



Before the
Federal Communications Commission
Washington, D.C.

In the Matter of:

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

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MB Docket No. 24-211

August 23, 2024



INTRODUCTION

The Center for Data Innovation (datainnovation.org) is pleased to submit these comments to the Federal Communications Commission (FCC) regarding the Notice of Proposed Rulemaking on “Disclosure and Transparency of Artificial-Intelligence Generated Content in Political Advertisements.”¹

The Center for Data Innovation studies the intersection of data, technology, and public policy, and formulates and promotes pragmatic public policies designed to maximize the benefits of data-driven innovation in the public and private sectors. It educates policymakers and the public about the opportunities and challenges associated with data, as well as technology trends such as open data, artificial intelligence, and the Internet of Things. The Center is part of the Information Technology and Innovation Foundation (ITIF), a nonprofit, nonpartisan think tank.

The FCC is proposing to require all broadcasters to provide an on-air announcement disclosing the use of AI-generated content in political ads. Specifically, the FCC proposes “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 provide an on-air announcement for all such ads disclosing the use of AI-generated content in the ad.”² This requirement would make an arbitrary distinction between AI-generated content and non-AI generated content, which could both discourage the legitimate use of the technology and mislead the public as to the veracity of political ads. A better approach would be to require disclosure of “materially deceptive media” used in political ads, regardless of the technology used to create such content. However, even these requirements would be more appropriately addressed by state and federal election laws to create consistent requirements for all election ads, such as those shared via online streaming platforms and on social media, not just those distributed on platforms controlled by broadcasters and other entities regulated by the FCC.

AI IN POLITICAL ADS IS GROWING

Advances in generative AI make it possible to create realistic media that appear to show people doing or saying things that never happened—a type of media commonly referred to as “deepfakes.” The technology has both legitimate and illegitimate uses. For example, the entertainment industry can use deepfake technology to dub performances into many languages, such as creating TV shows

¹ “Disclosure and Transparency of Artificial-Intelligence Generated Content in Political Advertisements, MB Docket No. 24-211,” Federal Communications Commission, July 25, 2024, <https://docs.fcc.gov/public/attachments/FCC-24-74A1.pdf>.

² *Ibid.*

and movies where the lip and mouth movements of actors precisely match each spoken language.³ But the technology also has many illegitimate uses, such as to create fake non-consensual intimate images of individuals and to spread misinformation.

Several political campaigns have used generative AI to produce and share content, including political ads. For example, in the 2024 presidential election primary, an ad by Governor Ron DeSantis's campaign used AI-created fake images of former president Donald Trump hugging and kissing Dr. Anthony Fauci to critique the former president's handling of the pandemic.⁴ Likewise, a political consultant created an AI-generated fake recording of President Biden's voice, which he then sent to potential voters via robocalls, encouraging them to skip the New Hampshire presidential primary.⁵ The Republican National Committee produced a 30-second video ad which consisted entirely of AI-generated images depicting hypothetical scenarios if President Biden were reelected: China invading Taiwan, massive crowds of immigrants crossing into the United States, and an American city in ruins due to crime and fentanyl.⁶ More recently, former president Trump shared fake AI-generated images of Taylor Swift and her fans appearing to support his candidacy.⁷ Also, earlier this year, a conservative radio show host created and shared fake AI-generated images portraying former president Trump surrounded by Black supporters.⁸

Some policymakers are concerned that political campaigns may exploit deepfake technology to mislead voters with deceptive content. But not everyone agrees that these types of false images are necessarily problematic. For example, Governor DeSantis argued that when former president Trump shared a fake image on social media of him riding a rhinoceros (implying he is a RINO, or Republican

³ "Deepfake dubs could help translate film and TV without losing an actor's original performance," *The Verge*, May 18, 2021, <https://www.theverge.com/2021/5/18/22430340/deepfake-dubs-dubbing-film-tv-flawless-startup>.

⁴ Nicholas Nehamas, "DeSantis Campaign Uses Apparently Fake Images to Attack Trump on Twitter," *The New York Times*, June 8, 2023, <https://www.nytimes.com/2023/06/08/us/politics/desantis-deepfakes-trump-fauci.html>.

⁵ "Fake Joe Biden robocall tells New Hampshire Democrats not to vote Tuesday," *NBC News*, January 22, 2024, <https://www.nbcnews.com/politics/2024-election/fake-joe-biden-robocall-tells-new-hampshire-democrats-not-vote-tuesday-rcna134984>.

