or data sets that may be grouped together,"[62] and "data" as "recorded information, regardless of form or the media on which the data is recorded."[63] Each AI-generated content notice, however, is separate and distinct from one another and the information contained in the political files generally is unstructured rather than systematically arranged in a table or database, such that the information could not readily be grouped together in any meaningful way. We tentatively conclude therefore that, in the absence of a standardized collection form, the proposed AI-generated content notices would not constitute a "data asset" subject to the requirements of the OPEN Government Data Act. We seek comment on this tentative conclusion.

4. Applicability of Proposed Disclosure Requirements to Political Ads Embedded in Network or Syndicated Programming

21. We seek comment on whether and how the proposed on-air and political file disclosure requirements should be applied to a candidate or issue ad that is embedded within a network or syndicated program aired by a broadcast station. We note that in instances where a political ad is embedded in network or syndicated programming, a broadcast station airing the programming would not have direct contact with the person or entity requesting to purchase airtime from the network or syndication company

[58] 47 U.S.C. § 315(b)(2)(C), (D).

[59] Congress enacted the OPEN Government Data Act as Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435 (2019), §§ 201-202.

[60] 44 U.S.C. § 3502(20), (22) (definitions of "open Government data asset" and "public data asset"); *id.* § 3506(b)(6)(B) (public availability).

[61] OMB has not yet issued final guidance.

[62] 44 U.S.C. § 3502(17).

[63] *Id.* § 3502(16).

for the political ad. In such cases, how does a broadcast station airing the network or syndicated programming currently comply with its obligations under the political programming and political file rules? Does the network or syndication company generally inform the broadcast stations airing the programming, at some point prior to the scheduled broadcast date, that a particular program includes a political ad? Should we require broadcast stations to make a simple inquiry to the respective network or syndication company, at the time the network or syndication company informs the stations airing the programming that a political ad is embedded in a particular program, whether the ad contains AI-generated content? Alternatively, should we allow broadcast stations to make a simple inquiry of their network and syndication partners at specified intervals (e.g., annually or at the start of each television season) requesting that the network or syndication company inform the stations each time that a political ad embedded within a program contains AI-generated content, prior to the airing of that program? Would the network or syndication company be expected to know if a political ad embedded within its programming contains AI-generated content? If a simple inquiry to the network or syndication company is unlikely to reveal whether political ads embedded in network and syndicated programming contain AI-generated content, should we exempt broadcast stations from complying with the proposed on-air and political file disclosure requirements with respect to political ads embedded in network or syndicated programming? In cases where a station is informed by a credible third party[64] that a political ad contains AI-generated content where there was no previous affirmative response to the station's inquiry, should a station be required to insert the required disclosure? To the extent that a simple inquiry to a network or syndication company can be expected to reveal whether political ads embedded in network or syndicated programming contain AI-generated content, would it be technically feasible or practical for the stations to insert an on-air announcement disclosing that such ads contain AI-generated content in the network or syndicated programming? If not, should we exempt stations from complying with the proposed on-air disclosure requirement but nevertheless require that the stations comply with the proposed political file disclosure requirement?

D. Extension of Proposals to Cable Operators, DBS Providers, and SDARS Licensees That Engage in Origination Programming

22. We propose to extend the proposals for broadcast stations discussed herein to cable operators, DBS providers, and SDARS licensees engaged in origination programming. As discussed above, "origination cablecasting" is "[p]rogramming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator."[65] Similarly, "DBS origination programming" is "programming (exclusive of broadcast signals) carried on a DBS facility over one or more channels and subject to the exclusive control of the DBS provider."[66] We note that the Commission's rules do not have a Commission definition of "SDARS origination programming." We propose to amend the rules by adding a definition of to define "SDARS origination programming" as "programming carried on a SDARS facility over one or more channels and subject to the exclusive control of the SDARS licensee." We seek comment on this proposal. Cable operators, DBS providers, and SDARS licensees engaged in origination programming are subject to certain public interest obligations, including political programming and political file requirements.[67] We tentatively conclude that the same public interest justifications that support the proposed rules for broadcast stations apply equally to cable operators, DBS providers, and SDARS licensees engaged in origination programming. We seek comment on this tentative conclusion.

23. Consistent with our broadcast station proposals, cable operators, DBS providers, and SDARS licensees, when engaged in origination programming, would be required to inquire whether

[64] *See supra* note 57.

[65] 47 CFR § 76.5(p).

[66] *Id*. § 25.701(b)(2).

[67] *See supra* paras. 4-6.

political ads scheduled to be aired on their systems or facilities contain any AI-generated content and provide an on-air announcement for all such ads disclosing the use of AI-generated content in the ad.[68] We also propose to use the same standardized language for disclosure of AI-generated content in political ads as proposed for broadcast stations.[69] Further, we propose to require these entities to include in their political files a notice disclosing the use of AI-generated content in political ads they air.[70] We seek comment on application of these proposals to cable operators, DBS providers, and SDARS licensees engaged in origination programming.

E. Extension of Proposals to Section 325(c) Permit Holders

24. We further propose to extend the on-air disclosure proposed in this proceeding to political ads broadcast pursuant to a section 325(c) permit.[71] A section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S.-licensed station, transmits or delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country and broadcasts the programming from the foreign station with a sufficient transmission power or a geographic location that enables the material to be received consistently in the United States.[72] Section 325(c) permit applications are subject to the requirements of section 309 (applicable to applications for U.S. station licenses).[73] Specifically, the Commission applies "the same criteria for meeting the programming standards component of the public interest, convenience, and necessity requirement to both a domestic license proceeding under section 309 and a cross-border broadcast license proceeding under section 325."[74]

25. Consistent with our proposals for U.S.-licensed broadcast stations, we propose to require section 325(c) permit holders to inquire whether political ads scheduled to be delivered from their U.S. studio to a non-U.S. broadcast station contain any AI-generated content and provide an on-air notice for all such ads disclosing the use of AI-generated content in the ad.[75] We propose to use the same standardized language for on-air notices as proposed for U.S.-licensed broadcast stations. We seek

[68] *See supra* paras. 15-16.

[69] *See supra* para. 17.

[70] *See supra* paras. 18.

[71] 47 U.S.C. § 325(c). Section 325(c) of the Act states that "No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor." *Id*.

[72] *Wrather—Alvarez Broadcasting, Inc. v. F.C.C.*, 248 F.2d 646, 651 (D.C. Cir. 1957). *See also* Remote Control Border Stations: Hearing before the Comm. on Merchant Marine, Radio, and Fisheries at 7, 14, 73d Cong. 2 (1934) (Statement of C. B. Jolliffe, Chief Engineer Federal Radio Commission).

[73] 47 U.S.C. § 325(d).

[74] *Application of Fox Television Stations, Inc.*, FCC Docket No. 96-434, Memorandum Opinion and Order, 11 FCC Rcd 14870, 14877, para. 21 (1996) (*Fox II*), *aff'd sub nom. Radio Television S.A. de C.V. v. FCC*, 130 F.3d 1078 (D.C. Cir. 1997) (*quoting Channel 51 of San Diego, Inc. v. FCC*, 79 F3d 1187, 1189 (D.C. Cir. 1996) (*Channel 51)*). *See also* S. Rep. No. 73-319, at 1085 (1934) (stating that the Commission is authorized to grant permits to those who operate in the public interest).

[75] *See supra* paras. 15-16.

comment on these proposals. In addition, we seek comment on whether any of our proposals should be modified for section 325(c) permit holders.[76]

26. We tentatively conclude that applying the same on-air disclosure requirements proposed in this proceeding for U.S.-licensed stations to section 325(c) permit holders would serve the public interest because, like programming from a U.S.-licensed station, programming transmitted or delivered by a section 325(c) permit holder is received by audiences in the United States. Thus, the obligation to serve the public interest by taking responsibility for material—including false, misleading or deceptive material—disseminated to the public through their facilities applies equally to section 325(c) permit holders. We seek comment on our tentative conclusion.

F. Statutory Authority

27. We seek comment on whether the Commission has the authority to adopt the proposed on-air disclosure and political file requirements for AI-generated content in political ads. Section 303(r) authorizes the Commission, as "public convenience, interest, or necessity requires,… to make such regulation and prescribe such restrictions, not inconsistent with law, as may be necessary to carry out the provisions of this Act…."[77] The Commission has relied on its authority under section 303(r) to develop rules necessary to the public interest.[78] For example, the Commission relied on section 303(r), among other general provisions of the Act, to adopt contest rules, explaining that the presentation of false and misleading program material, including advertising, violates a licensee's basic duty to deal honestly with its audience and is contrary to the public interest.[79] The confines of a Title III licensee's duty are set by the general standard "the public interest, convenience or necessity,"[80] and thus the Commission also has

[76] Because section 325(c) permit holders are not required to maintain a public inspection file, we seek comment on whether permit holders should be required to include a notice disclosing the use of AI-generated content in political ads they air in the International Communications Filing System in the relevant section 325(c) permit file, in addition to on-air disclosure of such content.

