

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

In the Matter of

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

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MB Docket No. 24-211

COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS

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I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ submits these comments in response to the FCC’s proposal to require broadcasters to inquire and disclose whether advertisers have used artificial intelligence (AI)-generated content in developing political advertisements.²

NAB understands the FCC’s aim to examine the impact of deepfakes in political advertising and appreciates the agency’s attempt to grapple with the host of challenges involved in crafting effective, common-sense regulations that meet the moment. As trusted sources of local news and information, radio and television broadcasters work tirelessly to distinguish fact from fiction, and take pride in their commitment to the truth in service of

¹ NAB is the nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, Notice of Proposed Rulemaking, MB Docket No. 24-211, FCC No. 24-74 (rel. July 25, 2024) (Notice).

viewers and listeners across the country. Indeed, in today's fractured media landscape, broadcasters not only see it as their duty but also their competitive advantage to serve this essential role for our democracy.

Unfortunately, despite the FCC's best efforts in the Notice, the reality is that the Commission cannot go it alone. The FCC simply does not have the authority to compel truthful disclosures about political deepfakes across platforms in a manner that would ultimately benefit the public. As we unpack the proposed rules to discern how they might address the problems that the Notice identifies, it is clear that the gaps we discern are not the result of the Commission's lack of effort or understanding of the issues; but rather, Congress never granted the Commission the authority necessary to develop meaningful and effective solutions in this arena.

The FCC's first hurdle is its lack of any authority over political advertisers or ad creators. A disclosure regime cannot be successful if the information that triggers the disclosure is not accurate or even available, but in this instance that information is controlled by the advertisers. To attempt to address this, the Commission – borrowing from the unrelated sponsorship identification context – proposes requiring broadcasters to ask (as opposed to advertisers having the obligation to inform) whether an advertisement contains any AI-generated content. If the response is “yes,” the broadcaster must disclose that in an on-air announcement using FCC-specified language. But since broadcasters have no way to determine if the answer is true or not (and the FCC cannot require them to investigate the veracity of the claim), the unaccountable advertisers can feel free to disclose use of AI; to falsely claim they did not use any generative AI, even if the ad contains a deepfake; to truthfully answer that the ad does not use AI, even if it deceives audiences

using less sophisticated means (e.g., “cheapfakes”); or to simply not answer at all. Moreover, unlike the laws concerning sponsorship identification, the Commission runs headlong into the problem that Congress never granted the agency any authority to require broadcasters to make inquiries or disclosures about the content of programming or advertisements.

Whereas sponsorship identification is about disclosing who is “behind” (*i.e.*, pays for) the ad, the proposed AI inquiries and disclosures are about what *makes up* an advertisement.

Further complicating matters, statutory provisions governing political advertising prohibit broadcasters from engaging in any form of censorship of candidate advertising, including labeling such ads with FCC-mandated disclosures.

Next, the Commission tries to avoid First Amendment questions by crafting an inquiry and disclosure mechanism focused on the technology used to create an ad, rather than a rule focused on whether an ad contains false, misleading, or deceptive content.

Unfortunately, as NAB’s comments explain, this approach fails to save the FCC from engaging in content-based regulation of highly protected political speech, while creating additional problems. First, by adopting a rule that does not have a rational relationship to the FCC’s stated goal (transparency concerning deepfakes), the rule is far less likely to survive any level of First Amendment scrutiny or even review under the Administrative Procedure Act. Second, the FCC’s proposed definition of generative AI is overbroad, encompassing virtually all of today’s audio and video production methods, even if merely used to enhance color and lighting in a television ad or reduce background noise in a radio ad. The resulting disclosures, which will appear in many – if not virtually all – political ads on broadcast stations, will only lead to audience confusion and unfounded concerns, not a more informed electorate.

NAB also explains that “generative AI” is not the enemy. Indeed, the Notice lists a number of benefits the technology affords, and the Administration has sought to “seiz[e] the promise” of AI.³ Thus, the use of generative AI in a political ad, standing alone, is irrelevant to the public. It is no more important than the kind of camera lens used to record video or the type of microphone used to record the audio of a political ad. It only becomes relevant where generative AI is used to create a *deepfake* ad. Thus, it is *those* ads that should be in the crosshairs, not every ad that employs the technology.

Perhaps most importantly, the Commission has no authority over social media platforms. Nearly all deepfakes occur on and are shared through social media platforms, so one would imagine that a government-enforced disclosure regime would apply, at the very least, to those chief distributors of mis- and disinformation. But without any arguable authority over this crowd, rather than recommending to Congress that it develop legislation to apply political ad disclosures in a platform-neutral manner, the Commission instead, without discussion and by implication, determines that it is reasonable to impose inquire-and-disclose obligations only on broadcasters. Unfortunately, this is not the first time broadcasters have been subjected to such a skewed regulatory approach, but that does not make it any more reasonable, useful to the public, or fair, especially when there are few, if any, examples of deepfake political ads that have aired on broadcast stations.

³ The White House, *FACT SHEET: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence* (Oct. 30, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/>.

As discussed further below, the Notice fails to grapple with this fundamental disparity. It does not ponder the implications of applying the proposed rules only to broadcasters and, in particular, whether the market will be distorted by requiring warning labels only on broadcast content. It is not difficult to conclude that if only broadcast ads require these disclosures, advertisers would think twice about placing ads with radio and TV stations. This likely outcome is made more certain because the FCC's definition of generative AI is so broad and the disclosure so overinclusive that any advertiser would rightly be concerned that viewers and listeners would discount its ads often without reason. If an advertiser used generative AI to smooth the crease in a candidate's suit or eliminate the noise of a truck rolling by in the background of a campaign event captured in an ad, should that advertiser be required to suggest to consumers that they are being purposely misled? And yes, while the proposed disclaimer does not say "false," "misleading," or "deceptive," the public understands that mandatory disclosures are only imposed to ensure that consumers are aware of a potential harm with a product or service, not to ensure they experience the benefits. There is never any need to require "transparency" for something neutral or good for the public.

Fortunately for the Commission, Congress is looking at ways to address mis- and disinformation. Moreover, as NAB describes below, broadcast radio and TV are not the primary targets of deepfake advertising. While it is easy to use generative AI at home to create a false ad for X or Facebook, far more barriers exist to employing deepfakes in election-related ads made for radio and TV. In addition to being more costly to produce and place such ads, unlike on social media, radio and TV ads are much harder to share and also much less likely to proliferate because stations can easily take them down after a valid

complaint. In the time that an ad runs five or ten times on a broadcast station, an equivalent deepfake on social media could have been shared and/or viewed hundreds of thousands or even millions of times.

In addition, NAB notes that there is nothing new about political ads attempting to mislead the public in some way or distort the truth. Broadcasters have managed complaints from candidates and political parties for decades, as one side and then the other take exception to political ads opposing them. Stations' processes function well, most complaints are quickly resolved, and very few complaints give rise to litigation. Thus, as Congress determines the best way forward, broadcasters will continue to monitor their airwaves and protect their viewers and listeners.

NAB strongly encourages the Commission to close this proceeding without moving forward. While Commission staff worked diligently to wrestle with the deepfake problem it identified, the agency is severely hamstrung by a complete or near-complete absence of Congressional authority. NAB urges the Commission to seek only holistic solutions that will not create new problems by trying to solve others. To the extent there is an issue to address, it is Congress, and not the FCC, that can and should take the lead.

II. BROADCASTERS TAKE THEIR ROLE AS TRUSTED SOURCES OF NEWS AND INFORMATION SERIOUSLY

A. Americans Consistently Rank Broadcasters Among the Most Trusted Sources of News

Broadcast stations remain among the most trusted sources of news and information for communities throughout the nation.⁴ This is particularly true in the election context, where viewers often turn to local broadcast news to separate facts from opinions and to understand the issues that affect their local communities.⁵ According to a May 2024 Cook Political Report, a majority of likely voters across seven swing states trust local broadcasting more than any other medium to provide election information.⁶

In addition, among all outlets, Americans trust local TV and radio news sources the most to be balanced and represent all sides of issues in their political coverage,⁷ free of bias and skewed information. Compare this to cable news channels and websites, for example,

⁴ BIA Advisory Services, *Economic Impact of Big Tech Platforms on the Viability of Local Broadcast News* (2021), at 1, Comments of NAB, GN Docket No. 22-20 (July 1, 2022), at Attachment G; Comments of NAB, MB Docket No. 18-349 (Sept. 2, 2021), at 21 (citing surveys from Nieman Lab, Gallup, and TVB). See also TVB Press Release, *GfK/TVB Purchase Funnel 2024 A18+* (2024), <https://www.tvb.org/research-measurement-analytics/research/purchase-funnel-2024/>.

⁵ See TVB Press Release, 2022 Voter Funnel Study, *Television Remains the Most Important Influencer, as seen in the 2022 Midterm Elections* (Dec. 8, 2022), www.tvb.org/research (survey of 10,000 registered voters across 10 battleground states following the 2022 midterm elections found local broadcast TV stations to be respondents' most trusted source for news).

⁶ The Cook Political Report, *2024 Swing State Project* (May 23, 2024), www.cookpolitical.com/survey-research/2024-swing-state-project/23May2024-toplines (survey of 3,969 likely voters across seven swing states (Arizona, Georgia, Michigan, North Carolina, Nevada, Pennsylvania, and Wisconsin)).

⁷ Radio Television Digital News Association (RTDNA)/Magid, *Improving Trust in Political Coverage*, at Slides 15 -16 (Sept. 2023).

which drive their programming days with opinions and commentary, rather than the factual reporting of “what’s actually going on.”⁸ Even among Americans who obtain news from social media, many say that inaccuracy is what they “dislike most” about it.⁹

Broadcast stations do not provide trustworthy news coverage, including coverage of elections and candidates, pursuant to some government fiat. Rather, they strive toward

⁸ WXYZ.com, *News Literacy Week: The Difference Between Local and National News* (Jan. 29, 2021), <https://www.wxyz.com/news/news-literacy-project/news-literacy-week-the-difference-between-local-and-national-news>, quoting Dustin Carnahan, Michigan State University Assistant Professor in Communications and Politics.

⁹ L. Wang and N. Forman-Katz, *Many Americans find value in getting news on social media, but concerns about inaccuracy have risen*, Pew Research Center (Feb. 7, 2024), <https://www.pewresearch.org/short-reads/2024/02/07/many-americans-find-value-in-getting-news-on-social-media-but-concerns-about-inaccuracy-have-risen> (finding that 40 percent of U.S. adults who get news on social media say inaccuracy is the thing they dislike most, which included concerns about unverified facts, misinformation, “fake news,” and unreliable sources).

credibility as part of their mission to serve the public interest¹⁰ and because a reliable and accurate news product helps keep viewers and listeners engaged and loyal.¹¹

Broadcasters also have strong incentives to provide their communities with trusted news and information to distinguish themselves from the array of other video and audio options, and thus attract audiences and advertising revenues. The recent explosive growth in programming options has only increased broadcast stations' incentives to produce and improve *local* programming, which can be a market niche they can fill in today's splintered

¹⁰ See, e.g., Michael Stahl, *Scripps Commits To Boost – And Better – Its News Coverage*, tvnewscheck.com (May 25, 2023) (reporting on E.W. Scripps' news initiative to invest about \$10 million to increase compensation to attract and retain talented journalists and to add about 250 to local news teams); TVN Staff, *Nexstar Media Hosts Nearly 50 Candidate Debates, Forums Ahead of Midterm Election*, tvnewscheck.com (Oct. 13, 2022); M. Vaca, *News4JAX launches new streaming series 'Vote 2024: Path to the Polls,'* news4jax.com (Jan. 11, 2024) (describing series from Graham Media's Jacksonville station dedicated to "debates, trends, patterns, election laws and more" for the 2024 election); Greg Ng, *Get the Facts: How Maryland is securing the 2024 election*, wbaltv.com (May 13, 2024) (urging audiences to view Hearst's Baltimore TV station's special series "Securing the Election," examining what people need to do to vote in Maryland, how to vote by mail-in ballot, the concerns of election officials, and how shortages of election judges could impact democracy); *Entravision Adds Voter Registration Portal To Its El Botón App*, insideradio.com (Mar. 19, 2024) (reporting Entravision's addition of voter registration availability to its streaming app that offers Latinos access to music, podcasts, and entertainment news in Spanish); Mark Miller, *KXTV Sacramento Launches Voter Engagement Project*, tvnewscheck.com (Aug. 27, 2024) (describing the TEGNA station's initiative to provide essential, non-partisan information to voters through community events, expanded on-air content, and online resources, including a comprehensive voter guide).

¹¹ See, e.g., J.A. Eisenach and K.W. Caves, *The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting* (2011), at 2, 39-42, attached to Reply Comments of NAB, MB Docket No. 10-71 (June 27, 2011) (explaining that "local news production is a form of investment, as local news programming contributes to a television station's brand awareness, enhances viewer loyalty, and stimulates demand for complementary outputs"); S.M. Chan-Olmsted and Y. Kim, *Perceptions of Branding among Television Station Managers: An Exploratory Analysis*, 45 J. Broad. & Elec. Med. 75 (Winter 2001) (survey finding that TV station general managers regard "news leadership to be a 'must' for building distinctive and positive station brand images").

media marketplace.¹² Providing valued locally-oriented programming, including news, sports, weather, and emergency information, is what many broadcasters see as their unique competitive advantage.¹³

Given how vital providing news and information trusted by consumers is to many local stations, broadcasters have strong incentives to protect their audiences from untrustworthy information, including about elections and campaigns, even on non-broadcast platforms. As described in detail below, broadcasters have a long track record of efforts to fight misinformation and disinformation – without any government mandates and before the FCC’s current concerns with AI-generated deepfakes – and are redoubling their efforts, given the development and spread of AI tools.

¹² The FCC has stated that “there is evidence that being local is *the* defining value proposition that many radio stations see themselves as providing to consumers.” *2018 Quadrennial Regulatory Review*, Report and Order, MB Docket No. 18-349, FCC 23-117 (Dec. 26, 2023), at ¶ 36 (emphasis in original).

¹³ Industry analysts have observed that, while competition for audiences grows from OTT and SVOD options, TV stations can remain “resilient” with local news and sports. J. Nielson, *TV station ratings end 2020 on an upward trend*, Kagan, a media research group within S&P Global Market Intelligence (Feb. 18, 2021). Broadcasters also provide critical news and information during emergencies that audiences rely on and that other outlets do not and cannot provide. See, e.g., J. Burger, et al., *Trusted sources used during and after Superstorm Sandy: TV and radio were used more often than social media*, Nat’l Inst. of Health, Nat’l Library of Medicine (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4487519/>; Y. Nishida, et al., Int’l Telecomm. Union, *Why terrestrial TV is crucial during times of crisis* (Nov. 21, 2022), <https://www.itu.int/hub/2022/11/world-tv-day-television-emergency-broadcasting/>; Deschutes County Sheriff’s Office, Oregon, *Emergency Preparedness Recommendations* (urging citizens to keep a portable, battery-operated radio or TV in their basic disaster supplies kit), <https://www.deschutes.org/health/page/emergency-preparedness>; Nielsen, *In the “New Normal” of COVID-19, Local TV News Proves to be the Medium of Choice for News and Information* (Mar. 24, 2020), <https://www.nielsen.com/insights/2020/in-the-new-normal-of-covid-19-local-tv-news-proves-to-be-the-medium-of-choice-for-news-and-information/>.