⁶ Isaac Stanley-Becker and John Wagner, "Republicans counter Biden announcement with dystopian, AI-aided video," *Washington Post*, April 25, 2023, <https://www.washingtonpost.com/politics/2023/04/25/rnc-biden-ad-ai/>.

⁷ Elizabeth Wagmeister and Kate Sullivan, "Trump posts fake AI images of Taylor Swift and Swifties, falsely suggesting he has the singer's support," *CNN*, August 19, 2024, <https://www.cnn.com/2024/08/19/politics/donald-trump-taylor-swift-ai/index.html>.

⁸ Marianna Spring, "Trump supporters target black voters with faked AI images," *BBC*, March 4, 2024, <https://www.bbc.com/news/world-us-canada-68440150>.



in name only), the imagery was clearly parody.⁹ Similarly, supporters of former president Trump argue that when they share fake AI-generated images of Taylor Swift fans or Black voters supporting the Trump campaign, it does not matter if those specific images are not real because they still reflect authentic support from those communities.¹⁰ Some campaigns have even proudly embraced the use of generative AI. For example, a candidate for the Georgia House of Representatives has used generative AI to write articles and produce podcasts that use a clone of his voice to promote his candidacy, arguing that the technology allows him to run a more efficient campaign and spend more time in-person with voters.¹¹

THE FCC'S DISTINCTION BETWEEN AI-GENERATED CONTENT AND NON-AI-GENERATED CONTENT IS ARBITRARY

The FCC proposes to require television and radio broadcasters to disclose when political ads contain AI-generated content, uniquely and unfairly singling out this type of content. It defines AI-generated content as follows:

“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.”

Unfortunately, the definition is so broad that many innocuous uses of AI-enabled digital tools to edit multimedia would likely fall within this definition given that many software packages are incorporating generative AI features. Indeed, many campaigns may not even realize they are using generative AI today because software tools do not always advertise how they work on the backend.

More importantly, the FCC’s distinction between AI-generated content and non-AI generated content is completely arbitrary. For example, a campaign might use a generative AI feature to edit photos, such as to add or remove people from the background or fix closed eyes. These are all routine photo editing tasks that AI has simply made easier. Similarly, a campaign may use AI to alter photographs of a candidate, such as to make them appear older or younger, slimmer or heavier, darker or lighter skinned—or they could use non-AI photo editing tools to achieve the same effect. But with the FCC’s proposal, a campaign that uses AI to make these changes to content appearing in a political ad

⁹ Aaron Blake, “DeSantis ushers in our fake-images-in-politics nightmare,” *Washington Post*, June 8, 2023, <https://www.washingtonpost.com/politics/2023/06/08/desantis-fauci-trump-ai-video/>.

¹⁰ Wagmeister and Sullivan, “Trump posts fake AI images of Taylor Swift and Swifties, falsely suggesting he has the singer’s support.”

¹¹ Ali Swenson, Dan Merica, and Garance Burke, “AI experimentation is high risk, high reward for low-profile political campaigns,” *AP*, June 17, 2024, <https://apnews.com/article/artificial-intelligence-local-races-deepfakes-2024-1d5080a5c916d5ff10eadd1d81f43dfd>.



would be subject to a disclosure requirement, but a campaign that makes these changes manually (even using non-AI digital editing tools) would not be.

Tweaking the definition of AI-generated content, such as to exclude edited content, would not solve this problem because it would still unfairly target AI-generated content while ignoring virtually indistinguishable non-AI generated realistic content. While advances in generative AI have made it easier to produce hyper-realistic content, there are techniques that do not involve AI that can create similar results. For example, a talented impersonator can produce a realistic audio clip of a candidate speaking and, with the right makeup and prosthetics, create a convincing photograph or video, such as the actor Tina Fey impersonating Sarah Palin. Indeed, political ads have used professional actors or campaign staff to depict “everyday voters” or put them in costumes, such as a police uniform, to depict support from certain professions.¹²

The FCC’s distinction also appears arbitrary and myopically focused on AI-generated content when considering that political ads often use misleading imagery. Many political ads on television often use stock footage, and sometimes the stock footage does not exactly represent what it is meant to illustrate. For example, recent political ads have used stock footage of Italian fighter jets instead of American ones, a Ukrainian actor in a bomb shelter to depict young Americans living in their parent’s basements, and a Russian oil rig to symbolize U.S. natural resources.¹³