[77] 47 U.S.C. § 303(r).

[78] *See, e.g.*, *Children's Television Report and Policy Statement,* 50 FCC 2d 1 (19741994) (using its general authority over television in section 303(r) to adopt a policy statement restricting advertising in children's television programs prior to the passage of the Children's Television Act of 1990). The Commission has also used its general rulemaking powers in section 303(r) to adopt broadcast ownership restrictions. *See FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) (affirming the FCC's newspaper/broadcasting cross-ownership ban as properly based on the "public interest standard" under section 303(r)); *United States v. Storer Broadcasting Co*., 351 U.S. 192 (1956) (sustaining under section 303(r) the FCC's multiple-ownership rules placing limitations on the total number of stations in each broadcast service a person may own or control); *National Broadcasting Co. v. United States,* 319 U.S. 190 (1943) (sustaining under section 303(r) regulations prohibiting broadcast networks from owning more than one AM radio station in the same community, and from owning any standard broadcast station in any locality where the existing standard broadcast stations are so few that competition would be substantially restrained by such licensing)*; Office of Communications of the United Church of Christ v. FCC*, 560 F.2d 529 (2d Cir. l977) (concluding that although EEO enforcement is not in the Commission's statutory mission, the Commission possesses the power "to issue such regulations in furtherance of its statutory mandate to ensure that broadcasters serve all segments of the community").

[79] *Licensee-Conducted Contests NPRM*, 53 FCC 2d at 935, para. 6 (citing sections 4(i), 303(f) and 303(r) as authority for adopting the proposed contest rules); *Licensee-Conducted Contests Report and Order*, 60 FCC 2d at 1073 (adopting contest rules).

[80] 47 U.S.C. §§ 307(a), 309(a).

authority under various sections of the Act, including sections 307(a),[81] 309(a),[82] 309(k)(1)(a),[83] and 335 (for DBS providers)[84] to enact rules in the public interest. We seek comment on whether these provisions authorize us to require broadcasters, SDARS licensees and DBS providers engaged in origination programming, and section 325(c) permit holders to make the proposed on-air and political file disclosures regarding AI-generated content in political ads. In this regard, broadcasters, and SDARS licensees and DBS providers engaged in origination programming, are subject to statutory provisions and the Commission's rules governing political programming and recordkeeping, the fundamental purpose of which is to foster an informed electorate.[85] Are the proposed on-air disclosure and political file requirements necessary to ensure broadcasters and other regulated entities take reasonable measures to address false, misleading, or deceptive material and to ensure that voters have the information needed to assess the reliability and credibility of political ads in order to make informed decisions and therefore would serve the public interest? Are there other statutory provisions, such as sections 303(b),[86] 315,[87] 317,[88] or others, that would support adoption of the proposed on-air disclosure and political file requirements for broadcasters, SDARS licensees and DBS providers engaged in origination programming?

28. We note that cable operators engaged in origination programming are not subject to the Commission's rulemaking authority under section 303(r). We seek comment on whether there are other statutory provisions, such as sections 315[89] or others, that would support adoption of the proposed on-air disclosure and political file requirements for cable operators engaged in origination programming. Section 315 of the Act imposes on broadcast licensees and cable operators[90] certain programming obligations with respect to candidate ads[91] and recordkeeping obligations with respect to both candidate and certain issue ads,[92] and these obligations have been extended to DBS providers[93] and SDARS

[81] *Id.* § 307(a) (authorizing the Commission to grant licenses if the public interest, convenience, or necessity will be served).

[82] *Id.* § 309(a) (directing the Commission to determine whether the public interest, convenience, or necessity will be served by granting license applications).

[83] *Id.* § 309(k)(1)(A) (directing the Commission to grant a broadcast station renewal application if it finds that, during the preceding term, the station has served the public interest, convenience, and necessity).

[84] *Id.* § 335 (directing the Commission to impose on DBS providers public interest or other requirements for providing video programming). *See supra* note 30.

[85] *See supra* paras. 4-5.

[86] 47 U.S.C. § 303(b) (requiring the Commission as the "public convenience, interest, or necessity requires" to "[p]rescribe the nature of the service to be rendered" by station licensees).

[87] *Id.* § 315.

[88] *Id.* § 317 (on air disclosure requirements for paid programming, political programs, or any program involving the discussion of any controversial issue).

[89] 47 U.S.C. § 315.

[90] As noted above, section 315(c) of the Act defines the term "broadcasting station" as including cable television systems and the terms "licensee" and "station licensee" as including cable operators. 47 U.S.C. § 315(c) ("For purposes of this section— (1) the term 'broadcasting station' includes a community antenna television system; and (2) the terms 'licensee' and 'station licensee' when used with respect to a community antenna television system mean the operator of such system.").

[91] *See supra* para. 4.

[92] *See supra* para. 5.

[93] *See supra* note 11.

licensees.[94] Section 315(d) of the Act authorizes the Commission to "prescribe appropriate rules and regulations to carry out the provisions of this section" and section 315(e) imposes certain political record keeping requirements.[95] We seek comment on whether the proposed on-air disclosure and political file requirements are within the Commission's authority under sections 315(d) and/or 315(e). Given that section 315 imposes specific programming obligations only with respect to candidate ads, and not issue ads, does that suggest that this section provides authority to adopt the proposed on-air disclosure requirements only for candidate ads? Alternatively, would the same rationale for adopting the proposed on-air disclosure requirements for candidate ads also justify adopting the proposed disclosure requirements for issue ads?[96]

G. First Amendment Issues

29. We seek comment on whether the proposed rules raise First Amendment concerns, including those pertaining to broadcasters and cable operators, DBS providers, and SDARS licensees that engage in origination cablecasting. To the extent that our proposed rules implicate regulated entities' First Amendment right to free speech, we note there are various levels of constitutional scrutiny that might apply. For example, content neutral restrictions[97] on broadcasters are subject to review under "heightened rational basis," and will be upheld if reasonably tailored to satisfy a substantial government interest.[98] If the proposed rules are not considered content-neutral restrictions, then, with respect to broadcasters, the disclosure requirements will be reviewed under intermediate scrutiny, the less rigorous standard applied to content-based restrictions on that medium.[99] Under the intermediate scrutiny test, restrictions are upheld when the government advances "important governmental interests unrelated to the suppression of free speech" and does not "burden substantially more speech than necessary to further those interests."[100] If strict scrutiny applies, the disclosure requirements will be upheld if the government's interest is "compelling," and the rules are both "narrowly tailored" to further that interest

[94] *See supra* note 12.

[95] 47 U.S.C. § 315(d).

[96] We also note that section 4(i) of the Act authorizes the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). We seek comment on whether this provision would support adoption of the proposed on-air disclosure and political file requirements for cable operators engaged in origination programming. In particular, would the proposed on-air disclosure and political file requirements be reasonably ancillary to the Commission's performance of its statutorily mandated political programming and recordkeeping responsibilities?

[97] For example, the proposed on-air disclosure and political file requirements do not ban political ads that contain AI-generated content nor do they prohibit participation in public discussion; rather, the proposed rules would merely require a factual statement indicating that the ad contains information generated in part using artificial intelligence. *See Virginia Pharmacy Bd v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976) (defining "content-neutral" speech regulations as "those that are justified without reference to the content of the regulated speech").

[98] *Ruggiero v. FCC*, 317 F.3d 239, 247 (D.C. Cir. 2003) (en banc) (explaining that this standard represents a middle ground "between …minimal scrutiny and intermediate scrutiny").

[99] *See FCC v. League of Women Voters*, 468 U.S. 364, 380-81 (1984) (invalidating under the First Amendment a statute forbidding any non-commercial educational station that receives a grant from the Corporation for Public Broadcasting to "engage in editorializing") (*League of Women Voters*). While a content-based regulation of speech is typically subject to strict scrutiny, the Supreme Court has described First Amendment review of broadcast regulation as "less rigorous" than in other contexts based on the spectrum scarcity rationale. *See Turner Broadcasting System Inc. v. FCC*, 512 U.S. 622, 637 (1984) (*Turner*) (*citing Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 388-89 (1969)). *See also League of Women Voters*, 468 U.S. at 377 ("our cases have taught that, given spectrum scarcity, those who are granted a license to broadcast must serve in a sense as fiduciaries for the public by presenting 'those views and voices which are representative of [their] community and which would otherwise, by necessity, be barred from the airwaves") (*quoting Red Lion*, 395 U.S. at 389).

[100] *See Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180, 189 (1997); *Turner*, 512 U.S. at 637.

and the "least restrictive means" of accomplishing the desired objective.[101] We tentatively conclude that the proposed on-air disclosure and political file requirements comport with the First Amendment right to free speech, regardless which level of scrutiny applies. We seek comment on this tentative conclusion.

