

**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

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

**REPLY COMMENTS OF**  
**THE FREE STATE FOUNDATION<sup>1</sup>**

These reply comments are submitted in response to the Commission’s Notice proposing to require radio and TV broadcasters, as well as cable and direct broadcast satellite (DBS) operators, to include a disclaimer on all political ads that contain content generated by artificial intelligence (AI), along with a notice in their online political files disclosing ads using AI.<sup>2</sup> In these reply comments, we emphasize two primary points. First, even comments filed by parties sympathetic to the proposed rulemaking acknowledge that the Notice’s definitions of terms are ambiguous and easily misunderstood. The key definition of “AI-generated content,” on which the whole proposal depends, is especially problematic because it seemingly is so vague and overly broad that it would require a disclaimer for virtually all political ads.

Second, commenters rightly recognize that the Commission’s proposal to rely on a “credible third party” to trigger FCC action for an alleged failure to comply with its rules is susceptible to political manipulation, or at least the appearance of it. It is naïve to suggest that, during heated political campaigns, and in today’s charged political environment, that there will

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<sup>1</sup> These reply comments express the views of Randolph J. May, President of the Free State Foundation, and Seth L. Cooper, Senior Fellow and Director of Policy Studies. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is a nonpartisan, non-profit free market-oriented think tank.

<sup>2</sup> Disclosure and Transparency of Artificial Intelligence-Generated Content in Political, Advertisements, MB Docket No. 24-211 (August 22, 2024), Notice of Proposed Rulemaking (“Notice”) (released July 25, 2024), at: <https://www.fcc.gov/document/fcc-proposes-disclosure-rules-use-ai-political-ads>.

be agreement regarding the true independence, dispassionate judgement, and expertise of “credible” third parties. Any proposal to rely on such supposed credible third parties almost certainly would not find widespread public acceptance.

The Free State Foundation’s initial comments in this proceeding described serious legal problems with the Commission’s rush to adopt a novel AI political ad regulation, including the agency’s lack of statutory authority for its proposal and the proposal’s conflict with the Supreme Court’s Major Questions Doctrine.<sup>3</sup> Additionally, our initial comments identified several policy problems with the Commission’s proposed AI political ad regulation, including its overly broad definition of “AI-generated content” and its manipulation-prone requirement that broadcasters (and cable and DBS operators) take corrective action if they are informed by a “credible third party” that an ad without a disclaimer includes AI-generated content.<sup>4</sup> The Free State Foundation agrees with commenters who have identified flaws with the Notice’s definition of “AI-generated content” and its “credible third party” requirement.

The Notice defines “AI-generated content” 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.”<sup>5</sup> As explained in our initial comments, this overly broad definition seemingly could – and most likely would – apply to any modern-day political ad.<sup>6</sup>

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<sup>3</sup> See Comments of the Free State Foundation, Disclosure and Transparency of Artificial Intelligence-Generated Content in Political, Advertisements, MB Docket No. 24-211 (September 19, 2024), at 3-8, at: <https://www.fcc.gov/ecfs/search/search-filings/filing/109190421010215>.

<sup>4</sup> See Comments of the Free State Foundation, MB Docket No. 24-211, at 9-12; Notice, at ¶¶ 11-12, 17, 21.

<sup>5</sup> Notice, at ¶ 12.

<sup>6</sup> Comments of the Free State Foundation, at 12.

Indeed, commenters who support the Commission’s proposed AI political ad regulation rightly identified problems with the Notice’s definition of “AI-generated content.” For example, the Brennan Center for Justice stated: “*First*, and most importantly, we are concerned that the proposed rule as currently written, which applies to all “AI-generated content,” is both over and under-inclusive.”<sup>7</sup> The Brennan Center “agree[d] with other commenters that requiring disclosure for any political ad that includes any element of AI manipulation is likely to result in disclosures for far too many ads, essentially rendering the disclosure requirement meaningless.”<sup>8</sup>

Additionally, commenter Public Citizen stated that “[d]isclosure should be calibrated so as not to apply to all or virtually all political advertisements,” recognizing “potential ambiguity” in the proposed definition of AI-generated content and that “the benefits of those disclosures will be lost if the disclosure requirement is overbroad.”<sup>9</sup>