B. Broadcasters Have Launched Many Initiatives to Combat the Spread of Online Misinformation and Disinformation

1. Deepfakes Are a Significant Problem Online

The online spread of misinformation has been a concern since the advent of social media. In recent years, the widespread availability of generative artificial intelligence tools has caused an increase in highly realistic images, audio, and video. Deepfakes enabled by generative AI pose a threat to the public's ability to discern what content is authentic.

Many AI-generated images are circulated online, and many of them even go viral. The fact that anyone can rapidly reach a worldwide audience is one of the best features of social media, but it also has proved to be an effective tool for spreading misinformation. Any given post may have a fairly low chance of being seen by large numbers of people, but scammers and those who have other nefarious reasons for sharing deepfake images and videos can keep iterating until their fake content goes viral.

Deepfakes of candidates have been circulated online in connection with a number of elections, both domestic and abroad. For example, in Taiwan and Moldova, deepfakes of politicians appearing to step aside and endorse opponents have surfaced online.¹⁴ In Bangladesh, an opposition party politician was undermined by fake images on social media depicting her in a bikini.¹⁵ A party leader in Slovakia purported to discuss vote rigging and

¹⁴ See Pranshu Verma and Cat Zakrzewski, *AI deepfakes threaten to upend global elections. No one can stop them*, Washington Post (Apr. 23, 2024), <https://www.washingtonpost.com/technology/2024/04/23/ai-deepfake-election-2024-us-india/>.

¹⁵ *Id.*

raising the price of beer in a fake audio clip circulated online.¹⁶ These deepfakes find audiences online where they can be shared before any opportunity to check their authenticity.

Broadcasters have been the victims of online deepfakes, with well-known broadcast personalities such as Univision's Jorge Ramos and syndicated talk show host Kelly Clarkson being repeatedly cloned to create unauthorized pitches for goods and services.¹⁷ One broadcaster's news anchors were the subject of a deepfake video circulated online in which a routine discussion between the two anchors was manipulated to create a hateful, racist, anti-Semitic rant. The broadcaster was forced to sue in federal court to get the video taken down.¹⁸ Fake videos now can be created by most anyone at minimal or sometimes no cost using generative AI services from companies such as Google and OpenAI and with simple text prompts.¹⁹

¹⁶ Ali Swenson and Kelvin Chan, *Election disinformation takes a big leap with AI being used to deceive worldwide*, AP (Mar. 14, 2024), <https://apnews.com/article/artificial-intelligence-elections-disinformation-chatgpt-bc283e7426402f0b4baa7df280a4c3fd>.

¹⁷ See, e.g., Nate Trela, *Video uses fake Jorge Ramos audio to sell debt relief scam | Fact check*, USA Today (June 18, 2024), <https://www.usatoday.com/story/news/factcheck/2024/06/18/jorge-ramos-debt-elimination-fabricated-video-fact-check/74135175007/>; Gabrielle Settles, *Kelly Clarkson weight loss endorsement is AI, not reality*, USA Today (Nov. 7, 2023), <https://www.usatoday.com/story/news/factcheck/2023/11/07/altered-kelly-clarkson-video-promotes-keto-diet-gummies-fact-check/71488915007/>.

¹⁸ *Scripps Media Inc. v. Macintosh*, Case No. 3:23-cv-01846 (N.D. Ohio) (filed Sept. 22, 2023).

¹⁹ Swenson and Chan, *Election disinformation*; see also Huo Jingnan, *X's chatbot can now generate AI images*, npr.org (Aug. 16, 2024) (describing how NPR typed in prompts to the AI chatbot Grok, which then returned fake images of people putting many envelopes into ballot drop boxes in the middle of the night).

Online deepfakes also complicate the difficult job of reporting on breaking news events. For example, in the immediate aftermath of the terrorist attacks in Israel last October, many fake images and videos emerged online.²⁰ One broadcast network estimated that only 10 percent of the videos it reviewed in those early days were usable or authentic. Broadcasters continue to take steps to train their reporters on sophisticated techniques to validate media and detect inauthentic content. Technical tools to assist in this effort, including standards developed by the Coalition for Content Provenance and Authenticity, are being created to help detect and prevent the spread of deepfakes.²¹ However, social media platforms struggle to keep up with the pace at which deepfake technology is evolving.

2. Broadcasters Work Diligently to Counter Online Misinformation

In keeping with their roles as trusted sources of news, over the past decade many broadcasters have invested heavily in initiatives to help their viewers and listeners remain better informed about the misinformation and disinformation they may encounter online. Maintaining the trust of audiences is paramount to broadcasters around the country.

In one notable example, TelevisaUnivision launched eIDetector in 2016 to debunk false messages that misinform the Hispanic community.²² Following a review by the eIDetector team, images can be labeled as *auténtico* (authentic), *fuera de contexto* (out of

²⁰ See David Klepper, *Fake babies, real horror: Deepfakes from the Gaza war increase fears about AI's power to mislead*, Associated Press (Nov. 28, 2023), <https://apnews.com/article/artificial-intelligence-hamas-israel-misinformation-ai-gaza-a1bb303b637ffbbb9cbc3aa1e000db47>.

²¹ Coalition for Content Provenance and Authenticity, <https://c2pa.org/>.

²² eIDetector, <https://www.univision.com/especiales/noticias/detector/>.

context), *engañoso* (misleading), *manipulado* (manipulated), or *falso* (fake), depending on the outcome of an investigation. Audio labels include *verdad* (true), *falta contexto* (lack of context), *no hay evidencias* (there is no evidence), *engañoso* (misleading), or *falso* (fake). As of August 2022, eIDetector is part of Meta’s third-party fact-checking program, which means that false content identified by eIDetector bears a label when shared on Meta’s social media platforms.²³

Other station groups and networks have launched their own fact checking initiatives and tools. For example, TEGNA created VERIFY in 2015 – and expanded it in 2021 – to inform users about the veracity of trending stories online, leveraging its 49 newsrooms around the country.²⁴ In 2020, TEGNA worked with the nonprofit First Draft in training all TEGNA journalists to identify false information and doctored or fake videos/photos online, and First Draft provided additional training focusing on how certain groups, including minority communities, are targeted by misinformation campaigns.²⁵ Similarly, last year CBS launched a new unit called CBS News Confirmed to produce segments validating or refuting

²³ Veronica Villafaña, *Univision Noticias’ eIDetector will partner with Meta*, Media Moves (Aug. 25, 2022), <https://www.mediamoves.com/2022/08/univision-noticias-eldetector-will-partner-with-meta.html>; *Meta’s Third-Party Fact Checking Program*, <https://www.facebook.com/formedia/mjp/programs/third-party-fact-checking>.

²⁴ <https://www.verifythis.com/>.

²⁵ Michael Stahl, *As Elections Near, TV’s Fact-Checking Surges*, tvnewscheck.com (Sept. 8, 2020).

viral stories.²⁶ Fox also has launched a tool to verify whether images or screenshots shared purporting to be from its affiliated publishers are authentic.²⁷

Broadcast groups and networks often redouble their efforts at combatting misinformation in election years. For instance, as part of its *Decisión 2024*, Telemundo has expanded content on its fact-checking platform, T-Verifica, to combat Spanish-language disinformation and misinformation specifically about the 2024 election.²⁸ Television groups also join with outside organizations (e.g., FactCheck.org, MediaWise, PolitiFact) as part of their election year initiatives to fight misinformation, especially online.²⁹

Local stations frequently use their platforms to help counter the spread of disinformation online. When a deepfake video circulated online purporting to show the Governor of Utah admitting to fraudulently gathering signatures, Nexstar station KTVX was quick to run a segment on local news to counter the false narrative and coupled it with tips

²⁶ See Brian Steinberg, *CBS Launches Fact-Checking News Unit to Examine AI, Deepfakes, Misinformation*, *Variety* (Nov. 6, 2023).

²⁷ *Verify Tool*, <https://www.verify.fox/>.

²⁸ See Mark Miller, *Telemundo Launches Decisión 2024, Multiplatform News and Civic Engagement Initiative*, *tvnewscheck.com* (Mar. 4, 2024).

²⁹ See, e.g., Michael Stahl, *As Elections Near, TV's Fact-Checking Surges*, *tvnewscheck.com* (Sept. 8, 2020) (describing Hearst's partnership with FactCheck.org as part of its election year commitment to fact-checking and explaining how Hearst's national bureau, in conjunction with its local stations and FactCheck.org, increase their fact-checking of officials' statements and viral images and memes circulating online during political windows); Mark Miller, *Telemundo Launches Decisión 2024, Multiplatform News and Civic Engagement Initiative*, *tvnewscheck.com* (Mar. 4, 2024) (describing Telemundo's teaming up with MediaWise, the Poynter Institute's digital media literacy initiative, during the 2024 race to provide online tools and resources to help people spot misinformation online, including on popular social media platforms).

that viewers can use to spot deepfakes on their own.³⁰ Similarly, when a politics newsletter in Arizona used a (disclosed) deepfake of a Senate candidate to highlight the issue of deepfakes, Gray stations KTVK and KPHO aired an educational piece to help viewers learn how not to fall victim to malicious deepfakes that may arise in this or a future election cycle.³¹ Many local broadcasters continue to inform and educate their audiences about online disinformation, including deepfakes.³²

III. BROADCASTERS SHARE THE FCC'S GOAL OF EMPOWERING AUDIENCES IN THE FIGHT AGAINST DISINFORMATION

Because of broadcasting's longstanding role as a highly trusted source of news and information, and its evolving role in educating the public about disinformation being shared online and especially via social media, broadcasters are committed to combatting harmful false and deceptive political advertising, especially fraudulent deepfakes. Broadcasters

³⁰ Jonathan Sharp, *Deepfake video of Gov. Cox should serve as a 'huge warning,' Utah County Commissioner says*, KTVX (June 25, 2024), <https://www.abc4.com/news/politics/deepfake-video-utah-elections/>.

³¹ Casey Torres, *Deepfake video of Kari Lake highlights potential problem in election season*, AZ Family (Mar. 26, 2024), <https://www.azfamily.com/2024/03/26/deepfake-video-kari-lake-highlights-potential-problem-election-season/>.

³² See, e.g., Ken Colburn, *Data Doctors: Tips for Spotting Deepfake Videos*, wtop.com (Apr. 19, 2024), <https://wtop.com/tech/2024/04/data-doctors-tips-for-spotting-deepfake-videos/>; Christina Hager, *Could you spot a deepfake video? Boston area survey showed more than half failed the test*, WBZ News (Aug. 15, 2024), <https://www.cbsnews.com/boston/news/i-team-deepfake-videos-artificial-intelligence/>; Khiree Stewart, *University of Maryland professor working on software to detect deepfakes*, wbaltv.com (Feb. 22, 2024); <https://www.wbaltv.com/article/maryland-professor-deepfake-detection-app-talklock/46915638>.

agree that public access to accurate information about elections and the positions and actions of candidates is critical to our democracy.³³

Broadcasters are fortunate that, in many ways, the broadcast platform does not lend itself well to successful dissemination of deepfakes, making broadcast stations a less likely

³³ Broadcasters regularly work to ensure that the public has access to accurate, nonpartisan information about elections and is educated about the value of their civic participation. For example, NAB's Election Toolkit provides stations with a variety of resources to help them educate viewers and listeners, including: (i) downloadable high-resolution television and radio announcements about the importance of voting that direct audiences to reliable information sources on voter registration and ballot questions where they live; (ii) links to fact-checking resources and material on covering elections from leading journalism foundations and professional associations; (iii) ideas for ways to engage audiences including hosting debates, fostering dialogue between candidates and voters, running candidate profiles, and interviewing experts about ballot referenda; and (iv) "get out the vote" social media tiles. See NAB, *2024 Election Toolkit*, <https://www.nab.org/sites/electiontoolkit/default.asp>. The Election Toolkit has been available to stations for many years and is updated every two years. New this election cycle is NAB's Hispanic Get Out the Vote (GOTV) Coalition comprised of NAB, nonprofit advocacy groups, and several media outlets with significant Hispanic and Latino audiences. Designed to counter misinformation and disinformation efforts that have disproportionately targeted these audiences, the Coalition connects stations with a variety of resources including downloadable announcements, scripts and discussion points on the importance of voting, research/data, and a speakers bureau of leading experts on civic participation within Hispanic and Latino communities. See NAB, *Hispanic GOTV Coalition*, <https://www.nab.org/HispanicGOTV/>. Coalition members meet regularly to discuss and share best practices and make presentations at journalism and media conferences. See, e.g., NAB, *NAB Show 2024, Exclusive Convening of the Hispanic Media GOTV Coalition* (Apr. 15, 2024), https://nab24.mapyourshow.com/8_0/sessions/session-details.cfm?scheduleid=1428; Investigative Reporters and Editors 2024 Conference, *FYI Forum: Strategies to Counter the Spread of Misinformation, Disinformation and Malinformation* (June 20, 2024), <https://schedules.ire.org/ire-2024/>. See also Press Release, NAB, *NAB Launches "Martes de Acción" (Tuesdays of Action) to Support Hispanic Voter Participation Ahead of 2024 Elections* (Sept. 3, 2024) (every Tuesday through Election Day, NAB's Hispanic Media GOTV Coalition members will intensify outreach efforts across various platforms, including radio, television, and live events, featuring targeted messaging to educate Hispanic voters on critical election-related topics, ranging from voter registration deadlines and early voting to Election Day preparedness and combating misinformation).

place for deepfake material to appear. First, deepfakes thrive online due to the ease of sharing and re-sharing them.³⁴ Broadcast programming and advertising, in contrast, cannot easily be forwarded and re-sent (the content would have to appear on an affiliated broadcaster app or website, not just on air, and even then may not be easily shared electronically). Second, when a deepfake ad “goes viral” online, even if it is taken down on one site, it may exist in many other places and continue to be saved, posted, and reposted by social media users.³⁵ If a broadcast ad is taken down, it is unlikely to exist elsewhere. And rather than dealing with nameless, faceless multinational corporations when trying to flag a misleading ad on social media, working with a local station to identify an allegedly problematic advertisement would be far easier. Third, when a deepfake is repeatedly shared, it is impossible to retrace its “steps” and provide corrected information to everyone who received it and alert them of the misinformation. But on broadcast platforms, many of the

³⁴ Empirical research shows that social media users’ perception of the veracity of online content does not deter sharing and that false information spreads more efficiently than truth. See, e.g., Gordon Pennycook, Ziv Epstein, Moshen Mosleh, *et al.*, *Shifting Attention to Accuracy Can Reduce Misinformation Online*, *Nature* Vol. 592, Issue 7855 590–595 (2021) (experiment showed that although social media users believe it is extremely important to share accurate content, their political agreement with content was a stronger predictor of whether they would share it than their belief in its veracity); Soroush Vosoughi, Deb Roy, & Sinan Aral, *The Spread of True and False News Online*, *Science*, 359(6380), 1146-1151 (2018) (an empirical study of 126,000 true and false news stories on a social media site over a period of several years showed that falsehoods spread “farther, faster, deeper and more broadly than the truth in all categories of information”; that the effects were more pronounced for false political news than for any other news category; and that contrary to conventional wisdom, robots shared true and false news at the same rate, suggesting that false news stories spread more quickly because of human activity).

³⁵ See, e.g., Catherine Thorbecke, *Why deleting something from the internet is ‘almost impossible,’* CNN BUSINESS (Sept. 18, 2022) (“Retracting something from the internet, hitting the reset button — is almost impossible.”).

same viewers or listeners who saw or heard particular content can be reached with a corrected message in the same time slot at a later date. All these factors inherent in local broadcasting make it a less likely target for deepfake advertising.