30. *Government interest*. We tentatively conclude that the Commission has a compelling interest in providing greater transparency regarding the use of AI-generated content in political advertising. As we explain above, the Commission has long recognized that broadcasters must assume responsibility for all material which is broadcast through their facilities and must take reasonable measure to address any false, misleading, or deceptive matter.[102] In addition, at the very heart of the political programming and recordkeeping requirements enacted by Congress and implemented by the Commission is a recognition of the critical role that political programming plays in fostering an informed electorate.[103] The need for transparency about the use of AI-generated content is particularly pronounced when political ads intended to influence voters are involved. Recent advancements in generative AI technologies have led to their widespread use, and AI is expected to play a growing role in the future production of political ads.[104] While the use of AI technologies to create political ads may provide benefits,[105] it can also result in the dissemination of deceptive, misleading, or fraudulent information to voters.[106]

31. As set forth above, the proposed on-air disclosure and political file requirements would further the government interest in ensuring that broadcasters and other program distributors fulfill their responsibilities regarding the material which they relay through their facilities and take reasonable measures to address potentially false, misleading, or deceptive material and ensuring that the public has the information they need to make informed decisions about the political ads that are carried. Disclosing the use of AI-generated content in political ads is vital to ensuring that the public can assess the substance and credibility of the information they receive. Rather than abridging the free speech rights of broadcasters and cable operators, DBS providers, and SDARS licensees that engage in origination programming, the proposed on-air disclosure and political file rules would further the goals of the First Amendment and Communication Act by ensuring broadcasters and other regulated entities take reasonable measures to address potentially false, misleading, or deceptive political advertising and enhancing the public's ability to evaluate political ads, thus promoting an informed electorate and improving the quality of public discourse. We tentatively conclude that this interest is sufficient to satisfy any standard of First Amendment review that may apply. We seek comment on this analysis.

32. *Tailoring*. We tentatively conclude that the proposed rules are appropriately tailored to serve the government interest. The proposed rules would require the disclosure of any political ad that uses artificial intelligence, defined as "an image, audio, or video generated using computational technology or other machine-based system that depicts an individual's appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors." Since broadcasters and other affected Commission licensees and regulatees would be required to make on-air and political file disclosures only in instances where the ad contains content meeting this definition, and would be allowed to rely on the information provided to them by the person or entity making the request for the purchase of airtime, any administrative burden would be modest. Accordingly, we tentatively conclude that the proposed rules are appropriately tailored to meet any standard that might apply. We seek comment on this analysis.

33. *The Means Chosen to Accomplish the Government's Objective*. We also tentatively

[101] *See U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813 (2000).

[102] *See supra* para. 3.

[103] *See id.*

[104] *See supra* para. 9.

[105] *See id.*

[106] *See supra* para. 10.

conclude that the means chosen to accomplish the government's objective would meet any standard of First Amendment review that might apply. Our proposed on-air disclosure and political file requirements would not prevent or inhibit the airing of political ads, i.e., these requirements would not prevent anyone from speaking.[107] Rather, these requirements would promote the goals of the First Amendment and the Communications Act by ensuring broadcasters and other regulated entities take reasonable measures to address potentially false, misleading, or deceptive material and enhancing the public's ability to assess the substance and reliability of political ads, thus fostering an informed electorate and improving the quality of public discourse. As the Court has previously concluded, "disclosure is a less restrictive alternative to more comprehensive regulations of speech."[108] Broadcasters and cable operators, DBS providers, and SDARS licensees engaged in origination programming would have the modest burdens of inquiring of the ad sponsor whether the political ad scheduled to be aired contains an AI-generated content and, if it does, making on-air and political file disclosures. For this reason, we anticipate our proposed rules would have little if any impact on the decision to accept political ads containing AI-generated content as compared to other ads. We seek comment on this analysis.

34. In addition, we tentatively conclude that the analysis provided here applies equally to those operating pursuant to section 325(c) permits, because as described in section III.E above, there is nothing to differentiate them from other broadcast licensees when it comes to political programming requirements, and the governmental interest and effects on speech are the same as to content transmitted by U.S.-licensed broadcasters and content transmitted by section 325(c) permittees over the facilities of a non-U.S. broadcaster.

35. We also tentatively conclude that the proposed on-air and political file disclosures would not violate the First Amendment rights of the candidates or other entities that sponsor political ads. As set forth in detail above, these proposed rules would further the government's compelling interest in providing greater transparency regarding the use of AI-generated content in political advertising, ensuring that voters have the information they need to make informed decisions about the political ads that are carried on broadcast stations and other affected facilities.[109] Additionally, we tentatively conclude that the proposed rules are appropriately tailored to serve this interest. When purchasing airtime, broadcasters or other regulated entities would simply ask candidates and other entities that sponsor ads whether their ad was created using AI-generated content. If the answer is yes, then the broadcaster or regulated entity would add the necessary disclosure. Our proposed definition of AI-generated content is straightforward and simple to apply. Thus, the administrative burden would be modest. Finally, we tentatively conclude that the means chosen to achieve the government's objective would satisfy First Amendment review. The proposed rules would not suppress speech by preventing or inhibiting candidates and other entities that sponsor political ads from using artificial intelligence to produce their ads. Rather, the proposed disclosure requirements would promote the goals of the First Amendment by enhancing the public's ability to evaluate the substance and reliability of political ads, thus fostering an informed electorate and improving the quality of public discourse. As we noted above, the Court has previously concluded that "disclosure is a less restrictive alternative to more comprehensive regulations of speech."[110] We seek comment on this analysis.

H. Cost-Benefit Analysis

36. We seek comment on the costs and benefits of our proposed rules on broadcasters, cable operators, DBS providers, and SDARS licensees that engage in origination programming, and section 325(c) permit holders, particularly those that are small entities. We tentatively conclude that requiring

[107] *See supra* para. 14 (emphasizing that we are not proposing to ban or restrict the use of AI-generated content in producing political ads).

[108] *Citizens United v. Fed. Elec. Comm'n*, 558 U.S. 310, 369 (2010) (*Citizens United*).

[109] *See supra* paras. 30-31.

[110] *Citizens United*, 558 U.S. at 369.

these entities to make a simple inquiry to the candidate or other entity that requests airtime as to whether a political ad contains AI-generated content would not impose a significant burden on these entities. In this regard, we expect that the candidate or other entity that requests airtime generally would be aware whether or not a particular ad contains AI-generated content. We also tentatively conclude the proposed rules would benefit the public by providing greater transparency regarding the use of AI-generated content in political ads, while imposing a modest burden on the affected entities (i.e., the burden of making a simple inquiry as to the use of AI-generated content and making an on-air disclosure and/or including a notice in the political file). We seek comment on these tentative conclusions and on other potential benefits and costs of the proposed rules. The benefits and costs of our rules for disclosing AI-generated content depend on the share of political advertisements for which such disclosure would plausibly be required. We thus seek estimates of the share of political advertisement for which disclosure of AI-generated would be required. We also seek comment on the cost to the affected entities of airtime for on-air disclosures aired prior to a political ad (i.e., airtime that could otherwise be sold to other advertisers). Given that candidate ads are already required to include an on-air disclosure that the candidate has approved the ad,[111] we seek comment on any burden associated with requiring two on-air disclosures in a single candidate ad. In addition, we request comment on whether there are any alternative actions we should take to minimize any burdens on affected entities, particularly on small entities. For example, should we limit the proposed on-air disclosure and political file requirements to political ads aired in the 60-day period leading up to a primary election and the 90-day period leading up to a general election? Would it significantly reduce burdens on small entities to require only an on-air disclosure informing the public of the use of AI-generated content, and not a separate notice in the online political file?

37. *Digital Equity and Inclusion*. The Commission, as part of its continuing effort to advance digital equity for all,112 including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations[113] and benefits (if any) that may be associated with the issues discussed herein. Specifically, we seek comment on how any Commission actions taken to address the use of AI in political advertising may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

IV. PROCEDURAL MATTERS

38. *Ex Parte Rules - Permit-But-Disclose*. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[114] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are

[111] *See supra* para. 17.

[112] Section 1 of the Communications Act of 1934 as amended provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

[113] The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

[114] 47 CFR §§ 1.1200 *et seq*.

reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

39. *Filing Requirements—Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[115]

40. *Regulatory Flexibility Act Analysis*. The Regulatory Flexibility Act of 1980, as amended (RFA),[116] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[117] Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must have a separate and distinct heading designating

[115] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, 35 FCC Rcd 2788 (2020).

[116] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601, *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[117] *Id*. § 605(b).

them as responses to the IRFA and must be filed by the deadlines for comments on the first page of this document.[118]

41. *Paperwork Reduction Act*. This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

42. *People with Disabilities*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

43. *Providing Accountability Through Transparency Act*. Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on https://www.fcc.gov/proposed-rulemakings.[119]

44. *Additional Information*. For additional information on this proceeding, please contact Kathy Berthot of the Media Bureau's Policy Division at Kathy.Berthot@fcc.gov or (202) 418-7454.