Furthermore, we agree with the observation of Public Knowledge that the proposed definition of AI-generated content “seems to be overly inclusive of any computer-generated imagery.”<sup>10</sup> It explained that “[b]roadly scoping in all computational technology could create confusion in reporting from advertisers, who may not know if, for example, the ordinary video editing or audio enhancement software they used requires disclosure, especially considering AI features are being integrated in many places.”<sup>11</sup> We also agree with Public Knowledge’s reasoning that “[a] broad scope could lead to under-reporting—meaning uneven reporting and

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<sup>7</sup> Comments of the Brennan Center for Justice, Disclosure and Transparency of Artificial Intelligence-Generated Content in Political, Advertisements, MB Docket No. 24-211 (September 19, 2024), at 6 (emphasis in original), at: <https://www.fcc.gov/ecfs/search/search-filings/filing/10919509207480>.

<sup>8</sup> Comments of the Brennan Center for Justice, at 6.

<sup>9</sup> Comments of Public Citizen, Disclosure and Transparency of Artificial Intelligence-Generated Content in Political, Advertisements, MB Docket No. 24-211 (September 19, 2024), at 1, 5, at: <https://www.fcc.gov/ecfs/search/search-filings/filing/1091944307175>.

<sup>10</sup> Comments of Public Knowledge, Disclosure and Transparency of Artificial Intelligence-Generated Content in Political, Advertisements, MB Docket No. 24-211 (September 19, 2024), at 3, at: <https://www.fcc.gov/ecfs/search/search-filings/filing/10919061057579>.

<sup>11</sup> Comments of Public Knowledge, at 4-5.

disclosure—or risk-averse over-reporting. A significant risk with over-reporting, and then over-disclosure, is that ads without true AI-generated content receive a disclosure, thereby creating audience fatigue and watering-down the effectiveness of the disclosures.”<sup>12</sup>

Moreover, the Free State Foundation agrees with the ACLU that “[i]n light of its imprecise wording and overinclusive definition of AI-generated content, the FCC has not shown that the proposed regulation, which burdens political speech, is appropriately tailored to an overriding governmental interest... This proposed definition is imprecise and sweeps far too broadly, encompassing a wide range of content that is not deceptive, misleading, or fraudulent.”<sup>13</sup> The ACLU observes that “[t]he FCC’s proposed definition of AI-generated content would subject to its proposed rule a broad range of advertisements that do not involve deceptive deepfakes.”<sup>14</sup>

There are more definitional problems with the Commission’s proposed novel AI political ad regulation. The Free State Foundation agrees with the Institute for Free Speech that the proposed definition of “issue advertising” is impermissibly vague.<sup>15</sup> In the Notice, the proposed definition of “issue advertising” is “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.”<sup>16</sup> The terms “relating to,” “any political matter,” and “controversial issue of national importance” are themselves undefined in the Notice. The Notice lacks language or examples that would limit

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<sup>12</sup> Comments of Public Knowledge, at 5.

<sup>13</sup> Comments of ACLU, Disclosure and Transparency of Artificial Intelligence-Generated Content in Political, Advertisements, MB Docket No. 24-211 (September 19, 2024), at 2-3, at: <https://www.fcc.gov/ecfs/search/search-filings/filing/10919624022815>.

<sup>14</sup> Comments of ACLU, at 3.

<sup>15</sup> Comments of the Institute for Free Speech, Disclosure and Transparency of Artificial Intelligence-Generated Content in Political, Advertisements, MB Docket No. 24-211 (September 19, 2024), at 7-9, at:

<sup>16</sup> Notice, at 25-26 (Appendix A – Proposed Rules).

their amorphous meaning. We agree with the Institute for Free Speech that “[t]his is likely to chill both political speech and pure issue advocacy, in violation of the First Amendment.”<sup>17</sup>