Additionally, placing broadcast political advertising typically involves some interaction between a representative of an entity buying time and station personnel accepting the advertising buy.³⁶ The fact that political ads on broadcast stations must already identify their sponsors³⁷ and include “stand by your ad” statements (for federal candidates that wish to qualify for lowest unit rates)³⁸ – and that station staff help gather that information and ensure that appropriate disclosures appear – makes it far less likely that a broadcast political ad will contain a deepfake. In contrast, deepfake content thrives in the anonymity of fake social media accounts.

³⁶ Many political advertisements appearing on broadcast stations are placed by well-established political advertising agencies that have ethical obligations and business incentives not to place deepfake advertising. For example, many stations partner with advertising agencies that are members of the American Association of Political Consultants (AAPC), which determined more than a year ago that deepfake political advertising is inconsistent with its Code of Ethics. See Press Release, AAPC, *AAPC Condemns Use of Deceptive Generative AI Content in Political Campaigns* (May 3, 2023), <https://theaapc.org/american-association-of-political-consultants-aapc-condemns-use-of-deceptive-generative-ai-content-in-political-campaigns-2/> (“The [AAPC] Board unanimously agreed that the use of ‘deep fake’ generative Artificial Intelligence (AI) content is a dramatically different and dangerous threat to democracy.”). For purposes of its ethical standard, the AAPC defined deepfakes as “synthetic, computer-generated video, stills, or audio elements derived from a person’s likeness, voice, or image that is so near realistic that it is intended to lead voters to deceptive conclusions alternative to reality about a candidate, party, or issue.”

³⁷ 47 U.S.C. § 317; 47 C.F.R. § 73.1212.

³⁸ 47 U.S.C. § 315(b)(2).

For all these reasons – and perhaps others – the Notice does not identify evidence of deepfakes on broadcast radio or television stations. That is not to say deepfakes have or may never appear in any form over the air; but rather, the same epidemic plaguing social media platforms simply does not exist on broadcast outlets. At a minimum, the FCC would need to identify growing instances of deepfakes being utilized in political ads on television and radio stations before adopting new rules in this fast-moving AI environment.

And while the factors identified above make broadcast platforms a less likely target for fraudulent deepfakes, vigilance is warranted. Broadcasters and NAB continue to share information, hold events, and engage in dialogue about the best ways to avoid misleading content in the era of generative AI and will continue to strengthen existing preventative measures.

IV. EFFECTIVE RULES WOULD PROVIDE MEANINGFUL DISCLOSURES ALLOWING AUDIENCES TO MAKE INFORMED DECISIONS ABOUT POLITICAL ADVERTISEMENTS AND ACCOUNT FOR THE REALITIES OF CREATING, SELLING, AND AIRING THOSE ADS

*This filing contains information generated in whole or in part by artificial intelligence.*³⁹

Does NAB’s above disclosure, standing alone, provide readers of our comments with any useful information? Clearly not. The disclosure says nothing about how NAB used AI or what parts or how much of NAB’s comments were AI-generated. Most importantly, the disclosure provides no relevant information about the veracity of NAB’s comments but,

³⁹ NAB admits that while writing these comments, the authors occasionally made use of editorial suggestions made by Microsoft’s AI-enhanced editing tools, e.g., auto-correct. See Napier Lopez, *Microsoft is using AI to give Office spell-check on steroids and much more*, TNW, A Financial Times Company (July 26, 2016), <https://thenextweb.com/news/microsoft-using-ai-give-office-spell-check-steroids-much>.

without the explanation given in note 39, would very likely cause doubts about the accuracy and reliability of our comments. The same problems afflict the (almost) identical disclosure the Notice proposes to attach to all political advertising containing any AI-generated content.

As explained in detail below, the proposed on-air disclosure fails to give meaningful information to the public and would not achieve the FCC's stated goals of ensuring the public can assess the "substance and reliability" of the political ads they see and hear.⁴⁰ Indeed, such meaningless and ambiguous disclosures would inflict more harm on consumers than good. Other requirements suggested in the Notice also would be unworkable and open to abuse. The disclosure and other proposed rules, moreover, will not be simple to implement but would burden broadcast stations, candidates, and other political speakers because the proposals do not reflect how political advertising is created, sold, scheduled, and aired.

A. The Proposed Rules Would Fail to Provide Meaningful Information to the Public

The proposed regulations would require broadcasters (and other regulatees in certain circumstances) to inquire of political advertisers "whether any political advertising scheduled to be aired on its station contains any artificial intelligence-generated content."⁴¹ If the advertiser responds affirmatively, the broadcaster would be required to "make an on-air announcement, immediately preceding or during the airing of the advertising," stating:

⁴⁰ Notice at ¶¶ 33, 35.

⁴¹ Notice at Appendix A, proposed 47 C.F.R. § 73.1945(c). The rule also would apply to cable, direct broadcast satellite (DBS), and satellite radio operators when they are engaged in "origination programming." See Notice at ¶¶ 2, 22, and Appendix A, proposed 47 C.F.R. §§ 25.701 (DBS), 25.702 (satellite radio), and 76.207 and 76.1701 (cable).

“[The following] or [This] message contains information generated in whole or in part by artificial intelligence.”⁴² The rules would define artificial intelligence-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.⁴³

In its current form, the proposed inquiry and disclosure regulations are both overly broad and underinclusive. The proposed definition of AI-generated content could be interpreted to apply to all or nearly all content produced by any modern production platform. Merely using artificial intelligence in the production of an ad is in no way probative of its truthfulness and thus usefulness to the public. Artificial intelligence has become so integrated into the production process that it performs tasks such as noise reduction, color correction, video stabilization, and more. In fact, any pictures, video, or audio recorded on a modern smartphone likely have been altered by artificial intelligence, whether the user realizes it or not.⁴⁴ It is virtually certain that any content produced in the last several years has been altered by AI at some point in the production process. If the proposed definition

⁴² Notice at Appendix A, proposed 47 C.F.R. § 73.1945(d). For radio, the on-air announcement must be delivered in a clear and conspicuous voice at a speed that is understandable. For television, the on-air announcement may be either audio (delivered in a clear and conspicuous voice at a speed that is understandable) or visual, using letters equal to or greater than four percent of the vertical picture height for at least four seconds. A similar disclosure would be placed in a station’s online public inspection file. *Id.*

⁴³ Notice at ¶ 12 and Appendix A, proposed 47 C.F.R. § 73.1945(a).

⁴⁴ See Press Release, Apple, *Apple introduces dual camera iPhone 11* (Sept. 10, 2019), <https://www.apple.com/newsroom/2019/09/apple-introduces-dual-camera-iphone-11/> (highlighting Deep Fusion advanced neural processing that uses advanced machine learning to enhance all photos taken on newer Apple devices).

applies, then many, most, or even every political ad aired on broadcast stations would likely be required to bear a notification that artificial intelligence was used in its creation, and the deluge of notifications would fail to provide any meaningful information to the viewer or listener.

Even if the FCC were to modify the definition such that it applied *only* to AI-generated voices and AI-generated actors (rather than *particularly* to those things), that definition would still cover many non-deceptive uses. Using generative AI to create background elements for ads, rather than licensing stock images, video, or audio, can be a cost-effective way of producing ads. For example, an ad may show children playing on a playground while a voiceover discusses a candidate’s stance on the environment. Whether those children are AI-generated or human actors does not materially alter the meaning or the message in the ad or affect a viewer’s ability to understand the candidate’s position on the issue.

Generative artificial intelligence can be used in many ways to speed the production of an ad without being misleading. It is becoming common for small businesses to use generative AI to make polished advertisements at a fraction of the cost otherwise possible.⁴⁵ Candidates, especially in local races or otherwise operating with small budgets, could make use of similar technology to reduce the impact of money in campaigns.⁴⁶ When generative AI

⁴⁵ See, e.g., <https://waymark.com/> (AI video advertising technology provider).

⁴⁶ See, e.g., Scott Babwah Brennen & Matt Perault, *The New Political Ad Machine: Policy Frameworks for Political Ads in an Age of AI*, Center on Technology Policy at the University of North Carolina at Chapel Hill (Nov. 2023), at 10, <https://techpolicy.unc.edu/wp-content/uploads/2023/11/GAI-and-political-ads.pdf> (generative AI tools “are likely to be particularly impactful for smaller campaigns and challengers . . . reducing advertising barriers may make it easier for them to compete with organizations that have deeper

is used in ways that simply speed the production process or reduce costs, there is little value in consumers being informed of its use. In fact, such disclosure likely would be counterproductive, leading to unfounded distrust of even accurate political messages.

Meanwhile, limiting the definition to AI-generated voices or people would leave many deceptive uses of generative artificial intelligence without a disclaimer. For example, removing people from an event that occurred can be just as misleading as adding them. Or adding non-human elements to video footage of a real event, to convey a misleading impression of danger or destruction, can fundamentally alter a person's understanding of those events.

At the same time, deceptive political ads not using artificial intelligence would be exempt from disclosure under the proposed rules. There have been numerous cases of misleading videos, often called “cheapfakes” or “shallowfakes,” circulating online that used only traditional video editing techniques, not artificial intelligence. In several cases,

pockets”); Russell Berman, *Political Campaigns May Never Be the Same*, The Atlantic (May 27, 2023), <https://www.theatlantic.com/politics/archive/2023/05/ai-political-campaigns-2024-election-democracy-chatgpt/674182/> (“AI has the potential to achieve in a few years what decades of attempted campaign-finance reform have failed to do—dramatically reduce the cost of running for election . . . [t]he result could be a more open and accessible democracy, in which small, bare-bones campaigns can compete with well-funded juggernauts.”); Notice at n.43, *citing* Antoinette Siu, *Agencies Weigh the Pros and Cons of Generative AI As Political Advertising Grows*, Digiday (Aug. 15, 2023), <https://digiday.com/media-buying/agencies-weigh-the-pros-and-cons-of-generative-ai-as-political-advertising-grows/> (AI can lower costs for campaigns and level the playing field).

cropping,⁴⁷ splicing,⁴⁸ altering playback speed,⁴⁹ and other traditional editing techniques were used to create misinformation that spread online. Experts have become concerned that overemphasizing AI and deepfakes distracts from the wider problem with political disinformation, including cheapfakes.⁵⁰ Indeed, one recent paper recounting two experiments in which participants were exposed to political cheapfakes and deepfakes on the same topic, found that deepfakes were perceived as *less* credible than similar cheapfakes, suggesting that less sophisticated modes of deception can be at least as

⁴⁷ See Adriana Usero and Glenn Kessler, *'Cheapfake' Biden videos enrapture right-wing media, but deeply mislead*, The Washington Post (June 14, 2024), <https://www.washingtonpost.com/politics/2024/06/14/cheapfake-biden-videos-enrapture-right-wing-media-deeply-mislead/>.

⁴⁸ See Donie O'Sullivan, *A false ad claiming Republicans back the Green New Deal tests Facebook's policy on lies*, CNN (Oct. 28, 2019), <https://www.cnn.com/2019/10/26/politics/facebook-false-ad-green-new-deal/index.html>.

⁴⁹ See Drew Harwell, *Faked Pelosi videos, slowed to make her appear drunk, spread across social media*, The Washington Post (May 24, 2019), <https://www.washingtonpost.com/technology/2019/05/23/faked-pelosi-videos-slowed-make-her-appear-drunk-spread-across-social-media/>.

⁵⁰ See, e.g., Vittoria Elliott, *Worried About Political Deepfakes? Beware the Spread of 'Cheapfakes'*, wired.com (Dec. 18, 2023), <https://www.wired.com/story/meta-youtube-ai-political-ads/> (quoting professor at University of California Berkeley School of Information as asking "If you think deceptive political ads are bad, well, then why do you care how they're made? It's not that it's an AI-generated deceptive political ad, it's that it's a deceptive political ad period, full stop."); Nina Schick, *Don't underestimate the cheapfake*, MIT Technology Review (Dec. 22, 2020), <https://www.technologyreview.com/2020/12/22/1015442/cheapfakes-more-political-damage-2020-election-than-deepfakes/> (stating that "cheapfakes have become a regular feature of US political life," and citing a 2020 case where a Georgia election worker had to go into hiding due to threats after a cheapfake falsely accusing him of throwing away an absentee ballot went viral).

credible as more sophisticated forms of AI-driven audiovisual fabrication.⁵¹ A rule like the one proposed in the Notice that focuses entirely on the technology used ignores the FCC's broader concerns.

A disclosure requirement that applies equally to misleading and non-misleading content, while simultaneously failing to cover some categories of misleading content, provides no meaningful information to viewers or listeners. It would be impossible to craft a technology-based definition that covered all or even most deceptive uses of the technology without impacting benign uses, many of which have public interest benefits. The proposals here thus will not achieve the FCC's goals of providing information enhancing the public's ability to evaluate political ads.

B. Any Requirement that Broadcasters Perform Additional Investigation Would Be Unworkable

The Notice seeks comment on what should happen when an entity requesting airtime does not respond to an inquiry,⁵² as well as "appropriate actions for stations to take in cases where a station is informed by a credible third party that a political ad contains AI-generated content."⁵³ Beyond asking an advertiser to self-identify, there are no reliable ways to determine whether artificial intelligence was used in the creation of an advertisement. If the proposed rule is adopted and a station makes the required inquiry but an advertiser does

⁵¹ Michael Hameleers, *Cheap Versus Deep Manipulation: The Effects of Cheapfakes Versus Deepfakes in a Political Setting*, 36 Int'l J. of Public Opinion Res. 1 (Mar. 2024), <https://academic.oup.com/ijpor/article/36/1/edae004/7617425>.

⁵² Notice at ¶ 15.

⁵³ *Id.* at ¶ 17.

not notify the broadcaster that the ad contains AI-generated content, a broadcaster should be deemed to have satisfied its obligation.

Broadcasters should not be expected to undertake investigations in response to potentially specious claims by third parties that a political ad was AI-generated (not to mention that such a requirement would be unlawful). According to the Government Accountability Office, “[c]urrent deepfake detection technologies have limited effectiveness in real-world scenarios.”⁵⁴ Automated systems for detecting the use of generative AI are notoriously fallible, producing both false positive and false negative results. Reliably determining whether something was generated by artificial intelligence is not always possible, and when it is, it typically requires an extensive manual investigation.⁵⁵ Earlier this year, Meta introduced a feature that would automatically label AI-generated photos posted on its platforms. As soon as the feature was activated, however, photographers were noting that real photos were being labeled as being made with AI.⁵⁶ And AI audio detection tools are similarly lacking in accuracy and should not be relied upon, at least on their own.⁵⁷

⁵⁴ U.S. Government Accountability Office, *Science & Tech Spotlight: Combating Deepfakes*, GAO-24-107292 (Mar. 11, 2024), <https://www.gao.gov/products/gao-24-107292>.

⁵⁵ See K. Schaul, P. Verman, and C. Zakrewski, *See why AI detection tools can fail to catch election deepfakes*, Washington Post (Aug. 15, 2024), <https://www.washingtonpost.com/technology/interactive/2024/ai-detection-tools-accuracy-deepfakes-election-2024>.

⁵⁶ See Ivan Mehta, *Meta is tagging real photos as ‘Made with AI,’ say photographers*, TechCrunch (June 21, 2024), <https://techcrunch.com/2024/06/21/meta-tagging-real-photos-made-with-ai/>.

⁵⁷ Loreben Tuquero, *AI detection tools for audio deepfakes fall short. How 4 tools fare and what we can do instead*, Poynter (Mar. 21, 2024) (citing experts and testing four online tools that claimed to be able to determine whether an audio clip is AI-generated), <https://www.poynter.org/fact-checking/2024/deepfake-detector-tool-artificial-intelligence-how-to-spot/>.