V. ORDERING CLAUSES

45. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 303, 307, 309, 312, 315, 317, 325(c)-(d), and 335 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, 307, 309, 312, 315, 317, 325(c)-(d), and 335, this Notice of Proposed Rulemaking **IS ADOPTED.**

46. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking in MB Docket No. 24-211 on or before thirty (30) days after publication in the Federal Register and reply comments on or before forty-five (45) days after publication in the Federal Register.

47. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[118] *See* 5 U.S.C. § 603(a).

[119] *Id.* § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

APPENDIX A

Proposed Rules

REVISIONS ARE SHOWN WITH BOLD AND STRIKEOUTS

The Federal Communications Commission proposes to amend Parts 25, 73, and 76 of Title 47 of the Code of Federal Regulations (CFR) as follows:

PART 25 — SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721.

2. Amend § 25.701 by adding new paragraph (b)(5), renumbering paragraph (d)(4) as paragraph (d)(5), and adding new paragraph (d)(4) to read as follows:

§ 25.701 Other DBS Public interest obligations.

* * * * *

(b)(5) ***Disclosure of Artificial Intelligence-Generated Content in Political Advertising.***

(i) Artificial intelligence-generated content is defined for purposes of this section as set forth in § 73.1945(a) of this chapter.

(ii) Political advertising is defined for purposes of this section as set forth in § 73.1945(b) of this chapter.

(iii) Each DBS provider engaged in origination programming must inquire whether any political advertising scheduled to be aired on its facilities contains any artificial intelligence-generated content. Such inquiry shall be made, in writing to the person or entity making the request for the purchase of political advertising time, at the time that an agreement is reached to air the political advertising on the DBS provider's facilities.

(iv) If a DBS provider's inquiry pursuant to paragraph (iii) of this section finds that any political advertising scheduled to be aired on its facilities contains any artificial intelligence-generated content, the DBS provider must make an on-air announcement, immediately preceding or during the airing of the advertising, stating: "[The following] or [This] message contains information generated in whole or in part by artificial intelligence." The on-air announcement may be provided either orally in a voice that is clear, conspicuous, and at a speed that is understandable, or visually with letters equal to or greater than four percent of the vertical picture height for at least four seconds.

* * * * *

(d) *Political file.*

* * * * *

(4) In the case of political advertising, as defined in § 73.1945(b) of this chapter, found by inquiry from a DBS provider engaged in origination program to contain any artificial intelligence-generated content, as defined in § 73.1945(a) of this chapter, the DBS provider shall place in the

online political file a notice stating that "This message contains information generated in whole or in part by artificial intelligence."

(5) * * *

* * * * *

(3) Amend § 25.702 by revising paragraph (a), , renumbering paragraph (b)(4) as (b)(5), and adding new paragraph (b)(4) to read as follows:

§ 25.702 Other SDARS Public interest obligations.

(a) Political broadcasting requirements. The following political broadcasting rules shall apply to all SDARS licensees: 47 CFR 73.1940 (Legally qualified candidates for public office), 73.1941 (Equal opportunities), 73.1942 (Candidate rates), ~~and~~ 73.1944 (Reasonable access)**, and 73.1945 (Disclosure of Artificial Intelligence-Generated Content in Political Advertising)**. **"SDARS origination programming" is defined to mean "programming carried on a SDARS facility over one or more channels and subject to the exclusive control of the SDARS licensee."**

(b) *Political file.*

* * * * *

(4) In the case of political advertising, as defined in § 73.1945(b) of this chapter, found by inquiry from a SDARS licensee engaged in origination program to contain any artificial intelligence-generated content, as defined in § 73.1945(a) of this chapter, the SDARS licensee shall place in the online political file a notice stating that "This message contains information generated in whole or in part by artificial intelligence."

(5) * * *

* * * * *

PART 73 — RADIO BROADCAST SERVICES

4. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

5. Amend § 73.1943 by renumbering paragraph (d) as paragraph (e) and adding new paragraph (d) to read as follows:

§ 73.1943 Political File.

(d) In the case of political advertising, as defined in § 73.1945(b) of this chapter, found by the licensee's inquiry to contain any artificial intelligence-generated content, as defined in § 73.1945(a) of this chapter, the licensee shall place in the online political file a notice stating that "This message contains information generated in whole or in part by artificial intelligence."

(e) * * *

* * * * *

6. Add a new § 73.1945 to read as follows:

§ 73.1945 Disclosure of Artificial Intelligence-Generated Content in Political Advertising.

(a) Artificial Intelligence-Generated Content is defined for purposes of this section as an image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual's appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors.

(b) Political advertising is defined for purposes of this section as (1) advertising that is made by or on behalf of a legally qualified candidate for public office; or (2) issue advertising. Issue advertising is defined for purposes of this section as paid political programming that communicates a message relating to any political matter or controversial issue of public importance, but does not include advertising that is made by or on behalf of a legally qualified candidate for public office.

(c) Each licensee must inquire whether any political advertising scheduled to be aired on its station contains any artificial intelligence-generated content. Such inquiry shall be made in writing to the person or entity making the request for the purchase of political advertising time, at the time that an agreement is reached to air the political advertising on the station.

(d) If a licensee's inquiry pursuant to paragraph (c) of this section finds that any political advertising scheduled to be aired on its station contains any artificial intelligence-generated content, the licensee must make an on-air announcement, immediately preceding or during the airing of the advertising, stating: "[The following] or [This] message contains information generated in whole or in part by artificial intelligence." For radio stations, the on-air announcement must be provided orally in a voice that is clear, conspicuous, and at a speed that is understandable. For television stations, the on-air announcement may be provided either orally in a voice that is clear, conspicuous, and at a speed that is understandable, or visually with letters equal to or greater than four percent of the vertical picture height for at least four seconds.

*** * * * ***

PART 76 — MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

7. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

8. Add a new § 76.207 to read as follows:

§ 76.207 Disclosure of Artificial Intelligence-Generated Content in Political Advertising.

(a) Artificial Intelligence-Generated Content is defined for purposes of this section as an image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual's appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors.

(b) Political advertising is defined for purposes of this section as (1) advertising that is made by or on behalf of a legally qualified candidate for public office; or (2) issue advertising. Issue advertising is defined for purposes of this section as paid political programming that communicates a message relating to any political matter or controversial issue of public importance, but does not include advertising that is made by or on behalf of a legally qualified candidate for public office.

(c) Each cable television system operator must inquire whether any political advertising scheduled to be aired on its system contains any artificial intelligence-generated content. Such inquiry shall be made in writing to the person or entity making the request for the purchase of political advertising time, at the time that an agreement is reached to air the political advertising on the system.

(d) If a cable television system operator's inquiry pursuant to paragraph (c) of this section finds that any political advertising scheduled to be aired on its station contains any artificial intelligence-generated content, the operator must make an on-air announcement, immediately preceding or during the airing of the advertising, stating: "[The following] or [This] message contains information generated in whole or in part by artificial intelligence." The on-air announcement may be provided either orally in a voice that is clear, conspicuous, and at a speed that is understandable, or visually with letters equal to or greater than four percent of the vertical picture height for at least four seconds.

* * * * *

9. Amend § 76.1701 by renumbering paragraphs (d) and (e) as (e) and (f) and adding new paragraph (d) to read as follows:

§ 76.1701 Political File.

* * * * *

(d) In the case of political advertising, as defined in § 73.1945(b) of this chapter, found by inquiry from a cable operator engaged in origination cablecasting to contain any artificial intelligence-generated content, as defined in § 73.1945(a) of this chapter, the cable operator shall place in the online political file a notice stating that "This message contains information generated in whole or in part by artificial intelligence."

(e) * * *

(f) * * *

* * * *

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rule changes proposed in the *Notice of Proposed Rulemaking* (*NPRM*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. The presentation of political programming has long been recognized as an essential element of broadcasters' obligation to serve the public interest because of the critical role such programming plays in fostering an informed electorate, which in turn is vital to the effective operation of the democratic process.[4] The political programming and recordkeeping requirements established by Congress and implemented by the Commission ensure that candidates for elective office have access to broadcast facilities and certain other media platforms and foster transparency about the entities that sponsor political ads.

3. The use of emerging artificial intelligence (AI) technologies in political ads can serve the public interest in fostering an informed electorate by, for example, allowing candidates to tailor their messages to specific populations or empowering smaller political campaigns with limited financial resources to reach larger audiences. The use of AI technologies in political advertising, however, also has the potential to produce "deepfakes" and other deceptive and misleading information, creating confusion among the voting public. Accordingly the Commission initiates the *NPRM* to further the public interest by ensuring broadcasters and other regulated entities take reasonable measures to address potentially false, misleading or deceptive material and promoting an informed electorate.