REQUIRING DISCLOSURES FOR AI-GENERATED CONTENT IN POLITICAL ADS WOULD DISCOURAGE LEGITIMATE USE OF AI AND CONFUSE VOTERS

The FCC’s proposal to require political ads to disclose the use of AI-generated content would discourage the technology’s use, including legitimate uses that serve the public interest. For example, a campaign may use AI to produce videos ads of their candidate answering questions more efficiently rather than having the candidate record their answers directly, allowing candidates with fewer financial resources to be more competitive. Or a campaign may use AI to produce radio ads of their candidate speaking in a language that they do not speak fluently to communicate better with more voters. In many contexts, these uses are reasonable and appropriate.

The FCC states that its rationale for its proposed disclosure requirement is because of “the potential for AI-generated content in political ads to provide false, misleading, and/or deceptive information to the public.” But as noted, AI-generated content is not necessarily deceptive so these disclosures may confuse voters as to the veracity of political ads. Truthful ads that use AI may seem less trustworthy

¹² Simone Pathé, “Just How Average Are the Average Voters in Campaign Ads?” *Roll Call*, October 25, 2018, <https://rollcall.com/2018/10/25/just-how-average-are-the-average-voters-in-campaign-ads/>.

¹³ Matt Berg, “Whoops! Foreign imagery keeps creeping into campaign ads,” *Politico*, May 22, 2023, <https://www.politico.com/news/2023/05/22/campaign-ads-using-foreign-footage-00098198>.



because of these disclosures. On the other hand, voters may assume political ads without these disclosures are more truthful, even if these ads contain outright falsehoods. Alternatively, if these disclosures become ubiquitous, voters may simply stop paying attention to them.

The FCC appears to want to regulate the use of AI in political ads as a substitute for its inability to regulate truth in political ads. But these are not the same. Campaigns have long struggled with truth in political ads, and this issue predates the advent of generative AI.¹⁴ As former FCC Chair Tom Wheeler has plainly noted, when it comes to political ads, “Unfortunately, you’re allowed to lie.”¹⁵

THE FCC SHOULD LEAVE RULES ABOUT DECEPTIVE POLITICAL ADS TO STATE AND FEDERAL ELECTION LAW

The FCC should leave decisions about disclosures in political ads to federal and state election law. State and federal lawmakers have passed, or are considering passing, new disclosure laws for political campaigns. The FCC’s jurisdiction is limited, and so its proposal only applies to TV and radio ads. If it moves forward with its disclosure requirement, it could create confusion for voters since political ads on social media and streaming media services would be subject to different rules. For example, voters might mistakenly assume that political ads on social media do not have AI-generated content if they expect to see such a disclosure based on ads on television.

More importantly, whether pursued by the FCC or state and federal legislators, any mandatory disclosures for political ads should focus on alerting the public that the ad contains materially deceptive media, not whether it contains AI-generated media. Specifically, the rules should make it unlawful for campaigns and other political organizations to knowingly distribute materially deceptive media that uses a person’s likeness to injure a candidate’s reputation or manipulate voters into voting against that candidate without a clear and conspicuous disclosure that the content they are viewing is fake. Such a requirement would prevent, for example, an opposing campaign from running advertisements using deepfakes without full transparency to potential voters that this media is fake. For example, California’s law requires a disclosure stating, “This [image/audio/video] has been manipulated.”¹⁶ Such a disclosure is more informative for voters than stating “This [image/audio/video] was created with AI” and avoids creating a negative connotation around the use of AI.

¹⁴ Patrick C. Meirick et al., “To Tell the Truth: Ad Watch Coverage, Ad Tone, and the Accuracy of Political Advertising,” *Political Communication*, December 26, 2017, <https://doi.org/10.1080/10584609.2017.1414089>.

¹⁵ Domenico Montanaro, “The truth in political advertising: ‘You’re allowed to lie,’” *NPR*, March 17, 2022, <https://www.npr.org/2022/03/17/1087047638/the-truth-in-political-advertising-youre-allowed-to-lie>.

¹⁶ Cal. Election Code §20010.



CONCLUSION

The FCC should abandon this proposal that would arbitrarily penalize the use of AI in political ads, confuse voters about the veracity of these ads, and create different disclosure standards for streaming and social media platforms. Instead, it should leave decisions about disclosures in political ads to federal and state election law.