Candidates unhappy with how an opponent’s ad portrays them may make unsubstantiated claims about the use of artificial intelligence to create additional work for their opponent’s campaign to disprove, or to pressure stations to cease airing the ad. False claims that images shared by a Presidential campaign were AI-generated already have been promulgated by disgruntled opponents in this election cycle.⁵⁸ Outside the political arena, false claims that unflattering videos were deepfakes have resulted in arrests and lengthy investigations.⁵⁹ The FCC must not go beyond its authority and create a process open to abuse by bad-faith actors.

C. Contrary to the Notice’s Assertions, Implementing and Complying with the Proposed Rules Would Not Be Simple for Parties to the Political Advertising Process

Beyond being ineffective in providing meaningful information to audiences, the proposed rules will not be easy or efficient to implement. Under the proposals, a broadcast station would be required to ask the person or entity requesting to purchase airtime for a political ad whether the ad contains any AI-generated content and make an on-air disclosure with mandated language if the respondent reports that the ad does contain such content.⁶⁰ Stations would have to make this inquiry in writing at the time an agreement is reached to

⁵⁸ See, e.g., Rebecca Picciotto, *Trump promotes false Harris AI crowd size conspiracy*, CNBC (Aug. 11, 2024), <https://www.cnbc.com/2024/08/11/trump-harris-rally-crowd-ai-conspiracy.html>. In this instance, multiple photos from several photographers were available to compare to disprove the false claim in a timely fashion. This is not always the case.

⁵⁹ See Jenny Kleeman, *She was accused of faking an incriminating video of teenage cheerleaders. She was arrested, outcast and condemned. The problem? Nothing was fake after all*, The Guardian (May 11, 2024), <https://www.theguardian.com/technology/article/2024/may/11/she-was-accused-of-faking-an-incriminating-video-of-teenage-cheerleaders-she-was-arrested-outcast-and-condemned-the-problem-nothing-was-fake-after-all>.

⁶⁰ Notice at ¶ 15.

air a political ad. The Notice characterizes its proposals as “simple” obligations amounting to only “modest” burdens on broadcasters, candidates and other political speakers.⁶¹ However, the Commission seems to be under the mistaken impression that political advertising transactions involve only one station, one ad, and one entity that both produces the ad and purchases airtime, when in fact, the process is far more complicated.

There are numerous steps in the political ad sales process, and the steps can vary widely depending on the relevant political race, issue, ad buyer, and broadcast station, among other factors. For example, NAB understands that political ad buyers frequently request airtime for political spots days, weeks, or even months in advance of the time blocks they request, and often long before any ad is created. This is especially true for non-candidate PAC and issue ad buyers seeking to lock in airtime and rates as early as possible. Making inquiries about AI-generated content in political ads scheduled to run weeks in the future and not yet produced will fail to yield useful answers.

In many if not most cases, moreover, the “time buyer” that requests the airtime is not involved in the creation of ads and has no knowledge of the content or production of ads. The time buyer is responsible for interacting with broadcasters to request and schedule airtime for political spots, but the ad content is created and produced by a separate production company on behalf of a candidate’s committee, a PAC, or a non-candidate issue advertiser.⁶² Even in local political races and ballot campaigns, where it is somewhat more

⁶¹ *Id.* at ¶¶ 32-33, 35-36.

⁶² Additionally, production of political ads may include source material such as photographs, video, or audio from campaign rallies, public speeches, or other material that was not developed directly by the production company.

likely that an ad will be produced by the same company requesting the airtime, the time buyer is still typically unfamiliar with the content or production of the ad. Thus, in many, and potentially the vast majority of cases, the FCC's proposal would require broadcast stations to direct inquiries about the presence of AI-generated content in political ads to entities or persons who are incapable of providing the answer.⁶³

Additionally, as illustrated by the Democratic Party's change of Presidential candidates this past summer, circumstances during elections can shift rapidly. As a result, political spots, both candidate and issue ads, are often shared with stations only hours before airtime or edited at the last minute before airing. Ad buyers that had requested a block of airtime weeks in advance for a certain flight of political spots commonly call the station a day before the block begins to run to change the schedule of airings or to swap out an ad for an entirely different spot. According to our members, it is not at all uncommon for a station to receive an ad at noon that is supposed to start running during the 5:00 p.m. local news. How will stations be able to inquire about AI-generated content, receive an answer

⁶³ As the Notice recognizes, the disconnect between a station and the entity that may know whether an ad contains AI-generated content is even more pronounced for political ads embedded in network or syndicated programming. Notice at ¶ 21. In these situations, broadcasters have no relationship with either the time buyer or ad producer. Requiring a station to question a network or syndication company about the presence of AI-generated content in political ads is unlikely to yield an answer because the network or syndicator is unlikely to know the answers for the same reasons that broadcast stations do not know if a political ad contains AI-generated content. Thus, the inquiry would be a fruitless exercise in most cases. Nor would it be feasible for a station to otherwise ensure that such ads contain the required AI disclosure, given that stations do not schedule and place ads embedded in network and syndicated programming. Accordingly, as the Notice posits, NAB submits that the most practical course is to exempt broadcast stations from complying with the proposed AI disclosure rules for political ads embedded in network and syndicated programming. *Id.*

(especially from a time buyer unlikely to know the answer), and add the mandated disclosures under such compressed time frames? And to complicate matters further, many political advertisers run several different ads during one weekly schedule, and non-candidate advertisers often run multiple versions of an ad about a candidate that address different issues. Clearly, implementing the FCC's proposals will be far more challenging and burdensome than assumed in the Notice, which does not consider the complexities of creating, selling, and broadcasting political advertising.

1. The Proposed Disclosure Rules Would Decrease the Usable Time for a Political Advertisement to Convey Its Message and/or the Number of Political Ads that Broadcasters Could Air in their Fixed Advertising Blocks

Due to the offered definition of AI-generated content, the rules as proposed would cover virtually all political ads on broadcast stations. Even if the scope were narrowed, many ads would still likely be forced to run with disclosures, thereby creating additional burdens regarding implementation and timing. For instance, the FCC's proposal would require stations to make an on-air announcement disclosing that an ad contains AI-generated content either during or immediately preceding the broadcast of the ad, although the Notice also seeks comment on permitting stations to air the disclosure immediately after the ad.⁶⁴ Each of these options raise challenges for broadcasters and political speakers.

First, regarding placement of the AI disclosure during an ad, political ads must already contain other announcements that reduce the visual real estate or aural time of a spot available to candidates and other political speakers, such as the requirement to include

⁶⁴ Notice at ¶ 16.

a sponsorship identification announcement.⁶⁵ On television, the sponsor identification must be provided visually for four seconds, while an aural announcement is optional. Many candidates, PACs, and other non-candidate advertisers provide both. On radio, of course, sponsor identifications are provided aurally. Additionally, ads by federal candidates that refer to an opponent in the same race must contain the “stand by your ad” statement approving the message to receive the lowest unit rate.⁶⁶ On television, this disclosure must be provided both visually and aurally, either in a full-screen video of the candidate making the statement or as a voice-over by the candidate over a nearly full-screen image of the candidate. Again, this disclosure must be provided aurally by the candidate for radio spots.

On radio, imposing the proposed AI disclosure on top of these other required disclosures would remove an additional 4 to 6 seconds, or 13 to 20 percent, from a 30-second spot, significantly reducing the amount of time available to candidates and other political speakers to share their messages. On television, even if the FCC were to require provision of the AI disclosure only visually,⁶⁷ doing so would still further encumber the limited amount of video in a political ad available to candidates and others. In fact, broadcasters report that adding a new AI disclosure to the other required announcements would essentially render 15-second political ads useless. The Notice also asks whether even more

⁶⁵ 47 C.F.R. § 73.1212(d).

⁶⁶ 47 U.S.C. § 315(b)(2).

⁶⁷ Notice at ¶ 17 (asking whether television broadcasters should have the option to make the on-air disclosure either orally or visually, or should they be required to make disclosures both orally and visually). Double disclosures would doubly burden political speakers and broadcasters.

of political ads' valuable real estate should be given over to AI disclosures, such as disclosures in both English and the primary language of the broadcast.⁶⁸

Second, airing the proposed AI disclosure immediately before or after a political ad is not straightforward, given the way that programming and advertising time are scheduled in specific, rigid blocks. Television and radio stations typically devote portions of programming to advertising in set blocks of time, such as two, three, or four minutes, and sell that time in 30 or 60 second increments.⁶⁹ Inserting a 4 to 6 second AI disclosure immediately before or after many or most political ads would disrupt stations' carefully scheduled flights of programming and advertising, and is simply not feasible.

During network or syndicated programming on television or radio, a local broadcast station is allotted specific blocks of time for "local inserts" when the local station may sell ads or provide other content unique to the local station. These blocks are fixed increments of time (e.g., 60, 90, 120 seconds) during each half-hour or hour of network or syndicated programming, with no flexibility for a station to start early, end late, or otherwise modify. As broadcast stations typically sell political ads in set increments (e.g., 30 seconds), requiring a station to insert a 4 to 6 second AI disclosure before or after certain political spots would

⁶⁸ Notice at ¶ 17. The FCC should refrain from prescribing the language(s) in which AI disclosures must be provided. Beyond further reducing the time made available for political speech, mandated disclosures in multiple languages further encroach on broadcasters' editorial discretion. Also, local stations are more familiar with their local audiences and communities than the FCC and are better positioned to ensure that their viewers and listeners understand the message in any AI disclosures.

⁶⁹ See, e.g., U.S. Congressional Research Service, *Direct-to-Consumer Advertising of Prescription Drugs*, Report R40590 (May 20, 2009), <https://crsreports.congress.gov/product/pdf/R/R40590>.

unsettle this tightly scheduled block of local inserts. As a result, broadcasters would be forced to reduce the number of ads they could sell to political speakers to accommodate the insertions of compelled AI disclosures.⁷⁰ The Notice appears unaware of (i) the incompatibility of its proposals with how advertising time, including candidate and issue ads, is sold and scheduled in the differing types of programming aired by broadcast stations (local, network and syndicated), and (ii) the burdens on political speech resulting from reductions in the number of political ads that may be aired in fixed ad blocks and/or the amount of time in ads usable for political messages.

If the Commission ultimately adopts rules mandating on-air disclosures, it should provide flexibility in the language required for those disclosures. At a minimum, the Commission could specify that its language represents a floor, not a ceiling, on what stations can opt to disclose. For example, assume that a broadcaster already employs (or chooses to adopt) an internal policy specifying that it will place a disclosure on content that uses generative AI in a manner that is deceptive and misleading (e.g., “The following message relies in whole or in part on materially deceptive AI-generated content.”). The same ad would also meet the disclosure requirement under the FCC’s rules. In such an instance, the broadcaster should be permitted to use its existing disclosure language rather than placing multiple disclosures on the same ad.

⁷⁰ For example, if a 30-second political spot becomes 34 to 36 seconds due to the addition of the proposed disclosures, then a broadcaster could no longer air four such spots in a two-minute block of advertising time in local programming or in a two-minute “local insert” into network or syndicated programming.

The Notice additionally seeks comment on requiring broadcast stations to include in their political files a notice disclosing the use of AI-generated content for each political ad that contains such content.⁷¹ The Commission believes that this requirement would foster greater transparency by allowing listeners, viewers, and other interested parties to confirm which ads contained AI-generated content.⁷² As an initial matter, the Commission assumes that members of the public would utilize stations' public files for this or any other purpose. A Freedom of Information Act (FOIA) request revealed that only .060 percent of the U.S. population viewed broadcast stations' online public files in 2021 – and that percentage was inflated, as it counted the views by broadcasters and related personnel (station staff, counsel, etc.).⁷³ NAB made additional FOIA requests on June 18 and June 28, 2024, requesting information about how often OPIF was accessed and any studies about the utility

⁷¹ Notice at ¶ 18.

⁷² *Id.*

⁷³ According to the FCC's response to a 2022 NAB FOIA request, in 2021 the FCC Public Inspection File (OPIF) website as a whole had 199,431 unique views (and 248,032 total views). Letter from Sima Nilsson, Media Bureau, FCC to Patrick McFadden, NAB, FOIA Control No. 2022-000374 (Apr. 28, 2022). That averages merely 11.38 unique views per station in an entire year. See FCC, *Broadcast Station Totals as of Dec. 31, 2021*, Public Notice, DA 22-2 (Jan. 4, 2022) (reporting a total of 17,529 full power AM, FM and TV commercial and noncommercial stations and Class A TV stations required to maintain online public files). But even this limited number of views per station cannot reasonably be attributed to members of the public because stations themselves (and their attorneys) view their own (and their clients') online public files to check for completeness and accuracy and to ensure that materials were successfully uploaded. NAB further assumes that these modest numbers of views also included views by FCC staff. Even overestimating (likely substantially) the number of views by the general public, that still would mean only .060 percent of the estimated U.S. population viewed broadcast stations' online public files in 2021. See <https://www.census.gov/popclock/> (estimating U.S. population to be 332,048,977, as of July 1, 2021) (visited May 22, 2024).

of broadcaster public files. Although responses to these requests were due on July 18 and July 29, 2024, the FCC did not respond until September 17, and even that late response was lacking.⁷⁴ Any assumption of significant public use of stations' public files thus is, at best, unproven and likely invalid.

In any event, even assuming the proposed public file disclosure requirement could be met through check-off boxes on NAB's PB-19 Form⁷⁵ (or equivalent form), it is important to note several long-standing challenges associated with obtaining this form from political advertisers and filing it in OPIF. First, some broadcast station groups do not use the PB-19 Form, so all other information collection forms used for political advertising purposes also would have to be updated to reflect the AI disclosure requirement, which would likely be a time-consuming, unreliable process. Second, some advertisers decline to use the PB-19 Form. NAB recently explained that, when it updated the PB-18 Form and released the PB-19 Form in 2020, some of the largest issue advertisers in the country refused to use the new form.⁷⁶ If issue advertisers were reluctant to use an updated version of NAB's political advertising form – one that did not contain any substantial changes – they may well be

⁷⁴ Unlike the FCC's response to NAB's 2022 FOIA request about OPIF where the FCC provided a spreadsheet of itemized data broken down by station and by website, the FCC now belatedly provided copies of emails that only included aggregated information with no itemization of break downs by station and/or by website. Nor did the FCC explain why its current FOIA production is significantly less fulsome than its previous production.

⁷⁵ NAB, "Political Broadcast Agreement Form for Candidate Advertisements" and "Political Broadcast Agreement Form for Non-Candidate/Issue Advertisements" (both commonly referred to as the "PB-19 Form"), <https://my.nab.org/membersonly/s/member-downloads>.

⁷⁶ Letter from Rick Kaplan, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299 (May 17, 2024) (NAB FSID Letter), at 3.

extremely wary of using a further revised form that contains an entirely new substantive certification regarding AI-generated content. Third, broadcasters frequently receive incomplete PB-19 Forms, so NAB expects that many stations would receive revised forms with any new checkboxes pertaining to AI content left unchecked. Lacking jurisdiction over advertisers, the FCC can do nothing to ensure their compliance with this or any other disclosure requirement.

Finally, consistent with requesting airtime far in advance, some advertisers submit a PB-19 Form at the start of an election season and then place orders during the season, requesting that the station continue to use the information indicated on the initial form throughout the season, with occasional updates as the copy or schedule of political ads changes.⁷⁷ Requiring a new form for each new ad for purposes of the AI disclosure will demand additional time and resources, result in resistance (if not non-compliance) from advertisers, and likely delay the airing of requested political ads.