4. The *NPRM* proposes to define "AI-generated content" for purposes of this proceeding as "an image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual's appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors." The *NPRM* also proposes to require that all radio and television broadcast stations inquire whether political ads scheduled to be aired on their stations contain any AI-generated content and make an on-air announcement for all such ads disclosing the use of AI-generated content in the ad. Under this proposal, broadcast stations would fulfill their obligation by making a

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[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[4] *See, e.g., Licensee Responsibility as to Political Broadcasts*, 15 FCC 2d 94 (1968) ("In short, the presentation of political broadcasts, while only one of many elements of service to the public, is an important facet, deserving the licensee's closest attention, because of the contribution broadcasting can thus make to an informed electorate—in turn so vital to the proper functioning of our Republic.") (citations omitted); *Licensee Obligations in Political Campaigns*, 14 FCC 2d 765 (1968) ("The Commission recognizes the important contribution which licensees can make to an informed electorate by contributing broadcast time to election campaigns."). *See also* CBS v. FCC, 453 U.S. 367, 396 (1981) (stating that the reasonable access provision "make a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process.").

simple inquiry to the person or entity that submits the request for the purchase of airtime as to whether a political ad includes AI-generated content. Further, the *NPRM* proposes to require that broadcasters make the on-air disclosure at the beginning of or during the ad and use standardized language for the disclosure and to require broadcast stations to include in their online political files a notice, using standardized language, disclosing the use of AI-generated content for each political ad that contains such content. Moreover, the *NPRM* proposes to extend these proposed on-air disclosure and political file requirements to cable operators, DBS providers, and SDARS licensees engaged in origination programming and to permit holders transmitting programming pursuant to section 325(c) of the Act.[5] The *NPRM* does not propose to ban or otherwise restrict the use of AI-generated content in political ads. Instead, it merely seeks to ensure that the listening and viewing public is informed when political ads include such content.

B. Legal Basis

5. The proposed action is authorized pursuant to sections 1, 4(i), 303, 307, 309, 312, 315, 317, 325(c)-(d), and 335 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, 307, 309, 312, 315, 317, 325(c)-(d), and 335.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA).[8] A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[9]

7. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[10] Based on industry data, there are about 420 cable companies in the U.S.[11] Of these, only seven have more than 400,000 subscribers.[12] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[13] Based on industry data, there are about 4,139 cable systems (headends) in

[5] 47 U.S.C. § 325(c).

[6] 5 U.S.C. § 603(b)(3).

[7] *See id.* § 601(6).

[8] *See id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)(1)). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[9] 15 U.S.C. § 632.

[10] 47 CFR § 76.901(d).

[11] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[12] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[13] 47 CFR § 76.901(c).

the U.S.[14] Of these, about 639 have more than 15,000 subscribers.[15] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

8. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[16] For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.[17] Based on industry data, only six cable system operators have more than 498,000 subscribers.[18] Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[19] Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

9. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.[20] Transmission facilities may be based on a single technology or combination of technologies.[21] Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and

[14] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[15] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[16] 47 U.S.C. § 543(m)(2).

[17] *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (*2023 Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id*. This threshold will remain in effect until the Commission issues a superseding Public Notice.. *See* 47 CFR § 76.901(e)(1).

[18] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q (*last visited Sept. 27, 2023); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[19] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR § 76.910(b).

[20] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[21] *Id.*

wired broadband Internet services.[22] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[23]

10. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[24] U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.[25] Of this number, 2,964 firms operated with fewer than 250 employees.[26] Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service - DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.[27] DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

11. *Radio Stations*. This industry is comprised of "establishments primarily engaged in broadcasting aural programs by radio to the public."[28] Programming may originate in their own studio, from an affiliated network, or from external sources.[29] The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small.[30] U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.[31] Of this number, 1,879 firms operated with revenue of less than $25 million per year.[32] Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

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[22] *See id*. Included in this industry are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

[23] *Id*.

[24] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[25] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[26] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[27] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report,* Table III.A.5*,* 32 FCC Rcd 568, 595 (Jan. 17, 2017).

[28] *See* U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations*," https://www.census.gov/naics/?input=515112&year=2017&details=515112.

[29] *Id.*

[30] *See* 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

[31] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

[32] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than $100,000, and $100,000 to $249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher (continued….)

12. The Commission estimates that as of March 31, 2024, there were 4,427 licensed commercial AM radio stations and 6,663 licensed commercial FM radio stations, for a combined total of 11,090 commercial radio stations.[33] Of this total, 11,088 stations (or 99.98 %) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on April 4, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of March 31, 2024, there were 4,320 licensed noncommercial (NCE) FM radio stations, 1,960 low power FM (LPFM) stations, and 8,913 FM translators and boosters.[34] The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

13. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations[35] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of "small business" is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

14. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."[36] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[37] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small.[38] 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the

that noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[33] *Broadcast Station Totals as of March 31, 2024*, Public Notice, DA 24-323 (rel. Apr. 4, 2024) (*April 2024 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-24-323A1.pdf.

[34] *Id*.

[35] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR § 21.103(a)(1).

[36] *See* U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* https://www.census.gov/naics/?input=515120&year=2017&details=515120.

[37] *Id.*

[38] *See* 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

entire year.[39] Of that number, 657 firms had revenue of less than $25,000,000.[40] Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

15. As of March 31, 2024, there were 1,382 licensed commercial television stations.[41] Of this total, 1,263 stations (or 91.4%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 4, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 31, 2024, there were 383 licensed noncommercial educational (NCE) television stations, 379 Class A TV stations, 1,829 LPTV stations and 3,118 TV translator stations.[42] The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

16. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.[43] Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.[44] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[45] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[46]

17. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[47] U.S. Census Bureau data for 2017 show that there

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[39] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[40] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[41] *Broadcast Station Totals as of March 31, 2024*, Public Notice, DA 24-323 (rel. Apr. 4, 2024) (*April 2024 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-24-323A1.pdf.

[42] *Id.*

[43] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[44] *Id.*

[45] *Id.*

[46] Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

[47] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

were 3,054 firms that operated in this industry for the entire year.[48] Of this number, 2,964 firms operated with fewer than 250 employees.[49] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.[50] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[51] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

18. The rule changes proposed in the *NPRM*, if adopted, would impose compliance and recordkeeping obligations on small, as well as other entities. Specifically, the *NPRM* proposes to require broadcast stations, cable operators, SDARS licensees, and DBS providers engaged in origination programming, and section 325(c) permit holders, to make a simple inquiry to the candidate or other entity that requests airtime as to whether a political ad contains AI-generated content and provide on air-disclosures informing listeners and viewers that such ads contain AI-generated content. The *NPRM* further proposes to require that broadcast stations, and cable operators, SDARS licensees, and DBS providers engaged in origination programming, include a notice in their online political files for all political ads that include AI-generated content disclosing that the ad contains such content.

19. At this time the record does not include sufficient cost/benefit analyses to allow the Commission to quantify the costs of compliance for small entities including whether it will be necessary for small entities to hire professionals to comply with the proposed rules if adopted. The Commission expects, however, that the proposed rules would impose only a modest burden on the affected entities (i.e., the burden of making a simple inquiry as to the use of AI-generated content and making an on-air disclosure and/or including a notice in the political file), because the candidates or entities requesting airtime should be aware of whether the ad which they seek to have aired contains AI-generated content. The *NPRM* nevertheless seeks comment, particularly for small entities, on the costs and burdens of the proposed rules and whether there are any actions it should take to minimize any burdens on small entities.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

20. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."[52]

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[48] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[49] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[50] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[51] *Id.*

[52] 5 U.S.C. § 603(c)(1)-(c)(4).

21. An alternative option that may reduce burdens on small entities considered in the *NPRM* is whether to limit the proposed on-air disclosure and political file requirements to political ads aired in the 60-day period leading up to a primary election and the 90-day period leading up to a general election. The *NPRM* also considers whether requiring *only* an on-air disclosure informing the public of the use of AI-generated content, and not a separate notice in the online political file, would significantly reduce burdens on small entities. To assist in its evaluation of the economic impact of the proposed rules on small entities, and to better explore options and alternatives, the Commission seeks comment on whether any of the burdens associated with the compliance and recordkeeping requirements described above can be minimized for small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities based on its review of the record and any comments filed in response to the *NPRM* and this IRFA.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

22. None.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, Notice of Proposed Rulemaking, MB Docket No. 24-211

Artificial Intelligence has become powerful enough to mimic human voices and create life-like images.

This year in the primary election in New Hampshire, thousands of voters got an AI-generated robocall impersonating President Biden that told them not to vote.

This past summer, the campaign of Governor DeSantis was flagged for circulating fake AI-altered images of former President Trump.

Facing a rising tide of disinformation, roughly three-quarters of Americans say they are concerned about misleading AI-generated content. That's why the Federal Communications Commission is focused on delivering on a simple standard that is grounded in a key principle of democracy—transparency.

