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FCC Proposes to Define 'AI-Generated Content' in Proceeding on Use of AI in Political Ads

August 1, 2024

The Federal Communications Commission (FCC) has released a notice of proposed rulemaking (notice) seeking comment on required disclosures when artificial intelligence (AI) is used in political ads. This is the most recent FCC effort to analyze the use of AI in the communications industry generally, and in this proceeding, the FCC for the first time proposes to adopt a definition of "AI-generated content."

The FCC proposes to define "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, circumstances, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors." Diverging from the definitions used in many recent state bills on the use of AI in political ads, the FCC's definition does not limit the new rules to AI-generated content that is false or misleading – **all** AI content would be covered. Parties with interests in the AI space may wish to comment on the FCC's definition of "AI-generated content," as the definition the FCC adopts could have implications in other FCC proceedings or at other governmental agencies.

If adopted, the new rules would apply to all political advertisements – candidate and issue – that run on radio and TV stations, as well as on cable and satellite (multichannel video programming distributors, or MVPDs). The new rules would not apply to streaming platforms like Netflix, Hulu and Peacock. The FCC proposes to require employees of TV and radio stations, as well as MVPDs, to ask every political ad buyer whether each ad includes AI-generated content. Political ads with AI-generated content would be required to include a mandatory disclaimer about the use of AI in the ad, and notice of the AI-generated content would be placed in FCC-hosted online public files. The FCC seeks comment on the specifics of the disclaimer, such as placement and wording, and on what documentation the companies would be required to post to online public files. The FCC believes that because it is only requiring "a simple inquiry" as to whether an ad includes AI-generated content, and because political ads are already subject to FCC-required disclaimer and public file rules, the proposed rules would not impose a significant burden on affected parties.

The notice was a split decision along party lines – with three Democrats in favor and two Republicans opposed. Given the topic, Federal Election Commission (FEC) Chair Sean Cooksey said that the FCC should not move forward with the proposed rules, which would infringe on the FEC's jurisdiction. Cooksey, along with Republican FCC Commissioner Brendan Carr, have both condemned the FCC's release of the notice as an attempt to interfere with the 2024 elections. The timing of the notice, however, will make it challenging for the FCC to adopt new rules and have those rules become effective before November.

Comments on the FCC's proposed new rules will be due on September 4 and reply comments due on September 19.

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