Compounding all these obstacles is the strict deadline for filing political advertisement information in OPIF and the sheer number of political ad requests that some broadcast stations must process. Once an advertising order is placed, a broadcaster must place the required information in the online public file “as soon as possible,”⁷⁸ which the FCC staff interprets as filing within 24 hours. Obtaining the information needed to complete the form has been a long-standing challenge for broadcasters, often demanding substantial time and resources to go back and forth with an ad buyer. Adding the proposed inquiry about

⁷⁷ *Id.* at 3-4.

⁷⁸ 47 C.F.R. § 73.1943(d).

the presence of AI-generated content in an ad will only exacerbate this problem, and likely lead to more delays that can place a station in jeopardy of missing the filing deadline.

The challenges of complying with the FCC's proposed rules will be multiplied across the thousands of advertising orders placed during every political season. One NAB member station group reported that, just during the month of October 2022, it received more than 2,300 orders for issue advertisements from 227 separate entities,⁷⁹ and these figures do not include the numerous candidate ads the station group received. We note that these orders were for ads leading up to a midterm election, which is typically less active than Presidential election seasons. In early August, NAB reviewed some stations' online public files and, with three months remaining before the upcoming election, found numerous individual broadcast stations (not groups) that already had more than 500 entries in the political advertising folder in their online public inspection file, and some had nearly 2,000 entries.⁸⁰ A single document, moreover, can represent dozens of airings of political advertisements. Complying with new requirements to inquire about the presence of AI-generated content, receive an answer from someone who knows, and make mandated disclosures in so many candidate and issue ads under tight timeframes cannot be presumed to be "simple."

⁷⁹ NAB FSID Letter at 5.

⁸⁰ Stations' online public inspection files are available at <https://publicfiles.fcc.gov/>.

2. The Proposed Rules Would Add New Complexities to Compliance with State Laws

As the Commission notes, at least 11 states have enacted legislation regulating AI-generated content in political ads and other campaign communications and dozens more are weighing legislation.⁸¹ Existing state laws and pending bills differ widely in their applicability to and impact on broadcasters. These laws and bills further vary in the kinds of political ads covered (e.g., issue ads but not candidate ads in some states) and in what types of content they target. The varying state laws may cause uncertainty for stations whose signals reach across state borders as to which state's law governs their broadcasting of political ads (e.g., the state in which the political candidate addressed in the ad is running for office, or the state where the station is licensed).

The proposals in the Notice will add another layer of complexity, requiring stations and political speakers in some states to comply with both the FCC's rules and the relevant state law, which are unlikely to be consistent. Some states, for example, mandate disclosures different than the FCC's proposal. Alabama law criminalizes the distribution of AI-generated materially deceptive media intended to influence an upcoming election. This law prohibits the distribution of such material if a person intends the distribution to harm the reputation or electoral prospects of a candidate, and the distribution is reasonably likely to cause that result, unless a disclosure like the following is displayed: "This media has been manipulated by technical means and depicts speech or conduct that did not occur."⁸² The

⁸¹ Notice at ¶ 7.

⁸² 2024 AL HB172, Sec. 2(4)(b)(1), <https://legiscan.com/AL/text/HB172/2024>.

FCC’s proposal would require an entirely different disclosure: “This message contains information generated in whole or in part by artificial intelligence.”⁸³ The text and purpose of these disclosures vary significantly, but the FCC provides no guidance on how stations are supposed to comply with multiple new mandates (as well as pre-existing sponsor identification and “stand by your ad” requirements) without substantially affecting political speech. The Alabama law also has requirements for the size of the disclosure and how long it must appear that differ from the FCC’s proposals.⁸⁴ In addition, in contrast to the FCC’s and some states’ focus on AI-generated content, certain laws, such as in New York, apply to materially deceptive content in political advertising, whether AI-generated or not.

Compliance with both varying state laws and the proposed rules will require stations to navigate a matrix of obligations to determine which apply. Such a predicament could force stations to make multiple, differing inquiries of advertisers and possibly multiple, differing on-air disclosures concerning the same political ad, or provide disclosures for certain kinds of ads under state law and other disclosures for other kinds of ads pursuant to FCC rules. These critical issues that could result in significant additional burdens on broadcasters and on political speakers are not considered in the Notice. Indeed, even after recognizing the existence of relevant state laws, the Notice claims that the proposed on-air disclosure requirements would “ensure” that broadcast stations “face *uniform* requirements.”⁸⁵ That is flatly inaccurate, as adoption of the proposed rules would actually ensure that broadcasters,

⁸³ Notice at ¶ 17.

⁸⁴ 2024 AL HB172, Sec. 2(4)(b)(2).

⁸⁵ Notice at ¶ 8 (emphasis added).

candidates, and issue advertisers face differing and inconsistent requirements.⁸⁶

Accordingly, NAB urges the Commission to sufficiently vet these thorny questions about growing numbers of inconsistent state laws before approving any of its proposals.

V. ONLY A HOLISTIC APPROACH CAN EFFECTIVELY ADDRESS THE ROLE OF AI IN CREATING DECEPTIVE POLITICAL ADVERTISEMENTS

Imagine watching the local news on a broadcast television channel when, during the break, an advertisement featuring a political candidate appears. The ad includes, among other disclosures, a new statement:

THE FOLLOWING MESSAGE CONTAINS INFORMATION GENERATED
IN WHOLE OR IN PART BY ARTIFICIAL INTELLIGENCE

Based on the four corners of the ad, it is impossible to tell what part(s) of it was generated by AI or even how AI might have altered it. Did the candidate just touch up the ad by, for example, removing car sounds from the background? Or were the featured people speaking and interacting in the ad deepfakes?

After seeing the advertisement, these questions remain, and the viewer is left to wonder whether the ad was reliable. Put differently, the viewer has no way to know what part of the ad to trust and thus must completely write off the entire ad. Making matters worse, since the proposed disclosure does not focus on whether the ad incorporates a deepfake –

⁸⁶ The only way to truly establish uniformity would be for Congress to preempt the field and require all political advertisers to conform to the same standards (whether that standard allows for the inclusion of deepfakes, or not) and to include the same disclosures (if deepfakes are even permitted). If the Commission does adopt rules, however, it should do so after carefully examining state laws and with the goal of minimizing duplicative disclosures.

the true pernicious behavior – the viewer is just left to assume that the warning label must indicate bad intentions or actions on the advertiser’s part.

Moreover, given that the disclosure would only apply to ads on broadcast radio or television (and a very small percentage of ads run on cable/satellite systems), what are consumers to make of the very real possibility of seeing an AI-disclosed ad on a television station and then seeing the *same* ad without a disclosure when the ad is streamed? Were they *really* the same ad? If so, why the two versions? And if not: *Why include a disclosure on an ad on one channel and not include the same disclosure on the exact, same ad on another channel?*

This very real and utterly baffling scenario will confront the public if the FCC’s proposed asymmetric regulations become final. Contrary to the FCC’s concern about AI-generated content in political ads creating “potential for providing deceptive, misleading, or fraudulent information to voters” and wanting to enhance the public’s ability to assess the substance and reliability of political ads,⁸⁷ the Notice instead promises to cause public confusion. Even worse, the follow-on effects of the proposed regulations will unsettle the whole ecosystem of stakeholders.

Start with broadcasters. As discussed in Section II., broadcasters are the most trusted source of news and information. But what if all (or most or many) political ads appearing on broadcast television and radio carry a unique label that some or all of an ad’s content was generated by artificial intelligence? Audiences seeing or hearing those ads may

⁸⁷ Notice at ¶¶ 10, 31, 33, 35.

question whether the ads featured on broadcast stations are as trustworthy as ads without any AI-related disclosures placed elsewhere. An unwitting viewer may assume that ads on a streaming platform are “uncorrupted” by AI, whereas ads on a local over-the-air broadcast station are “corrupted.” Such a signal not only dilutes confidence in the ad but potentially even harms the broadcaster’s hard-earned reputation as a trustworthy source of news, including information about elections.

The harm, however, won’t just be reputational. If an ad on a broadcast station carries a disclosure that casts a pall on its veracity, candidates and issue advertisers will very likely consider whether to shift their placement of ads to readily available platforms where these confusing and brand-damaging AI disclosures are not mandated. Candidates would have to determine whether they want their communications to the public labeled to suggest – especially with no foundation – that those ads may be suspect or untrustworthy. As a result, candidates and other political advertisers may well move their ads to other platforms, which will decrease the number and value of political ads carried on broadcast stations and increase the ads placed on competing outlets, such as cable network programming, streaming platforms including free ad-supported streaming television (FAST) channels, and social media. In effect, not only would the FCC be promulgating a rule that would depress the ad revenues earned by local broadcasters⁸⁸ but also drive political ads to unregulated platforms.

⁸⁸ Broadcasters are already experiencing significant downward pressure on revenues and margins. See, e.g., Moody’s Investor Service, *Record US political ad spend insufficient to save TV broadcasters from looming threats*, at 2 (Apr. 2, 2024); Comments of NAB, GN Docket No. 24-119 (June 6, 2024), at 13-21 (documenting with data from BIA and Borrell

Of course, broadcasters are not the only ones who will be harmed by the proposed rules. Candidates and other political speakers advertise on broadcast stations for the opportunity to reach viewers and listeners through this trusted medium. But imposing the proposed disclosures will undermine, or at least muddle, political speakers' messages to the public, ultimately confusing the public and interfering with candidates' ability to connect with potential voters. Alternatively, candidate or issue advertisers wanting to reach broadcast stations' audiences but avoid the diminishing effect of the AI disclosures may feel forced to produce more expensive ads with manual refinements or provide lower quality ads for airing on broadcast stations that do not utilize time- and/or expense-saving AI technologies. That places further burdens on candidates and other political speakers, especially for campaigns that lack resources.

Ultimately, average citizens also will lose. As discussed above, viewers and listeners will be exposed to novel disclosures on broadcast programming that they will not experience

the substantial declines in radio and television stations' ad revenues and in their shares of local ad markets, primarily due to competition from digital platforms). Billions of dollars of advertising, including political advertising, already have shifted away from linear television to digital and online options, especially connected TV (CTV) and social media. See, e.g., M. Villalobos, *New TV Advertising Technology Will Transform The 2024 Election*, forbes.com (May 14, 2024); P. Verna, *US Political Ad Spending Forecast 2024*, eMarketer (Feb. 23, 2024). Given these other options, political advertisers wary of negative public perceptions about AI labels on their ads will simply direct more advertising to non-broadcast platforms. Given the value of political advertising to the broadcast industry and stations' growing struggles to compete in the ad market against digital platforms more generally, loss of political ad revenues spurred by additional asymmetric FCC regulation would be another serious economic blow. See, e.g., M. Majidi, *U.S. political ad spending during election cycles 2014-2024, by medium*, statistica.com (June 27, 2024); Insider Intelligence, *2024 Political Ad Spending Will Jump Nearly 30% vs. 2020*, eMarketer (Jan. 11, 2024); S. Fischer, *U.S. political ad market projected to reach record \$16 billion in 2024*, axios.com (Dec. 8, 2023).

anywhere else, thus causing confusion as to why one ad contains a disclosure while the ostensibly same ad hosted elsewhere does not. Candidates and other political speakers also will be incentivized to shift more ads to non-broadcast platforms, ironically resulting in more political ads being placed on platforms that are less trusted by the public. Citizens will not benefit by candidates and other political speakers funneling more and more of their communications through less trusted media platforms, including online where deepfakes almost exclusively reside.

These harmful effects on broadcasters, political speakers, and citizens highlight a major shortcoming of the proposed rules: By imposing the compliance burden solely on radio and television stations, they undermine the entire system. That is why a holistic approach that considers *all* relevant stakeholders and is appropriately tailored to deal with the precise harm posed by false, deceptive, and misleading deepfakes is crucial. Lacking authority over both the advertisers responsible for creating political advertisements and the online platforms where AI-generated deepfakes proliferate, the Commission cannot take a holistic – or effective – approach to this complex issue. Instead, it reverts to its default position of regulating local broadcast stations.

VI. THE LIMITS OF THE FCC'S LEGAL AUTHORITY IMPEDE ITS EFFECTIVE REGULATION OF DEEPFAKES

A. The FCC Lacks Statutory Authority to Adopt the Proposed Rules

One of the most significant challenges the FCC faces is that it has no jurisdiction at all over political advertisers, who are in the best position to determine whether any elements of their ads were developed using AI or, more to the point, contain deceptive or fraudulent deepfakes. Another challenge is that the Commission lacks the authority to regulate online

platforms, where most (if not all) political deepfakes can be found. These issues can only be addressed by a Congressional grant of authority over such entities.

Even with respect to regulated entities such as broadcasters, the FCC's statutory authority is inadequate to adopt the proposed rules. Like all federal agencies, the Commission "literally has no power to act . . . unless and until Congress confers power upon it."⁸⁹ "[N]o matter how important" the issue," an "agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress."⁹⁰ There is no valid grant of authority here.

Notably, the Commission relies in large part on its general public interest rulemaking authority under Section 303(r) of the Act as a basis for adopting the proposed rules,⁹¹ likely indicating doubt that any specific provision of the Act confers the necessary authority. But as an initial matter, courts are viewing agency actions taken without clear and specific delegations of authority with an even greater skepticism than in the past.

The Supreme Court recently rejected the notion, which had underlaid the now-repudiated *Chevron* doctrine, that statutory ambiguities are implicit delegations of power to agencies and held that courts must determine the "best reading" of any statute and "exercise their independent judgment in deciding whether an agency has acted within its

⁸⁹ *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 374 (1986).

⁹⁰ *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000).

⁹¹ Notice at ¶ 27, *citing* 47 U.S.C. § 303(r) (authorizing the FCC, "as public convenience, interest, or necessity requires," to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions" of the Act).

statutory authority.”⁹² Courts also are increasingly likely to find that agencies lack power over significant economic and political questions absent an express delegation of authority from Congress.⁹³ Given Congress’s long-standing interest in and legislation on political broadcasting, dating back to the 1927 Radio Act, a court likely would “expect Congress to speak clearly if it wishe[d] to assign to [the FCC] decisions” of “political significance,”⁹⁴ such as those relating to false, deceptive, or misleading political advertising (a perennial problem) or political programming created with or distributed via particular technologies or platforms. Yet despite legislating directly on elections, campaigns, candidates, and political advertising (both candidate and issue ads) on multiple occasions, Congress has not delegated such clear authority to the Commission.

Reliance on Section 303(r)’s general rulemaking authority to justify adoption of the political advertising proposals here is thus contrary to growing precedent demanding express delegations of statutory authority before federal agencies may act. And the Commission should not underestimate the significance of its proposals, which could easily require new disclosures for millions of political advertisements on thousands of television and radio stations. A search in early August of the FCC’s online public inspection file (OPIF) database revealed 8,775,376 files identified as “political ads” or “non-candidate issue ads,”

⁹² *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2265-66, 2273 (2024).

⁹³ See, e.g., *Brown & Williamson*, 529 U.S. at 160; *King v. Burwell*, 576 U.S. 473, 486 (2015); *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022); *Merck & Co., Inc. v. U.S. Dep’t of Health and Human Services*, 962 F.3d 531, 540 (D.C. Cir. 2020).

⁹⁴ *Utility Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014) (citation omitted).

including 726,897 files just in the 2024 election cycle⁹⁵ – and many of those millions of files represent orders for multiple advertisements, each of which would be subjected to any new rules. A reviewing court would likely demand explicit direction from Congress to permit FCC establishment of rules with this scope.