Today the FCC takes a major step to guard against AI being used by bad actors to spread chaos and confusion in our elections. We propose that political advertisements that run on television and radio should disclose whether AI is being used. If a candidate or issue campaign used AI to create an ad, the public has a right to know.

Voters deserve to know if the voices and images in political commercials are authentic or if they have been manipulated. To be clear, we make no judgment on the content being shared or prevent it from airing. This is not about telling the public what is true and what is false. It is about empowering every voter, viewer, and listener to make their own choices.

Some dispute the power granted by Congress to this agency to oversee the political messages they see on television, hear over the radio, or receive over the phone. They are wrong. Since the 1930s, the FCC has used this authority to require our nation's broadcasters to maintain a publicly available file for campaign ads. This file has information about who bought a campaign ad, how much they paid for it, and when it ran. Over time Congress expanded these requirements to include ads run on cable and satellite, too. These are also the policies that led to what are now familiar on-air disclosures so that every viewer and listener knows who is responsible for the ad.

While obfuscating may delay action in Washington, states across the country are not waiting. Nearly half of the States in this country have enacted laws to regulate the use of AI technology in elections. Most of these laws are bipartisan. And while those actions may not cover all aspects of how this technology may be used in our elections, they understand the urgency of the moment we are in and the need to start somewhere. We can help bring uniformity and stability to the patchwork of state laws on AI technology and deepfakes seeking to bring greater transparency in our elections.

The Federal Elections Commission is also considering a rulemaking on AI, announcing this year that they expect to act in early Summer. I welcome that upcoming announcement. With our complementary authorities, the FEC can regulate AI use in online advertisements for federal candidates while the FCC can focus on the areas where the FEC is powerless to act. The FEC does not oversee television and radio stations. Moreover under the law FEC authority over campaigns is limited to federal political candidates and does not extend to independent issue campaigns or State and local elections. These gaping loopholes can be addressed by the FCC.

There's too much potential for AI to manipulate voices and images in political advertising to do nothing. At the very least, the public deserves the chance to weigh in and offer solutions about the best way this agency can utilize its existing authority to increase transparency and build consumer trust.

If the voices and images we see in political ads are altered by AI, the public should know that. For political ads on television and radio, the FCC's new disclosure rules would make sure that they will.

STATEMENT OF
COMMISSIONER BRENDAN CARR, DISSENTING

Re: *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, Notice of Proposed Rulemaking, MB Docket No. 24-211

The Democratic National Committee (DNC) is now working to change the rules of the road in the run-up to the 2024 election.[1] It has done so by calling on the administrative state to impose new controls on political speech before voters hit the ballot boxes this fall. The FCC proposal adopted today echoes that DNC-backed initiative and would impose new regulations on the use of AI-generated political speech at the eleventh hour. This push for new regulations comes on the heels of press reports that the DNC and Democrat candidates are "nervous about not keeping up with the GOP in embracing" artificial intelligence technologies in this election cycle.[2]

The FCC's attempt to fundamentally alter the regulation of political speech just a short time before a national election is as misguided as it is unlawful.

That is why you have seen the Chairman of the Federal Election Commission (FEC) warn the FCC that its proposed regulations "would fall within the exclusive jurisdiction of the [FEC], directly conflict with existing law and regulations, and sow chaos among political campaigns for the upcoming election."[3] That is why you have seen leaders in the Senate write in opposition, stating that the FCC "has no authority to police the content of political advertising and any attempt to do so raises serious statutory and constitutional concerns."[4] And that is why you have seen legislation introduced to block the FCC from moving forward.[5]

Those concerns are well founded. We are in the home stretch of a national election. We are so close, in fact, that the comment cycle in this proceeding will still be open in September—the same month when early voting starts in states across the country. If there ever were a moment, if there ever were a time, for a federal agency to show restraint when it comes to the regulation of political speech and to ensure that it is operating within the statutorily defined bounds of its authority, now would be that time.

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[1] *See* Comments of Democratic National Committee, REG 2023-02 (Oct. 16, 2023) (endorsing Public Citizen's petition to regulate AI-based political speech), https://sers.fec.gov/fosers/showpdf.htm?docid=423822; *see also* Petition of Public Citizen (July 13, 2023) (petitioning the Federal Elections Commission to impose regulations on AI-based political speech), https://sers.fec.gov/fosers/showpdf.htm?docid=423502.

[2] *See* Courtney Subramanian, Nervous About Falling Behind the GOP, Democrats Are Wrestling With How To Use AI, Associated Press (May 6, 2024) ("Scarred by the memories of 2016, the Biden campaign, Democratic candidates and progressives are wrestling with the power of artificial intelligence and nervous about not keeping up with the GOP in embracing the technology, according to interviews with consultants and strategists."), https://apnews.com/article/ai-biden-campaign-democrats-2024-election-520f22de269ba1eff24d1544ca38d569; *see also* Dan Merica, *Democrats Wanted an Agreement on Using Artificial Intelligence. It went Nowhere*, Associated Press (June 2, 2025), https://apnews.com/article/artificial-intelligence-ai-dnc-campaign-2024-republicans-7c6b78b6a8ded9ad253be9ef491e0284.

[3] Letter from Chairman Sean Cooksey, Federal Election Commission, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 3, 2024), https://radioink.com/wp-content/uploads/2024/06/Sean-Cooksey-Letter-To-Jessical-Rosenworcel.pdf.

[4] *See* Letter from John Thune, Mitch McConnell, Eric S. Schmitt, & Ted Cruz, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 6, 2024), https://www.thune.senate.gov/public/_cache/files/f6d3f136-5e2e-42d6-a979-6a943dd06162/16768AD893634C882D27CE35E1D5FAE5.06.06.24-letter-to-chairwoman-rosenworcel-re.-ai-and-political-ads.pdf.

[5] Ending FCC Meddling In Our Elections Act, 118th Cong. 2d (2024), https://www.lee.senate.gov/services/files/1326B89B-5136-47CD-A020-44EE088EAAC1.

Yet today, the FCC's proposal throws prudence to the wind. In this Notice of Proposed Rulemaking, the agency *begins* a rulemaking to require disclosures for so-called "AI-generated content" in political advertisements on legacy television and radio, as well as some cable and satellite offerings. The FCC has stated its intent to complete this rulemaking before Election Day.

This is a recipe for chaos. Even if this rulemaking were completed with unprecedented haste, any new regulations would likely take effect after early voting already started. And the FCC can only muddy the waters. Suddenly, Americans will see disclosures for "AI-generated content" on some screens but not others, for some political ads but not others, with no context for why they see these disclosures or which part of the political advertisement contains AI. Far from promoting transparency, the FCC's proposed rules would mire voters in confusion, create a patchwork of inconsistent rules, and encourage monied, partisan interests to weaponize the law for electoral advantage.

I dissent.

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Let's start with the law. Congress gave the Federal Election Commission—not the FCC—the exclusive statutory authority to interpret, administer, and enforce the Federal Election Campaign Act.[6] That includes the authority to establish disclosures for political communications on television and radio.[7] The courts have recognized the FEC's unique authority to regulate political disclosures, even when other agencies attempt to circumvent or supplement its rules, concluding that "the FEC is the exclusive administrative arbiter of questions concerning the name identifications and disclaimers" for political communications.[8]

Here, the FEC is actively considering the very issues implicated by the FCC's proposal, and legislators in Congress are as well. Indeed, a DNC-backed petition has asked the FEC to impose new regulations on AI-generated political speech—a proposal that mirrors the FCC's proposal here—before voters hit the ballot boxes this fall.[9] As noted above, the FEC Chairman warned weeks ago that the publicized portions of the FCC's proposal would countermand the FEC's exclusive jurisdiction, "directly conflict with existing law and regulations, and sow chaos among political campaigns for the upcoming election."[10]

That is because Congress has not given the FCC the type of freewheeling authority over these issues that would be necessary to turn this plan into law. Under the Communications Act, the FCC's authority over candidate ads is limited to ensuring that broadcasters provide candidates equal access, document those ads in the stations' public file, and disclose the ads' sponsors.[11] And even where the FCC has authority (as in the case of sponsorship identification), it cannot force broadcasters to undertake a

[6] 52 U.S.C. § 30106(b). *See also FEC v. NRA Policial Victory Fund*, 513 U.S. 537, 539 (1994).

[7] *See* 52 U.S.C. § 30120.

[8] *Galliano v. United States Postal Service*, 836 F.2d 1362, 1368–70 (D.C. Cir. 1988) (holding that the U.S. Postal Service may not impose its own disclaimer requirements on mailers soliciting political contributions).

[9] *See* Petition of Public Citizen (July 13, 2023) (petitioning the Federal Elections Commission to impose regulations on AI-based political speech), https://sers.fec.gov/fosers/showpdf.htm?docid=423502; Comments of Democratic National Committee, REG 2023-02 (Oct. 16, 2023) (endorsing Public Citizen's petition to regulate AI-based political speech), https://sers.fec.gov/fosers/showpdf.htm?docid=423822.

