

**The Heritage Foundation  
214 Massachusetts Ave NE  
Washington, DC 20002**

**September 4, 2024**

**The Honorable Jessica Rosenworcel  
Chairwoman  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554**

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

Dear Chairwoman Rosenworcel,

The Heritage Foundation strongly opposes the Federal Communications Commission's proposed rule regarding the disclosure of AI-generated content in political advertisements. This proposal constitutes an overreach of the FCC's statutory authority, exhibits arbitrariness, and threatens to severely distort political discourse through a fragmented regulatory approach.

The FCC lacks the requisite statutory authority to implement such regulations. The Communications Act narrowly circumscribes the Commission's jurisdiction over political advertisements to three specific areas: equal access enforcement, public file maintenance, and sponsor identification requirements.<sup>1</sup> The Bipartisan Campaign Reform Act (BCRA) further restricts the FCC's role to merely compiling information on electioneering communications for potential Federal Election Commission oversight, rather than granting independent regulatory power.<sup>2</sup> This statutory framework precludes the FCC from asserting broad authority to regulate political advertising content or mandate AI-related disclosures. The Commission's invocation of an amorphous "public interest" mandate to justify this intervention is legally unsound, contravening well-established administrative law principles that limit agency authority to powers expressly delegated by Congress, as affirmed in *West Virginia v. EPA*.<sup>3</sup>

Furthermore, the Federal Election Commission's exclusive authority to regulate political disclaimers underscores the impropriety of the FCC's proposed intervention. FEC Chairman Sean Cooksey's recent statement clearly states that the BCRA does not empower the FCC to impose disclaimer requirements on political communications and serves as a stark rebuke to the

---

<sup>1</sup> 47 U.S.C. § 315, 317.

<sup>2</sup> Bipartisan Campaign Reform Act of 2002, Public Law 107-155.

<sup>3</sup> *West Virginia v. EPA*, Docket No. 20-1530, (2022).

Commission's attempted regulatory overreach.<sup>4</sup> It is clear that the FCC's attempt to expand its authority under BCRA not only contravenes established law but also represents an unlawful encroachment on the FEC's jurisdictional prerogatives.

Beyond this jurisdictional conflict, the proposed rule arbitrarily creates an asymmetric regulatory landscape, imposing disclosure requirements exclusively on broadcasters and cable companies while exempting digital platforms. This fragmented approach not only fails to achieve its purported objectives but threatens to exacerbate the very issues it aims to address. By mandating disclosures on traditional media while leaving digital platforms unregulated, the FCC risks creating a false dichotomy in the public perception of content validity. Viewers encountering undisclosed AI-generated content on digital platforms may erroneously assume its authenticity, precisely because the FCC's rule has conditioned them to expect disclosures on regulated media. This regulatory inconsistency thus legitimizes potential misinformation on unregulated platforms, undermining the rule's foundational purpose.

Further compounding these issues is the rule's failure to establish clear, objective criteria for identifying AI-generated content. The Commission's proposed definition for AI-generated content is overly broad, encompassing "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." This expansive definition potentially captures common digital editing techniques such as color correction, audio enhancement, or basic video editing done with AI tools—processes that have been standard in media production for decades. The inclusion of "computational technology" is particularly problematic, as virtually all modern media production involves some form of computational processing, rendering meaningful differentiation between AI and non-AI content practically impossible.

Moreover, the definition's focus on depiction of "appearance, speech, or conduct"<sup>5</sup> fails to account for AI's role in content creation processes that may not directly manipulate these elements, such as AI-assisted scriptwriting or data-driven content optimization. This lack of nuance and specificity undermines the rule's purported transparency objectives and exposes regulated entities to potential liability due to the inherent subjectivity in content classification. The ambiguity places an unreasonable burden on broadcasters and advertisers to determine what

---

<sup>4</sup> Sean J. Cooksey, Chairman, Federal Election Commission, letter to Chairwoman Jessica Rosenworcel, June 3, 2024, [www.fec.gov/resources/cms-content/documents/FEC\\_Chairman\\_Cooksey\\_Letter\\_to\\_FCC\\_Chairwoman\\_Rosenworcel\\_June\\_3\\_2024.pdf](http://www.fec.gov/resources/cms-content/documents/FEC_Chairman_Cooksey_Letter_to_FCC_Chairwoman_Rosenworcel_June_3_2024.pdf) (accessed August 28, 2024).

<sup>5</sup> FCC, MB Docket No. 24-211; FCC 24-74, August 5, 2024.

constitutes AI-generated content, ultimately compromising the effectiveness and fairness of the proposed regulation.

In conclusion, the FCC should abandon this misguided and potentially harmful proposal. The critical issues surrounding AI in political advertising demand a cohesive regulatory framework that carefully balances technological innovation, free speech protections, and electoral integrity—objectives that lie well beyond the FCC's remit. The Commission should recognize the limits of its authority and defer to Congress and the FEC to address these complex issues in a manner consistent with constitutional principles and existing regulatory frameworks.

**Respectfully submitted,**

**Jake Denton**

**Research Associate, Technology Policy Center**

**The Heritage Foundation**