The Notice, moreover, overstates the extent of Section 303(r) authority, which does not allow adoption of whatever rules the FCC deems in the public interest. Indeed, the “FCC cannot act in the ‘public interest’” if it “does not otherwise have the authority to promulgate the regulations at issue.”⁹⁶ Rather, it “must act pursuant to *delegated authority* before any ‘public interest’ inquiry is made under § 303(r),”⁹⁷ and the Notice did not identify any provision of the Act delegating such authority.⁹⁸ Statutory provisions giving the FCC authority to grant applications for broadcast licenses and renewals do not stretch to provide authority

⁹⁵ NAB Staff Search of OPIF, Aug. 6, 2024.

⁹⁶ *MPAA v. FCC*, 309 F.3d 796, 806 (D.C. Cir. 2002) (“An action in the public interest is not necessarily taken to ‘carry out the provisions of the Act’” under § 303(r), “nor is it necessarily authorized by the Act.”).

⁹⁷ *MPAA*, 309 F.3d at 806 (emphasis in original); see also *N.Y. Stock Exch. v. SEC*, 962 F.3d 541, 554 (D.C. Cir. 2020) (“Merely because an agency has rulemaking power does not mean it has delegated authority to adopt a particular regulation.”).

⁹⁸ The Notice cites cases upholding regulation of broadcast ownership to support the view that the FCC can adopt the proposed rules pursuant to § 303(r). See Notice at n.78, citing *FCC v. Nat’l Citizens Cmte. for Broad.*, 436 U.S. 775 (1978) (*NCCB*); *U.S. v. Storer Broad. Co.*, 351 U.S. 192 (1956); *Nat’l Broad. Co. v. U.S.*, 319 U.S. 190 (1943). However, the Supreme Court’s upholding of broadcast ownership regulation was based not only on § 303(r), but also on the FCC’s authority to allocate licenses, issue initial licenses and renew licenses, and set licensing qualifications and policies, which included policies to avoid concentration of licenses in the hands of a single owner and to promote diversification of ownership. See, e.g., *NCCB*, 436 U.S. at 780, 793-94 (discussing FCC’s licensing authority under §§ 307(a), (d), 308(a), and 309(a), (d) and finding that § 303(r)’s rulemaking authority supplied a statutory basis for the FCC to issue regulations codifying its view of the “public-interest licensing standard”) (emphasis added).

to impose rules about political advertising by candidates and other entities.⁹⁹ And obviously, the Commission cannot confer statutory authority upon itself by referencing its own 64-year-old, unenforceable, and partially-overturned policy statement.¹⁰⁰

The other general grants of authority in other statutory provisions mentioned, however briefly, similarly fail to provide an adequate source of authority for the proposed regulations. Section 4(i)¹⁰¹ is “not a stand-alone basis of authority” and “must be

⁹⁹ See Notice at ¶ 27, *citing* 47 U.S.C. § 307(a), § 309(a), § 309(k)(1)(A). Nor does § 303(b), which the Notice selectively quotes. *Id.* at ¶ 27 & n.86. That section authorizes the FCC to “[p]rescribe the nature of the service to be rendered by *each class of licensed stations and each station within any class.*” 47 U.S.C. § 303(b) (emphasis added). This permits the FCC to promulgate rules determining the nature of and limitations on the services to be offered over radio facilities, such as defining the types of services that special common carrier or aeronautical mobile satellite service licensees may provide. See *Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428, 441 (D.C. Cir. 1991); *MCI Telecom Corp. v. FCC*, 561 F.2d 365, 373-74 (D.C. Cir. 1977); see also, e.g., *Press Wireless, Inc.*, 25 FCC 1466, 1468 (1958) (refusing request by a radiotelegraph common carrier licensed solely in the fixed public press service to establish a new service to be known as international telecon). Misapplication of § 303(b) cannot justify adoption of rules about the material aired on stations licensed to provide an AM, FM, or television broadcast service.

¹⁰⁰ The Notice refers to a 1960 Policy Statement addressing deceptive quiz shows and payola for the proposition that broadcasters are obliged to take reasonable measures to remove false, misleading, or deceptive matter from the material they air. Notice at ¶ 3 and n.6, *citing Programming Inquiry*, Report and Statement of Policy, 44 FCC 2303 (1960). Those 1950s-era scandals, however, are far afield from the proposals here impacting the speech of candidates and other political speakers, which receives the highest level of constitutional protection and is governed by other specific statutes and rules, including a prohibition on censoring candidate advertisements. See Section VI.C., *infra*. Similarly, the FCC’s regulation of licensee-conducted contests, which ensures that stations do not provide false, misleading, or deceptive descriptions of the material terms of their *own* contests, 47 C.F.R. 73.1216, provides no basis for regulating others’ political speech. See Notice at n.6.

¹⁰¹ Notice at ¶ 28, n.96, *citing* 47 U.S.C. § 154(i) (authorizing the FCC to “perform any and all acts, make such rules and regulations, and issue such orders . . . as may be necessary in the execution of its functions”).

‘reasonably ancillary’ to other express provisions,”¹⁰² which is not the case here. On several occasions the courts have found Section 4(i)’s grant of rulemaking authority insufficient to permit adoption of specific rules when they were not tied to any of the FCC’s “statutorily mandated responsibilit[ies].”¹⁰³ Section 1 of the Act likewise provides no relevant authority.¹⁰⁴ This section’s general mandate to make communications services available to all the people of the U.S. refers to the “geographic availability of service,” not to the programming or content provided by those services.¹⁰⁵ General provisions such as Section 1, moreover, do not authorize adoption of the proposed rules because “Congress has been scrupulously clear when it intends to delegate authority to the FCC to address areas significantly implicating program content,” which “invariably raise *First Amendment* issues.”¹⁰⁶

The Notice also identifies Section 317 (sponsorship identification) and Sections 312 and 315 (candidates and political programming) as potential sources of authority,¹⁰⁷ but nothing in these provisions provides a legal basis for the proposals. Sponsorship identification is not even at issue here. The plain language of Section 317, and every FCC

¹⁰² *MPAA*, 309 F.3d at 806 (quoting FCC Chairman Michael Powell with approval).

¹⁰³ *Comcast Corp. v. FCC*, 600 F.3d 642, 661 (D.C. Cir. 2010) (concluding that the FCC lacked authority under Section 4(i) to regulate an internet service provider’s network management practices because the FCC failed to tie its assertion of authority over this provider’s internet service “to any statutorily mandated responsibility”) (internal citations omitted); *accord American Library Ass’n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005).

¹⁰⁴ Notice at ¶ 45, *citing* 47 U.S.C. § 151.

¹⁰⁵ *MPAA*, 309 F.3d at 804.

¹⁰⁶ *Id.* at 805 (emphasis in original).

¹⁰⁷ Notice at ¶¶ 27-28, 45, *citing* 47 U.S.C. §§ 312, 315, 317.

interpretation of it, makes clear that its purpose is to ensure that audiences know when broadcast material is paid for and to identify the sponsor.¹⁰⁸ This provision has nothing to do with the presence or absence of particular content (AI-generated or other) in broadcast material. Because Section 317 only requires disclosure of the identify of program sponsors (and not additional unrelated disclosures), it cannot provide a basis for the proposed rules.¹⁰⁹

Section 312(a)(7) mandates “reasonable access” to broadcast stations for legally qualified candidates for federal office. But the Notice does not explain how this provision about candidate access to stations could provide a basis for disclosure mandates in on-air political advertising (or any disclosures at all).

Section 315 also does not serve as a potential source of authority for the proposed rules. The guarantees of candidate equal opportunities and lowest unit charge pricing in

¹⁰⁸ 47 U.S.C. § 317. This section is entitled “Announcement of payment for broadcast” and requires a “disclosure of person furnishing” broadcast material.

¹⁰⁹ If the FCC were to inappropriately attempt to rely on Section 317 to justify its proposals, it must take into account limits on the FCC’s authority under the “reasonable diligence” standard, which cannot be used to require broadcasters to independently investigate responses provided by sponsors. See 47 U.S.C. § 317(c) (a station licensee must “exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly . . . information to enable such licensee to make the announcement required by this section”); see also *NAB v. FCC*, 39 F.4th 817, 819 (D.C. Cir. 2022) (vacating requirement for broadcasters to research the identity of sponsors in government databases and holding that broadcasters “simply need to be diligent in their efforts ‘to obtain’ the necessary information ‘from’ employees and sponsors. . . . Nothing more.”). Proposals to require broadcasters to consider and address “credible third party” claims about political ads (Notice at ¶¶ 17, 21) are impractical for the reasons discussed above, impose undue First Amendment burdens as described below, and are beyond the scope of the FCC’s authority under Section 317(c) (even assuming that a sponsor identification provision could somehow apply to justify disclosures beyond the identity of the sponsor, which it cannot).

Sections 315(a) & (b)(1) have nothing to do with the proposed (or any) on-air disclosures by stations. Section 315(b)(2) places certain requirements on federal candidates to qualify for lowest unit charge, but it does not mandate (or permit the FCC to mandate) any disclosures by broadcasters. Sections 315(e)(1) & (2) enumerate specific types of records a broadcaster must maintain in connection with requests to purchase political advertising time by legally qualified candidates for public office (candidate ads) or that communicate a message relating to any political matter of national importance (issue ads). But this recordkeeping requirement is just that, and it does not include, or authorize the FCC to adopt, mandates about on-air political programming, such as the proposals here. And while the FCC has authority to prescribe rules “to carry out the provisions” of Section 315,¹¹⁰ that does not permit adoption of requirements beyond those delineated in that section.

The detail and specificity of the political broadcasting requirements in Section 315 moreover indicate that if Congress had intended to address false, misleading, or deceptive political advertisements, or impose on-air disclosure requirements on stations airing political ads considered suspect, it would have done so itself (or specifically directed the Commission or another federal agency to do so). The fact that Congress provided carefully delineated, limited authority over certain aspects of political broadcasting does not imply that the Commission can forge ahead on its own and adopt additional political broadcasting requirements as it thinks best.

¹¹⁰ 47 U.S.C. § 315(d).

Fundamentally, an agency does not possess “plenary authority to act within a given area simply because Congress has endowed it with some authority to act in that area.”¹¹¹ Congress also was in no way obligated to add a provision to Section 315 or elsewhere explicitly negating the FCC’s exercise of power beyond that specifically set forth because statutes are “not written in ‘thou shalt not’ terms.”¹¹² Indeed, presuming a “delegation of power absent an express *withholding* of such power” would result in agencies “enjoy[ing] virtually limitless hegemony,” a result “quite likely” out of keeping with the Constitution.¹¹³ “The FCC may only take action that Congress has *authorized*,” and a theory that an agency may act “so long as Congress has not *prohibited*” the action in question is “backwards as a matter of basic separation of powers and administrative law.”¹¹⁴

For all these reasons, Section 315, along with the Act’s other provisions cited in the Notice, do not provide a sufficient source of authority for the proposed rules. In fact, if anything, the proposed disclosure mandates are inconsistent with Section 315’s ban on

¹¹¹ *Ry. Labor Executives’ Ass’n v. Nat’l Mediation Bd.*, 29 F.3d 655, 670 (D.C. Cir. 1994) (en banc) (observing that the National Mediation Board, “[u]nable to link its assertion of authority to any statutory provision,” erroneously suggested it had “plenary authority” due to Congress’s grant of “some authority”).

¹¹² *Id.* at 671.

¹¹³ *Id.* (emphasis in original). *Accord*, e.g., *N.Y. Stock Exch.*, 962 F.3d at 554; *ABA v. FTC*, 430 F.3d 457, 468-69 (D.C. Cir. 2005).

¹¹⁴ *Bais Yaakov of Spring Valley v. FCC*, 852 F.3d 1078, 1082 (D.C. Cir. 2017) (Kavanaugh, J.) (emphases in original). *See also MPAA*, 309 F.3d at 805 (rejecting as “entirely untenable” the FCC’s position that its adoption of video description rules was permissible because Congress did not “expressly foreclose the possibility”).

licensees censoring candidate ads.¹¹⁵ The Notice references this “no censorship” provision only in a footnote, tentatively concluding without discussion that the proposed compelled disclosures do not violate Section 315 because they are akin to the “content-neutral disclaimers” found permissible in a Notice of Apparent Liability (NAL) issued by the Media Bureau 34 years ago.¹¹⁶ This tentative conclusion is premature and unwarranted.

As NAB discusses above and in the First Amendment section below, labeling a candidate ad as AI generated will make that ad appear more suspicious and untrustworthy, regardless of its veracity, than non-AI generated candidate or issue ads aired on broadcast stations (or any political ads carried on cable/satellite channels or online platforms not subject to the labeling mandate). The negative connotations associated with a label that an ad “contains information generated in whole or in part” by AI is thus not “neutral,” as the Notice contends.¹¹⁷

¹¹⁵ 47 U.S.C. § 315(a) (stating that licensees “shall have no power of censorship over the material broadcast under the provisions of this section”).

¹¹⁶ Notice at n.54, *citing Southern Arkansas Radio Co.*, 5 FCC Rcd 4643, 4644 (MB 1990). As an initial matter, a Bureau-level *notice*, rather than a final FCC action, is less than compelling precedent. In any event, this NAL stated that FCC staff had advised broadcasters and candidates that a station disclaimer, such as “these views are not necessarily the views of the station,” does not violate Section 315(a)’s “no censorship” provision. The Bureau added that broadcasters choosing to use such a disclaimer in connection with a particular candidate’s advertising must use that disclaimer with all subsequent advertising aired on behalf of every candidate for the same office.

¹¹⁷ The proposed labeling regime also could well result in the public viewing one candidate for an office more favorably than another candidate for the same office, merely due to the technologies used to create their content and their choice of platforms for speaking to the public – and regardless of the accuracy and truthfulness of any of the candidates’ political speech. That result would not be “neutral” either. *Cf. Southern Arkansas Radio Co.*, 5 FCC Rcd at 4644 (stating that “content-neutral disclaimers” cannot be “utilized selectively within any particular race for public office”).

Previous court decisions analyzing Section 315(a), moreover, stress Congress’s “deep hostility to censorship either by the Commission or by a licensee” since the Radio Act of 1927.¹¹⁸ Congress intended Section 315(a) to ensure “complete freedom of expression by political candidates” and therefore the “no censorship” provision “prohibits any interference, *direct or indirect*, with such expression.”¹¹⁹ The proposed disclosure mandate for candidate ads at least indirectly affects candidates’ expression. It also may cause candidates “to back away from what [they] consider[] to be the most effective way of presenting [their] position” and reaching the audiences they are “most anxious to reach” (*i.e.*, by using AI to generate ads quickly and affordably and/or by airing their political speech on broadcast stations, rather than an unregulated platform not required to attach labels with negative connotations to their speech).¹²⁰ In short, the “no censorship” provision is broad, encompassing more than refusing to air a candidate’s ad or the deletion of material contained in it.¹²¹ The Notice

¹¹⁸ *Farmers Educ. & Coop. Union of America, North Dakota Div. v. WDAY*, 360 U.S. 525, 528 (1959). Section 326 of the Act also makes clear that the FCC has no “power of censorship” over broadcast stations more generally and prohibits the FCC from promulgating regulations that “interfere with the right of free speech” by broadcast communications.

¹¹⁹ *Becker v. FCC*, 95 F.3d 75, 84 (D.C. Cir. 1996) (emphasis in original), *quoting D.J. Leary*, 37 FCC 2d 576, 578 (1972). In *Becker*, the court vacated an FCC decision interpreting Section 315 to permit broadcasters some discretion with respect to the time of day for airing certain graphic candidate ads (those with pictures of aborted fetuses) so as to protect children, concluding the decision had violated the “no censorship” provision.