[10] Letter from Chairman Sean Cooksey, Federal Election Commission, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 3, 2024), https://radioink.com/wp-content/uploads/2024/06/Sean-Cooksey-Letter-To-Jessical-Rosenworcel.pdf.

[11] 47 U.S.C. §§ 315, 317.

roving investigation into the truth or falsity of the disclosure.[12] Likewise, the Bipartisan Campaign Reform Act merely requires the FCC to compile information on electioneering communications that the FEC may regulate.[13]

While the FCC cites to these laws as evidence that it can act here, the opposite is true. By enacting these narrow laws and only authorizing the FCC to act in specific circumstances, Congress limited the FCC's role over political ads to targeted matters. And these narrow laws, in turn, foreclose the FCC's attempt to expand its power by pointing to its generic statutory authority to regulate radio communications.[14] In short, none of the laws cited in the FCC's proposal vest this agency with the sweeping authority it claims over political speech, and the FCC will receive no deference for its novel interpretation of the Communications Act following the Supreme Court's decision in *Loper Bright v. Raimondo*.

And this should not go overlooked: in grasping for authority, the FCC breathes new life into sweeping, decades-old agency precedents that are far from limited to disclosure requirements. In particular, the agency's decision reaches back to a policy statement from the 1960s that announced the FCC's expectation for broadcasters to "take all reasonable measures to eliminate any false, misleading, or deceptive matter" on penalty of license revocation.[15] In other words, the authority the FCC claims today is one that, by its own terms, would empower the FCC to operate as the nation's speech police.

At the same time, the FCC does not explain how its proposal to impose liability on broadcasters for airing covered political ads without a disclosure can be squared with broadcasters' federal obligation to run them. Under the Communications Act, broadcasters must provide candidates "equal opportunities" for airtime and may not exercise the "power of censorship" over this political content.[16] That provision has not only been read by courts as immunizing broadcasters from liability for candidates' speech (including speech that allegedly defames other candidates),[17] but it prevents the FCC from allowing broadcasters to refuse running politically disfavored speech.[18] As the FCC recognized 40 years ago: "A station may not refuse to broadcast a candidate's program on the ground[s] that it contains libelous remarks, even though no opposing candidates have made broadcasts."[19] If today's FCC intends for stations to deny candidates access for failure to reveal the scope and scale of AI-generated content, it is not clear how the Communications Act would permit it.

Nor does the FCC's decision clear basic APA hurdles. As the Supreme Court has made clear, an administrative rule is arbitrary and capricious when the agency has "entirely failed to consider an important aspect of the problem."[20] The FCC has done precisely that here. Specifically, the Vice Chair of the FEC wrote a letter to the FCC, indicating that the FCC and FEC should move forward in a

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

[13] Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, title II, § 201(b), 116 Stat. 90 (2002).

[14] 47 U.S.C. § 303(r).

[15] NPRM at para. 3 & n.6 (May 22, 2024) (citing *Programming Inquiry*, Report and Statement of Policy, 44 FCC 2303, 2313 (1960)).

[16] 47 U.S.C. § 315.

[17] *KENS-TV, Inc. v. Farias*, No. 04-07-00170-CV, 2007 WL 2253502 (Tex. App. Aug. 8, 2007).

[18] *Becker v. FCC*, 95 F.3d 75 (D.C. Cir. 1996).

[19] Federal Communications Commission, *The Law of Political Broadcasting and Cablecasting: A Political Primer*, 100 FCC.2d 1476, 1984 WL 251279, at *37 (1984 ed.).

[20] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

complementary way.[21] Yet there is no indication in the proposal today that the FCC has sought comment in this document on how the FCC can move forward in light of the FEC's views and in a manner that complements that agency's efforts. Failure to create APA notice to consider this aspect of AI regulation is a problem for the FCC.

* * *

Undaunted, the FCC insists that its proposal merely seeks comment on transparency and disclosure obligations. That claim is not credible—in fact, it is incredible.

For starters, the FCC is wading into an area rife with politicization. It is not difficult to see how partisan interests might weaponize the FCC's rules during an election season. For example, the NPRM asks about legally obligating stations to take corrective action when they are informed by a "credible third party" that a political ad has AI-generated content. What is a "credible third party," you might ask? Is it the person being depicted? Is it a self-appointed "expert" on "misinformation" or "disinformation"? The NPRM does not say. I sure hope it is not the Orwellian-named NewsGuard[22] or Global Alliance for Responsible Media.[23]

But I will go out on a limb and predict that these "credible third parties," whoever they are, will not be disinterested observers without skin in the game. They will be about as objective and non-partisan as the self-appointed "fact checkers" that have been working to safeguard political narratives.

The FCC's proposal will invite highly motivated politicos to file a flood of complaints alleging "AI-generated content," not for the sake of the truth, but as a cudgel to chill opponents' speech. The FCC should not be offering itself up as a political football just as the big game is kicking off.

Finally, as discussed above, the FCC's proposal rests on the sweeping—and unprecedented—theory that the FCC is justified in regulating on-air content whenever it believes people might be misled. It is a theory with no limiting principle. Why stop at AI? Why stop at political ads? Why stop at disclosures? Indeed, one might wonder what would prevent the FCC from using the theory advanced by the agency in this NPRM from policing all manners of broadcast content. Today's decision, for its part, is curiously silent on this issue.

* * *

There is no doubt that the increase in AI-generated political content presents complex questions, and there is bipartisan concern about the potential for misuse. That is precisely why the FEC, and others are actively looking at these issues. By contrast, the FCC can only muddy the waters and thumb the scales by interjecting at the last moment before an election.

Is the government really worried that voters will find these political ads misleading in the absence of a regulator's guiding hand? Or is the government worried that voters might find these ads effective?

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[21] *See* Letter from Ellen L. Weintraub, Vice Chair Federal Election Commission, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 6, 2024), https://www.fec.gov/resources/cms-content/documents/Weintraub-Letter-to-Chairwoman-Rosenworcel-June-6-2024.pdf.

[22] *See generally* Press Release, *Comer Probes NewsGuard's Impact on Protected First Amendment Speech* (June 13, 2024), https://oversight.house.gov/release/comer-probes-newsguards-impact-on-protected-first-amendment-speech-government-contracts%EF%BF%BC/.

[23] *See* Brent Scher, *GARM Exposed: House Judiciary Report Says Ad Coalition Likely Broke Law To Silence Conservatives*, House Committee on the Judiciary (July 10, 2024), https://judiciary.house.gov/media/in-the-news/garm-exposed-house-judiciary-report-says-ad-coalition-likely-broke-law-silence.

Imagine going after President Lyndon Johnson for his 1964 "Daisy Girl" ad because voters might think that the child actually died in a nuclear strike.

The more likely scenario is that FCC-mandated disclosures will themselves prove misleading. Consider a recent example. This June, the New York Times criticized videos depicting President Biden's physical frailties as "cheap fakes" that "misled" the public.[24] Fast forward a few weeks, after the first presidential debate took place, and now that same outlet claims that the same video provides compelling evidence of President Biden's physical and cognitive decline.[25] To be sure, this example was not alleged to involve AI-generated content, but the principle is all the same.

Indeed, the agency's plan fails to identify an administrable path forward. It is just straight into the thicket. What does it mean to have "AI-generated content" in a political ad? Is it everything? Is it nothing? The NPRM proposes to cover any "image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual's appearance, speech, or conduct, or an event, circumstance, or situation."[26]

That standard is no standard at all—and, in fact, it highlights the FCC's utter lack of institutional expertise to deal with these issues, especially in this rushed manner. It would be difficult, in this day and age, to imagine an advertisement (political or not) that does *not* use a "computational technology" to "depict" an "event, circumstance, or situation." Partisan interests will undoubtedly complain that any ad contains "AI-generated content"—whether CGI, image cropping, or tools to amplify the quality of a person's voice. And lawyers will undoubtedly end up telling their clients to just go ahead and slap a prophylactic, government-mandated disclosure on all political ads going forward just to avoid liability. Whether deepfake, cheap fake, or none of the above, viewers will see these disclosures and have no more insight about what parts of the ad uses AI and which parts do not.

The FCC's involvement can only amplify that confusion. The FCC is legally powerless to adopt uniform rules in a technologically neutral fashion. Its legal authority claimed here extends only to legacy media—broadcast, cable, and satellite television—but not over-the-top content, like online streaming video and social media, where millions of Americans see political ads. As a result, AI-generated political ads that run on traditional TV and radio will come with a government-mandated disclaimer but the exact same ad that runs on a streaming service or social media site would not.