Unlike commenters who argue that changes to the proposed definition of “AI-generated content” could make the proposed regulation workable,<sup>18</sup> the Free State Foundation believes that definitional changes will not alleviate the significant legal and policy flaws. No such changes would overcome the fact that misleading or deceptive ads are not unique to ads with generative AI content, that online platforms increasingly are more popular venues for viewing political ads, and that requiring disclaimers on political ads featuring AI content shown only on broadcast, cable, or DBS platforms would create viewer confusion. Definitional changes would not overcome the agency’s lack of statutory authority for its proposed regulation of political ads using “AI-generated content.” Nor would they alleviate the burden on free speech that would result from the proposed requirement that lengthy disclaimers – stating “This message contains information generated in whole or in part by artificial intelligence” – air during 30-second political ads.<sup>19</sup>

The Notice also contains a proposed requirement that broadcasters (and cable and DBS operators) take corrective action if they are informed by a “credible third party” that an ad without a disclaimer has AI-generated content.<sup>20</sup> The Free State Foundation’s initial comments warned that this approach improperly would insert the agency into the middle of heated election processes and cause the agency to decide which third parties are supposedly “credible.”<sup>21</sup>

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<sup>17</sup> Comments of the Institute for Free Speech, at 9.

<sup>18</sup> *See, e.g.*, Comments of the Brennan Center for Justice, at 6-7; Comments of Public Citizen, at 5; Comments of Public Knowledge, at 5.

<sup>19</sup> Notice, at ¶ 17. *See* Comments of the Institute for Free Speech, at 5.

<sup>20</sup> *See* Notice, at ¶¶ 17, 21.

<sup>21</sup> *See* Comments of the Free State Foundation, at 11.

We therefore agree with comments recognizing that the Commission’s proposal that receipt of information from “credible third party” regarding political ads allegedly containing “AI-generated content” triggers a duty by a broadcaster to act is susceptible to manipulation – or at least susceptible to the appearance of manipulation. As commenter Public Knowledge rightly noted, “third party reports could also be weaponized to force disclosures to appear on ads in a manner that undermines their credibility.”<sup>22</sup> Also, we agree with Americans for Prosperity that “[e]mpowering 3rd parties in such a fashion would lead to an outcome ripe for abuse depending on what groups are considered a ‘credible 3rd party’” and that “[r]ather than focusing on their core functions, stations would be asked to potentially set up a process to reallocate resources towards dealing with complaints from interested parties seeking to take down otherwise legal advertisements.”<sup>23</sup>

Moreover, we agree with the National Association of Broadcasters (NAB) that the “credible third party” requirement likely would burden protected free speech rights of broadcasters (as well as cable and DBS operators). In its comments, NAB wrote: “Enabling outside parties to insert themselves into – and delay or potentially disrupt – the media buying process would not only burden candidates’ exercise of their statutory reasonable access and equal opportunity rights but also candidates’ and other entities’ First Amendment rights to speak to voters during the compressed election season.”<sup>24</sup> As NAB reasonably predicted, “[t]he sheer volume of political ads during busy election seasons” would make compliance with the

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<sup>22</sup> Comments of Public Knowledge, at 5.

<sup>23</sup> Comments of Americans for Prosperity, Disclosure and Transparency of Artificial Intelligence-Generated Content in Political, Advertisements, MB Docket No. 24-211 (September 19, 2024), at 13, at: <https://www.fcc.gov/ecfs/search/search-filings/filing/10918242920580>.

<sup>24</sup> Comments of National Association of Broadcasters (NAB), Disclosure and Transparency of Artificial Intelligence-Generated Content in Political, Advertisements, MB Docket No. 24-211 (September 19, 2024), at 64, at: <https://www.fcc.gov/ecfs/search/search-filings/filing/109201176726719>.

Commission’s “misguided” proposal – including its “credible third party” requirement – particularly burdensome for broadcasters that transmit political speech.<sup>25</sup>

In sum, the Commission’s proposal to impose a novel AI political ad regulation is a misguided power grab. If adopted, the proposal could result in government-enabled election interference with political speech, including through manipulation of political ads with AI content by “credible third parties.” The Commission should not adopt its proposal.

For the foregoing reasons, the Commission should act in accordance with the views expressed herein.

Respectfully submitted,

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<sup>25</sup> Comments of NAB, at 64.