¹²⁰ *Becker*, 95 F.3d at 83. See also *id.* at 84, *quoting In re Inquiry Concerning “Equal Time” Requirements under Section 315*, 40 FCC 357, 359 (1962) (“the Act bestows upon the candidate the right to choose the format and other similar aspects of the material broadcast”).

¹²¹ *Becker*, 95 F.3d at 83.

has not appropriately considered how its proposals may likely run afoul of Section 315(a).

B. The Proposed Rules Would Violate the Administrative Procedure Act

Even if the Commission had authority to adopt the proposed rules, which it does not, the rules would be arbitrary and capricious under the APA. The FCC simply has not drawn a rational connection between its proposals and the claimed ill it is attempting to remedy. An agency “must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made,”¹²² and must demonstrate it has “engaged in reasoned decisionmaking” by, *inter alia*, selecting an alternative with “adequate support in the record” and “intelligibly explain[ing] the reasons for making that choice.”¹²³ The proposed rules cannot meet this standard.

The Commission is concerned about the use of AI technologies to “produce ‘deepfakes’ and other deceptive and misleading information, sowing confusion and distrust among the voting public.”¹²⁴ “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.”¹²⁵ The Commission further

¹²² *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citations omitted) (*State Farm*).

¹²³ *FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 295 (2016).

¹²⁴ Notice at ¶ 1.

¹²⁵ Notice at ¶ 10.

states that manipulated ads could mislead the public about candidates' assertions or positions, whether certain events actually occurred, or even when/where to cast a ballot.¹²⁶

Unfortunately, the FCC's proposals would not prevent or even address these potential harms. The proposed rules do not focus on whether any political advertisements contain fraudulent deepfakes – or any other false, misleading, or deceptive content – or how to disclose the presence of such content in ads, but would only result in disclosures as to whether ads on broadcast stations have any AI-generated content. Under the FCC's rules, then, countless political advertisements innocuously using AI to enhance video and audio would be labeled in the very same manner as a deepfake of a candidate urging his/her supporters to cast their ballots on Wednesday, November 6, 2024.

Adoption of the proposals thus would not provide information enabling audiences to “evaluate such ads for themselves” or to “assess the substance and reliability of political ads,” as the Commission intends.¹²⁷ Instead, the proposed disclosures will likely cause audiences to: (i) view every political ad with an AI disclosure (which will be nearly every political ad on broadcast stations) as suspicious or untrustworthy, even if the vast majority of such ads contain nothing deceptive or misleading; (ii) tune out the disclosure entirely because they hear it and/or see it on nearly every political ad; and/or (iii) assume that actually misleading content is accurate because the disclosure would only appear when AI is

¹²⁶ Notice at ¶ 10. That the FCC's concern is with false, misleading, and deceptive ads, including deepfakes, rather than with AI *per se*, is shown by the Notice's text and the Commissioners' statements, which contain the words “false” 20 times, “misleading” or “mislead” 31 times, “deceptive” 24 times, “deepfake(s)” 16 times, “fake(s)” 5 times, and “fraudulent” 4 times.

¹²⁷ Notice at ¶¶ 2, 33.

used, not necessarily when content is deceptive. These potential outcomes would be counter-productive to the FCC's goals. Focusing on broadcast stations also will do nothing to assist the public in assessing deepfakes where they overwhelmingly exist – on social media and other online platforms. Perversely, the proposals easily could lead the public to assume that online ads lacking any AI tags are more trustworthy than ads on other platforms.

The facts found here – that the public's understanding of important political issues and meaningful participation in elections could be harmed by false, misleading, or deceptive content such as fraudulent deepfakes in political advertising – do not lead to a conclusion that mandatory disclosure of any use of AI in political advertisements aired on broadcast stations would likely alleviate or even address the problem. There is no rational connection between the proposed disclosure requirements and the FCC's stated goals and, thus, the proposed rules are arbitrary and capricious.¹²⁸

C. The First Amendment Significantly Constrains the FCC's Ability to Regulate Political Advertising

In the First Amendment hierarchy generally, “speech on public issues occupies the highest rung” and “is entitled to special protection.”¹²⁹ And the First Amendment “has its fullest and most urgent application precisely to the conduct of campaigns for political office.”¹³⁰ The proposed regulations – which impact the speech of political candidates,

¹²⁸ See *State Farm*, 463 U.S. at 43; *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 168 (1962) (setting aside order of federal agency where it failed to articulate a “rational connection between the facts found and the choice made”).

¹²⁹ *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (citation omitted).

¹³⁰ *Federal Election Commission v. Ted Cruz for Senate*, 596 U.S. 289, 302 (2022) (citation omitted).

groups and entities expressing views on political issues, and broadcasters airing political speech – therefore “trench[] upon an area in which the importance of First Amendment protections is at its zenith”¹³¹ and would be unlikely to survive judicial review, despite the FCC’s understandable concerns about potential abuses of AI to mislead the public.

“[C]ontent-based regulations that target *political* speech are especially suspect.”¹³²

The proposed rules are content based because they apply on their face only to *political* advertisements with AI-created content and not to any other ads or programming with or without AI content.¹³³ The Notice’s suggestion that the proposed regulations could be considered content neutral is thus incorrect.¹³⁴ Moreover, the proposed compelled disclosure is not somehow neutral because it merely requires a “factual” statement about the presence of AI content.¹³⁵ Not only does the disclosure just apply to political ads, thereby making it content-based under Supreme Court precedent, but it also carries a clearly negative connotation. Labeling a candidate or issue ad as AI generated will automatically make that ad more suspect in the public’s eye than another political ad or other content

¹³¹ *Meyer v. Grant*, 486 U.S. 414, 425 (1988).

¹³² *Washington Post v. McManus*, 944 F.3d 506, 513 (4th Cir. 2019) (emphasis in original).

¹³³ See, e.g., *Reed v. Town of Gilbert*, 576 U.S. 155, 163-165 (2015) (finding a town’s “sign code” an unconstitutional content-based restriction on speech because it placed differing regulation on signs depending upon their topic/content (e.g., “directional,” “political,” or “ideological” signs)). *Reed* made clear that a regulation may be an unconstitutional content-based speech restriction even if it does not discriminate among viewpoints. *Id.* at 168-69.

¹³⁴ Notice at ¶ 29 & n.97. The fact that the proposed on-air disclosure and political file requirements do not ban ads with AI content or prohibit participation in public discussion is not relevant for purposes of determining whether a speech regulation is content based. And a regulation does not need to ban or prohibit speech to be constitutionally infirm.

¹³⁵ *Id.* at n.97.

without such a tag, regardless of the veracity of the ad or how AI was used in its creation.¹³⁶

The proposed mandated disclosure is neither legally nor functionally “content neutral.”

As a content-based regulation that also compels speech, the proposed rule will be subject to strict scrutiny,¹³⁷ which requires the government to prove it “furthers a compelling interest and is narrowly tailored to achieve that interest.”¹³⁸ Even assuming that a less stringent standard would apply, “exacting” scrutiny – which the courts sometimes apply to

¹³⁶ See, e.g., Bhaskar Chakravorti, *AI’s Trust Problem*, Harv. Bus. Rev. (May 3, 2024) (discussing the “broad public skepticism” and a “persistent trust gap” about AI, especially online disinformation); Katherine Haan, *Over 75% Of Consumers Are Concerned About Misinformation From Artificial Intelligence*, forbes.com (July 20, 2023) (discussing Forbes Advisor survey showing that 76% of consumers are concerned about misinformation from AI tools, e.g., ChatGPT); Ina Fried, *Exclusive: Public trust in AI is sinking across the board*, axios.com (Mar. 5, 2024) (reporting that in the U.S., public trust in AI companies fell from 50 to 35 percent over past five years). While public distrust of AI is focused online, attaching an AI label to broadcast ads will inevitably transfer that mistrust, even without justification.

¹³⁷ *Reed*, 576 U.S. at 165-66 (stating that facially content-based laws are subject to strict scrutiny, “regardless of the government’s benign motive” or “content-neutral justification”). “Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech,” *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988), and generally requires strict scrutiny. See, e.g., *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 189, 193 (4th Cir. 2013) (en banc); *Frudden v. Pilling*, 742 F.3d 1199, 1201 (9th Cir. 2014). Freedom of speech “includes both the right to speak freely and the right to refrain from speaking at all,” *Janus v. Am. Fed’n of State, Cnty. & Mun. Emps., Council 31*, 585 U.S. 878, 892 (2018) (citation omitted), and extends “not only to expressions of value, opinion, or endorsement, but equally to *statements of fact* the speaker would rather avoid.” *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995) (emphasis added). The FCC’s assertion that the disclosure rules only require a “factual statement” about AI-generated content does not make that speech any less compelled under First Amendment precedent. Notice at n.97.

¹³⁸ *Reed*, 576 U.S. at 171 (citation omitted). Under strict scrutiny, narrow tailoring means “advanc[ing] the State’s compelling interest through the least restrictive means.” *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 452 (2015).

mandated disclosures¹³⁹ – is also “difficult” to satisfy.¹⁴⁰ But regardless which level of heightened First Amendment scrutiny applies, the proposed regulation does not satisfy it.¹⁴¹ Indeed, the current proposal – which, as previously discussed, is practically devoid of meaning because it would apply to every (or virtually every) political ad aired on broadcast stations¹⁴² – would not even survive rational basis review.

Government interest. The Supreme Court “has recognized only one permissible ground for restricting political speech: the prevention of ‘*quid pro quo*’ corruption or its appearance,” and has consistently rejected other legislative aims, “[h]owever well intentioned.”¹⁴³ The proposals here do not promote that anti-corruption interest.

¹³⁹ *Ams. for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021). Exacting scrutiny requires that there be “a substantial relation between the disclosure requirement and a sufficiently important governmental interest, and that the disclosure requirement be narrowly tailored to the interest it promotes.” *Id.* at 611 (internal citation omitted).

¹⁴⁰ *Washington Post*, 944 F.3d at 520 (stating that, while strict scrutiny is “virtually impossible to satisfy,” exacting scrutiny “is merely difficult”).

¹⁴¹ NAB disputes the Notice’s assumption that intermediate scrutiny would apply because, under precedent dating back over half a century, broadcasters receive lesser First Amendment protections. Notice at ¶ 29 and n.99. NAB questions the continuing validity of those cases premised on spectrum scarcity and notes that courts have subjected certain content-based FCC restrictions to strict scrutiny even when imposed on broadcasters. See *Action for Children’s Television v. FCC*, 58 F.3d 654, 660 (D.C. Cir. 1995 (en banc) (applying “strict scrutiny to [content-based] regulations . . . regardless of the medium affected by them”). The proposals, moreover, impact not just broadcasters but also candidates and others seeking to speak on political issues, whose speech is undoubtedly entitled to the highest level of constitutional protection. In any event, even intermediate scrutiny requires that a regulation further an important governmental interest unrelated to the suppression of free expression and not burden substantially more speech than necessary to further those interests. *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997).

¹⁴² See Section IV.A., *supra*.

¹⁴³ *FEC v. Cruz*, 596 U.S. at 305-306.

The FCC tentatively concluded that its interest – ensuring that regulated entities address potentially false, misleading, or deceptive political advertising and enhancing the public’s ability to evaluate political ads – is compelling.¹⁴⁴ But the Notice fails to establish that this stated interest justifies regulating *broadcasters* because it did not identify *any* instances of broadcast stations airing AI-generated deepfake political ads. The threshold question – under any constitutional standard – is whether the government has established that its speech restriction is preventing a real harm.¹⁴⁵ With no record evidence of AI deepfake ads being aired on broadcast television or radio (and the FCC would need to show they are regularly or increasingly occurring on both because its proposals apply to both), this threshold has not been met.

Moreover, the proposed rules would fail the requirement to show, even under intermediate scrutiny, that a speech regulation in fact alleviates a real harm “in a direct and material way.”¹⁴⁶ The proposed regulations would not directly or materially alleviate the FCC’s concern about false, misleading, or deceptive political advertising, or enhance the public’s ability to evaluate political ads’ substance and reliability,¹⁴⁷ because the rules would (i) label all broadcast political ads containing any AI-generated content in the exact same way, despite significant differences in how AI was used to create the ads or in the veracity of

¹⁴⁴ Notice at ¶¶ 31, 33.

¹⁴⁵ When defending a restriction on speech as necessary to prevent an actual harm, the government cannot “simply posit the existence of the disease sought to be cured,” but must point to “record evidence” demonstrating “the need to address a special problem.” *FEC v. Cruz*, 596 U.S. at 307.

¹⁴⁶ *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994).

¹⁴⁷ Notice at ¶¶ 31, 33, 35.

those ads, thereby impeding consumers' ability to accurately or meaningfully assess ads using AI; (ii) attach a negative connotation to AI-generated political ads aired on broadcast stations, automatically making them all appear more suspect than non-labeled ads (whether on broadcast or other platforms), even though political ads created without AI may well be misleading or deceptive;¹⁴⁸ and (iii) fail to address political advertising online, where AI-generated deepfakes live. In short, the means chosen by the Commission would not accomplish its goals.

Tailoring. The proposed regulations are both overinclusive and underinclusive and thus are not narrowly tailored.¹⁴⁹ They “burden substantially more speech than is necessary”¹⁵⁰ to further the FCC’s interest in addressing false, misleading, and deceptive use of AI in political advertising because the rules would apply to all political ads on broadcast stations – not just deepfakes – that contain any AI-generated content, which, under the proposed definition of AI, would mean essentially every political ad. That is vastly overbroad. Yet the proposals are also wildly underinclusive because they do not apply to political ads in most cable/satellite programming, let alone online, where deepfakes thrive.

Burdens on broadcasters, candidates, and other speakers. The Notice discounts the burdens and practical difficulties its proposals will place on the speech of broadcast stations, candidates, and those entities speaking on political issues. It inaccurately terms as

¹⁴⁸ See Notice at ¶ 10; see also Section IV.A., *supra* (discussing “cheapfakes”).

¹⁴⁹ See, e.g., *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993); *Ruggiero v. FCC*, 317 F.3d 239, 244 (D.C. Cir. 2003).

¹⁵⁰ *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (citation omitted).

“modest”¹⁵¹ the burdens on stations of informing those requesting air time about the FCC’s disclosure requirements; inquiring whether numerous political ads with frequently changing copy contain any AI-generated content; providing an on-air announcement for all such ads, often received at the last minute; and including in online political files a notice disclosing use of AI content for each ad with such content. The sheer volume of political ads during busy election seasons exacerbates these burdens, and the Notice offers other proposals that would substantially add to their First Amendment burden, especially the misguided notion that stations further inquire about or otherwise respond to so-called “credible third parties” claims about ads.¹⁵² 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.¹⁵³

¹⁵¹ Notice at ¶¶ 33, 35 (characterizing the proposals’ burdens on stations and on candidates and other political speakers).

¹⁵² See Section IV., *supra* (explaining the unworkability and opportunity for mischief of the “credible third party” proposal and discussing other challenges presented by the proposed rules, including incompatibility with how political advertising is created, sold, and scheduled and inconsistency with various state laws). Additional suggestions, if adopted, would further increase the already consequential First Amendment burdens on stations and political speech (e.g., adding both oral and visual disclosures to ads, making disclosures in more than one language, etc.). See Notice at ¶ 17.

¹⁵³ See *Loveday v. FCC*, 707 F.2d 1443, 1457 (D.C. Cir. 1983) (rejecting claims that broadcasters had a duty to investigate the identity of sponsors of political advertisements opposing a ballot initiative, observing, *inter alia*, that “Congress cannot be presumed to have intended to place that burden, expense, and delay upon political speech”).