I don't see how this type of conflicting patchwork could end well. Consumers don't think about the content they consume through the lens of regulatory silos. They just view content on screens. Will they conclude that the absence of a government warning on an online ad means that the content must be real? And applying new regulations on the broadcasters the FCC regulates but not on their largely unregulated online competitors only exacerbates regulatory asymmetries.

And that's not the end of it. Applying new regulations to candidate ads and issue ads but not to other forms of political speech just means that the government will be favoring one set of speakers over another. All of this confirms that the FCC is not the right entity to consider these issues.

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[24] Katie Glueck *et al*., *How Misleading Videos Are Trailing Biden As He Battles Age Doubts*, New York Times (June 21, 2024).

[25] Peter Baker *et al*., *Biden's Lapses Are Said to Be Increasingly Common and Worrisome*, New York Times (July 2, 2024).

[26] NPRM at para. 12.

The type of government intervention envisioned by this plan would only do more harm than good. I dissent.

STATEMENT OF
COMMISSIONER NATHAN SIMINGTON, DISSENTING

Re: *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, Notice of Proposed Rulemaking, MB Docket No. 24-211

Generative artificial intelligence is certainly a buzzy topic. But, absent the compelling force of an ongoing crisis or a situation worsening moment-to-moment, the worst time to regulate a domain is when everyone is talking about it. As I mentioned a year ago during the FCC's Artificial Intelligence workshop:

> [L]et us not cast about for regulatory solutions to problems that do not exist; remedies that may, as yet, be worse than the disease. While machine learning technologies have existed for various decisioning and ranking applications for decades, so-called generative artificial intelligence somehow feels importantly different to us. Scoring and ranking feels different when the output is a Mars sunset, a weird Balenciaga advertising parody, or a limerick. But it might be a difference in degree rather than in kind. I can't say for sure that I know yet. I don't think Sam Altman knows. I'm not even sure that Fei-Fei Li or Yann LeCun knows. And, at any rate, even if we should be led by caution in the absence of information, it is not clear to me that a rush to occupy the regulatory field is tantamount to caution. Of expert consensus and public policy implementation, there is many a slip twixt cup and lip.

From a policy perspective, I worry that this item is one such slip. And while we ought not cry over spilled milk, better not to spill in the first place. Yes, sure: in an ideal world, Americans would be informed about what they're seeing, and whether what they're seeing is a likeness generated by artificial intelligence intended to mislead them. This item, if implemented, *might* accomplish that for a small subset of *possibly* misleading advertisements. That *is* a valid policy desideratum. But *how* does the item accomplish it? By implementing a requirement that broadcasters seek and obtain a certification from the provider of a political advertisement regarding whether the ad is generated by artificial intelligence, and a disclosure of the same when the ad plays. Let's talk about each of these elements.

First: the item represents a requirement on broadcasters (yes, MVPDs engaged in 'origination programming' are also notionally obligated—no, that is not a particularly broad class of programming), rather than online platforms. Broadcasters are already burdened with a raft of regulatory compliance requirements, and any additional such requirements must, at this point, be justified by dire and immediate social exigency on a par with simultaneous global volcanic eruption or islands of unknown origin rising from the ocean. We are not at that level yet (most uses of generative artificial intelligence in the political context have been, so far, obvious memes), but let us stipulate to it *arguendo*. Would the proposed regulation serve the policy goal of protecting the American public? Political candidates and other purchasers of legitimate political advertisement, together with broadcasters, are groups that are fairly strongly incented *not* to get caught using generative artificial intelligence to create fake political ads; and, *pace* Governor DeSantis, are the ones likeliest to be exposed for having done so. It would seem to me that viral videos shared in the *unregulated* space of social media by unaccountable entities will be the setting for the moving action of this story.

Second: generated by artificial intelligence. What is 'artificial intelligence' in this context? Don't get me wrong: this item takes a serious stab at defining the term, and it draws on other serious attempts to do so for inspiration. There is some important line-drawing here. Yet a *lot* of photo, video, and audio editing and engineering software uses "computational technology or other machine-based system" to modify the "depict[ion of] an individual's appearance, speech, or conduct, or an event, circumstance, or situation[.]" A *lot*. Like, *all* of it. Given the threat of penalties (not to mention losing

the trust of viewers), will broadcasters and political advertisers alike have reason to be *overinclusive* in their disclosures? Absolutely. Consider the possibility that a consensus might emerge directly contrary to the intended one. Why would political advertisers not just say: let's just label most, or *every*, ad as generated by artificial intelligence, quickly relegating any such disclosure to a psychological status in the mind of the average American on a par with rapid-fire legalese played at the end of an ad or EULA click-wrap? Or, consider further! Suppose I am a political advertiser managing both a broadcast and digital advertising campaign, and the *same* ads are appearing to the *same* viewers—sometimes placed on a broadcast network, sometimes digitally—and *some* of those same ads have an artificial intelligence disclosure, and some do not. Is that not likely to create confusion? Maybe even mistrust? And, if so, to sidestep that mistrust entirely, maybe I don't run some of my ads—the ones required to be labeled as generated by artificial intelligence—on broadcast networks. Maybe I don't run any on broadcast networks at all.

Okay, that may be a bit of catastrophizing: I don't think political spend on broadcast will decline as a result of these new requirements. But what these requirements *do* is provide yet another small reason to shift programming to online and streaming platforms and away from the regulated space of broadcast. That secular trend is happening anyway, and I don't think the occasion warrants additional burden. Atlantis, to my knowledge, remains beneath the waves.

Third: a disclosure when the ad plays. We've been talking policy, but now let's talk about our statute. Our authority to accomplish this regulation doesn't exist. We are relying on Section 303(r), which provides that the Commission may, as "public convenience, interest, or necessity requires, . . . [] make such regulation and prescribe such restrictions, not inconsistent with law, as may be necessary to carry out the provisions of this Act[.]" Okay. This regulation isn't necessary to "carry out the provisions of this Act." We then go on to note that we have used Section 303(r) to act in the past. Well, all right. What 303(r) precedent justifies today's proposal? We cite the adoption of a policy statement regarding children's programming immediately before the 1990 adoption of the Children's Television Act (policy statements, while generally influential in the Commission's thinking, are not rules) and a raft of broadcast ownership restrictions. Among the several nominally precedential broadcast ownership restrictions, we cite the cross-ownership rule. That feels bizarre to me, akin to pointing to a concussion we got on the bunny hill as evidence that we are allowed to ski. Suffice it to say, I think that this cited authority is fairly weak tea, and that the ancient social conditions occasioning broadcast ownership restrictions (which, of course, no longer obtain) were far more real that the speculative harms associated with today's proposal.

We also ask whether Section 315, which authorizes the Commission to require broadcasters to maintain a political file and implement political advertising carriage requirements, might also support our effort. Suffice it to say, I am a skeptic that the carriage and political file rules in our Act—none of which mention authority to require disclosures of the sort contemplated here—authorize the step we take today. And 315(b)(2)(C), the "nearest neighbor" (apologies—we are discussing artificial intelligence, after all) to the disclosure rules proposed today, just does not apply. And I am not the only skeptic! As Sean Cooksey, Chairman of the Federal Elections Commission (FEC), recently noted in a letter to Chairwoman Rosenworcel:

> Indeed, federal courts of appeals have upheld the FEC's unique authority to regulate political disclaimers against other agencies' attempts to circumvent or supplement our rules, concluding that "the FEC is the exclusive administrative arbiter of questions concerning the name identifications and disclaimers" for political communications. Consequently, I maintain that the FCC lacks the legal authority to promulgate conflicting disclaimers requirements only for political communications.

(Citation omitted.) Chairman Cooksey goes on to provide that the FEC is engaged in its own rulemaking

contemplating the regulation of artificial intelligence in political communications. Why risk stepping in front of an ongoing rulemaking of a sister agency, addressing squarely the same question, over that agency's objection, relying on uncertain authority? I worry that the answer must be political.

The rules this item proposes threaten simultaneously to accomplish too much and not enough, leaning all the while on irrelevant or weak authority, in direct defiance of a sister agency's legitimate concerns. I have no choice but to dissent.

STATEMENT OF
COMMISSIONER ANNA GOMEZ

Re: *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, Notice of Proposed Rulemaking, MB Docket No. 24-211

This order initiates a proceeding to consider providing greater transparency regarding the use of AI-generated content in political advertising.

There is no getting around the fact that AI has fast become an integral element of almost every business, including advertising. Political and issue advertisements can be a critical channel for political candidates and other stakeholders to share their message with the listening and viewing public and thus an important form of civic engagement as citizens seek to understand the issues and discern the facts most important to their lives.

In this Notice of Proposed Rulemaking we propose a transparency measure and ask a lot of questions, both about what precisely requires disclosure and the level of burden we place on broadcasters to implement these requirements. What this proceeding does not do is propose a restriction or ban on the use of AI-generated content in political ads. The purpose is to make certain that listeners and viewers are informed when political ads include such content.

I look forward to the development of a robust record as we consider this complex issue.