The expectation, moreover, that “the candidate or other entity” requesting airtime generally would know whether a particular ad contains AI-generated content (however defined) is incorrect.¹⁵⁴ In the likely event that many requesters of ad time either cannot tell the station whether an ad has any AI content or fail to respond to the stations’ inquiry, what then? It would be highly burdensome and time consuming for stations to try to discover the individual(s) with personal knowledge of how voluminous numbers of ads were produced and whether AI was used. Even if the FCC had authority to require stations to investigate the technical production of political ads (which it does not), such a requirement would exponentially increase the First Amendment burdens on broadcasters, as well as candidates and other political speakers who need their ads timely aired prior to elections.

The Notice further downplays the burdens on the First Amendment rights of candidates and other sponsors of political ads by asserting that the proposed rules would not “prevent[] or inhibit[]” candidates and other entities from using AI to produce their ads.¹⁵⁵ Given the stigma inherent in labeling political ads as containing AI content, NAB disagrees. Valid concerns that the public would automatically view with suspicion broadcast ads with AI labels – especially compared to ads on other platforms without any labels – would likely “inhibit” political speakers’ use of AI in broadcast ads and even their use of

¹⁵⁴ Notice at ¶ 36. “Candidates” are generally not those requesting airtime. The “time buyers” who request airtime generally are not involved in ad creation and lack knowledge about the content or production of ads, which are usually created by a separate production company on behalf of a candidate’s committee, a PAC, or an issue advertiser. Time buyers also often request time on stations days, weeks, or months in advance, often before the ads are even produced, making it impossible for them or anyone else to answer inquiries about AI-generated content when the ad time and rates are reserved. See Section IV.C., *supra*.

¹⁵⁵ Notice at ¶ 35.

broadcast stations as their platform of choice to speak.¹⁵⁶ If AI usage is not something pernicious, why would the government take the drastic step of forcing ads to be labeled? Discouraging use of AI potentially would impose asymmetric First Amendment burdens on smaller campaigns and issue advertisers with limited financial resources.¹⁵⁷ And as previously described, the proposed disclosures also would decrease the number of political ads aired in broadcasters' rigidly fixed blocks of advertising time and/or reduce the usable audio and visual real estate for political ads to convey their messages, thereby burdening political speech and speakers.¹⁵⁸ The Notice does not even recognize this concern. Given their burden on political speech, lack of tailoring, and inability to promote the FCC's stated goals, the proposed content-based compelled disclosures will not pass a reviewing court's First Amendment scrutiny.

VII. FALSE, MISLEADING, OR DECEPTIVE AI-GENERATED POLITICAL ADS ARE BETTER ADDRESSED THROUGH MEANS OTHER THAN THE PROPOSED RULES

As explained in depth above, the proposed rules are legally and practically problematic and likely to be ineffectual (if not outright harmful). Even assuming the FCC has the authority to adopt them (which it does not), there is no need for it to rush into regulating now because broadcast stations are far less likely targets for dissemination of deepfakes than other platforms, and the Notice provides no evidence that political speakers are using

¹⁵⁶ See Section V., *supra*.

¹⁵⁷ See Notice at ¶ 9 (stating that AI tools could be valuable to smaller campaigns with limited resources, allowing them to reach more voters and compete more effectively with larger, better-funded campaigns); Section IV.A., *supra*.

¹⁵⁸ See Section IV.C., *supra*.

AI to generate deepfake ads for the purpose of airing on broadcast stations. Broadcasters furthermore have had long experience with political issue advertisements, and many have established processes for handling these ads that further reduce concerns with potentially false and defamatory material airing on broadcast platforms. As shown below, these and other available approaches already exist to deal with false, deceptive, or misleading political ads, whether AI generated or not. It is clear, moreover, that federal legislation remains the best vehicle for addressing false and deceptive political ads, including deepfakes, if policymakers believe it necessary. Only legislatures can take a holistic approach and reach both the advertisers responsible for creating political advertising and the online platforms where AI-generated deepfakes proliferate.

A. Various Ways Already Exist for Addressing False or Deceptive Political Advertising, Including But Not Limited to Deepfakes

NAB stresses that additional Commission regulation of already regulated political advertising on broadcast stations is not needed to address concerns about AI-generated deepfakes. As explained in Section III., the broadcast platform does not lend itself to the dissemination of deepfakes, political ads on broadcast stations already must identify their sponsors and comply with “stand by your ad” requirements, and many broadcast ads are placed by established political advertising agencies with ethical obligations and business incentives not to place deepfake advertising. Given these factors, the absence of evidence that deepfake political ads air on radio and television stations is unsurprising.

But even beyond all the reasons why those wanting to spread political deepfakes avoid targeting broadcasters, there are further reasons that the proposed additional regulation of broadcasters is unnecessary. First, broadcasters have decades of experience in

dealing with political issue advertisements. During political seasons, it is not uncommon for a candidate for office to register a complaint with a station airing an issue advertisement (generally from the campaign or other representatives of the candidate that felt attacked) on the basis that the ad is false, deceptive, misleading, and/or defamatory and demanding that the station cease running it. As trusted sources of news and information, including about elections, broadcasters take seriously claims that a political issue ad airing on their station(s) is false.¹⁵⁹ Stations and station groups address these types of claims through well-established processes, which may involve the stations' legal counsel, the advertisers/sponsors in question, and/or the complaining candidates/campaigns. These station-specific processes successfully – and usually quickly – resolve complaints about issue advertisements.¹⁶⁰ Broadcasters fully expect their existing practices will continue to effectively address any claims that issue ads are defamatory, regardless of the technology used to produce those ads. Practices that functioned successfully for broadcasters in the age of Photoshop will function in an AI era too.

¹⁵⁹ Because the Act prohibits stations from censoring candidate advertisements and provides candidates certain access rights (under both “equal opportunities” in Section 315 and “reasonable access” in Section 312(a)(7)), broadcast licensees cannot be held liable for defamatory content in candidate ads. See *Farmers Educ. & Coop. Union of Am., N.D. Div. v. WDAY*, 360 U.S. 525 (1959). Broadcasters have no such protection from legal liability for issue advertisements. At times, local stations decline to air or cease airing issue advertisements due to these concerns.

¹⁶⁰ According to NAB members and their counsel, many letters to stations demanding that an issue ad be removed from the air make erroneous legal claims (e.g., that the ad somehow violates FCC rules), and often may be intended to coerce stations into removing the ad or merely to publicize the fact that a candidate/campaign is disputing statements made in a particular ad and have asked for its removal. Nonetheless, stations consider these demand letters carefully, often consulting with counsel, and they take appropriate action when warranted.

Second, NAB reminds the FCC that options under state law exist for dealing with claims that political ads are false or fraudulent. Most obviously, the inclusion of AI-generated content does not change the core question of whether content, including advertisements, is defamatory under the laws of the 50 states. Defamation and similar claims such as “false light” invasion of privacy thus remain a viable course of action to counter false political advertising, whether deepfakes, cheapfakes, or “old fashioned” false statements.

Third, the Federal Election Commission (FEC) also can police certain fraudulent content in political advertisements. Under the Federal Election Campaign Act (FECA), 52 U.S.C. § 30124, the FEC is authorized to stop certain campaign ads that fraudulently misrepresent another campaign’s ad. In particular, FECA prohibits a candidate, a candidate’s agent or employee, or an organization under the candidate’s control from purporting to speak, write, or act for another candidate or political party in a manner damaging to that candidate or party.¹⁶¹ FECA also forbids a person from falsely representing that they speak, write, or act on behalf of a political candidate or party for the purpose of soliciting contributions.¹⁶² The FEC may bring case-by-case enforcement actions against uses of AI that violate these statutory prohibitions and potentially engage in targeted rulemakings. The FCC is not the only relevant federal agency here.

As these comments explain, the proposals to add new broadcast disclosure requirements for political ads wholly or partially generated by AI may be a solution in search of a problem. The proposed rules target a narrow slice of the market in which multiple

¹⁶¹ 52 U.S.C. § 30124(a).

¹⁶² 52 U.S.C. § 30124(b).

checks on false and deceptive content already exist and evidence of fraudulent deepfakes does not. On the other hand, the proposals leave unchecked other parts of the market where political deepfakes live and spread. Indeed, the Notice’s piecemeal approach to regulation likely will shift more ads to those unregulated platforms.¹⁶³ By contrast, federal and state legislative bodies currently are trying to do what the Commission cannot: Examine the entire market and establish holistic regulatory approaches to tackle political deepfakes that lie to, deceive, and/or mislead the American public.

B. Legislation Provides the Best Vehicle for Addressing Deceptive AI-Generated Content in Political Ads

At the federal and state levels, legislators are grappling with the complex question of how to regulate AI-generated and deceptive content in political ads. Many states have already passed legislation regulating the use of AI or other synthetic media to mislead audiences in political communications, and other states and the U.S. Congress are considering legislative action.¹⁶⁴ Legislatures are focused on creating laws that address *who* is most likely to facilitate sharing of AI-generated deepfake content and *what content* is likely to be false, misleading, or deceptive. In one sense, the Commission here is standing on the whale of deepfakes that are created by advertisers and other speakers and are hosted on social media and other unregulated platforms, while fishing for minnows among ads hosted

¹⁶³ See Section V., *supra*.

¹⁶⁴ See National Conference for State Legislatures, Artificial Intelligence (AI) in Elections and Campaigns (July 15, 2024), <https://www.ncsl.org/elections-and-campaigns/artificial-intelligence-ai-in-elections-and-campaigns>.

by broadcast stations already subject to political advertising regulations and inherently unlikely to widely spread fraudulent deepfakes.

While the Notice professes to offer greater transparency and ensure uniform requirements, its proposals would fail to do so.¹⁶⁵ Notably, the Commission is not targeting the entities that create or finance political advertisements or those platforms most likely to publish deepfake political ads. State legislatures, in contrast, have generally focused on the entities that create or pay for deepfakes or other false, misleading, or deceptive content, as does the proposed federal AI Transparency in Elections Act of 2024.¹⁶⁶ This approach appropriately places the burden on the creators or financers of the content – *i.e.*, those responsible for producing the content and most likely to be aware of any deceptive manipulations of video and/or audio content. Tellingly, some states, such as California or New Hampshire, actually *exempt* broadcasters and newspapers from coverage under their enactments.¹⁶⁷ The proposed federal Protect Elections from Deceptive AI Act recognizes the important role that journalists, including broadcast journalists, play in providing truthful

¹⁶⁵ Notice at ¶¶ 8, 30, 35; *id.*, Statement of Chairwoman Jessica Rosenworcel (asserting that FCC action will “help bring uniformity and stability to the patchwork of state laws on AI technology and deepfakes seeking to bring greater transparency in our elections”).

¹⁶⁶ See, e.g., Ariz. Rev. Stat. Ann. § 16-1023(A) (2024) (targeting “a person who acts as a creator” of a campaign ad “that the person knows is a deceptive and fraudulent deepfake of that candidate that is on that ballot”); Fla. Stat. § 106.145(4)(a) (2024) (assigning liability to a person identified as “paying for, sponsoring, or approving a political advertisement, an electioneering communication, or other miscellaneous advertisement of a political nature”); AI Transparency in Elections Act of 2024, S. 3875, 118th Cong. § 2(e)(2) (2024) (imposing requirements on the persons making disbursements to finance certain AI-generated communications to include disclosure statements in those communications).

¹⁶⁷ See, e.g., Cal. Election Code § 20010(d) (2019); N.H. Rev. Stat. Ann. § 664:14-c(V)(c) (2024); *cf.* Minn. Stat § 609.771.

information to the public, and includes provisions to ensure that prohibitions on materially deceptive AI-generated content do not apply to bona fide reporting about deepfakes.¹⁶⁸

In addition, states are focused on prohibitions or disclosures for political ads that include deepfakes rather than any ad that happens to have been modified by AI. For example, some state laws, such as Arizona, Colorado, Minnesota, and New Hampshire,¹⁶⁹ expressly target deepfakes in political advertising, and several other states regulate substantially similar content, such as materially deceptive media or synthetic content that may be misleading to the public.¹⁷⁰ Similarly, the proposed Protect Elections from Deceptive AI Act also targets *deceptive* AI-generated content.¹⁷¹ By contrast, as previously described, the FCC's proposals would require a disclosure even in the absence of any deepfake or other deceptive content and even if the use of AI was minor or entirely benign, thus failing to provide meaningful information to the public.¹⁷²

¹⁶⁸ See S. 2770, 118th Cong. § 2(a) (2024).

¹⁶⁹ Ariz. Rev. Stat. Ann. § 16-1023(D)(2) (2024); Colo. Rev. Stat. § 1-46-102(3) (2024); Minn. Stat § 609.771(c) (2023); N.H. Rev. Stat. Ann. § 664:14-c(l)(d) (2024).

¹⁷⁰ See, e.g., Idaho Code § 67-6628A (2024) (providing a private right of action for candidates to sue content providers that use “synthetic media” that is a deceptive communication in an electioneering communication); N.Y. Election Law § 14-106(5) (2024) (requiring disclosure for “materially deceptive media”). “Synthetic” media is a catch-all term to describe video, images, text, or voice that has been fully or partially generated using AI.

¹⁷¹ S. 2770, 118th Cong. § 2(a) (2024) (prohibiting “the knowing distribution of ”deceptive AI-generated audio and visual media” for political advertisements). Other federal legislation proposing regulation of AI in political ads makes clear that such ads must be “created or materially altered” using generative AI, rather than having only “minor alterations” by AI, to be covered. AI Transparency in Elections Act of 2024, S. 3875, 118th Cong. § 2(e) (2024).

¹⁷² See Section IV.A., *supra* (explaining that use of AI in ad production is not probative of its truthfulness because AI has become integrated into the production process and routinely performs tasks such as noise reduction, color correction, video stabilization, and more).

Many of the state and federal legislators grappling with these issues appear to recognize what the FCC misses: To address the problem of deepfakes, it makes no sense to target broadcasters who have no direct knowledge of whether a deepfake exists, must rely on other parties to identify and substantiate the truthfulness of their ads, and have not been identified as having hosted a material (or even a small) number of deepfake political ads, in stark contrast to online platforms.¹⁷³ In that sense, the rules proposed here, rather than bringing transparency to audiences and uniformity in regulatory approaches, completely avoids the more targeted solutions that a number of states are trying to develop and instead imposes different requirements, resulting in inconsistency and confusion.

At this stage, the Commission would be better advised to defer to the legislative branch. Only Congress can bring both transparency across platforms and uniformity to any regulation of political deepfakes.

VIII. CONCLUSION

As trusted providers of news and information to communities across the country, local broadcasters recognize the challenges of addressing false, misleading, and deceptive political advertising, especially fraudulent deepfakes and other online disinformation. While the broadcast platform does not lend itself to the widespread dissemination of deepfakes, NAB and broadcasters nonetheless continue to work to combat online disinformation and prevent its migration to television and radio stations.

¹⁷³ See Section II.B., *supra* (describing the significant problem of online deepfakes).

In their current form, the proposals in the Notice would fail to provide meaningful information to the public and would not achieve the FCC's goals of ensuring the public can assess the substance and reliability of the political advertisements they see and hear. The proposed inquiry and disclosure regulations are both overly broad and underinclusive and would be neither "simple" to implement nor "modest" in their burdens on local stations and political speakers, as the Notice contends. The significant statutory and constitutional limits on the FCC's authority prevent it from reaching the advertisers responsible for political ads, regulating political deepfakes where they thrive (online), or imposing the proposed rules on broadcast stations. As shown in these comments, avenues other than FCC regulation exist to address false, misleading, or deceptive political ads, including those created with AI, and legislation would provide the best vehicle going forward.

Respectfully submitted,

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