

Before the
Federal Election Commission
Washington, D.C.

In the matter of

Internet Communication Disclaimers and
Definition of “Public Communication”

Notice 2018–06

**COMMENTS OF THE
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)¹**

CCIA respectfully submits these comments in the above-referenced proceeding.² CCIA appreciates the FEC’s efforts to update its rules to ensure that voters know who is trying to communicate with them via election-related advertisements. With primary elections now occurring across the country and the midterm elections fast-approaching, it is important that the FEC put forward policies that take into account the dynamic and rapidly changing nature of the advertising marketplace on the internet, as well as the efforts of industry participants to increase transparency and accountability regarding the ads that are purchased by speakers seeking to reach potential voters on their platforms. These comments follow CCIA’s previous comments on this matter that responded to the FEC’s reopening of the comment period on the 2011 ANPRM.³

¹ CCIA represents large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services. Our members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion. A list of CCIA’s members is available online at <http://www.ccianet.org/members>.

² Internet Communication Disclaimers and Definition of “Public Communication”, Notice of Proposed Rulemaking, Fed. Election Comm’n, 83 Fed. Reg. 12864 (Mar. 26, 2018) (to be codified at 11 C.F.R. pts. 100 and 110) [hereinafter NPRM].

³ Computer & Communications Industry Association (CCIA), Comment (Nov. 9, 2017), <http://sers.fec.gov/fosers/showpdf.htm?docid=358503>; Internet Communication Disclaimers; Reopening of Comment Period, Fed. Election Comm’n 82 Fed. Reg. 46937 (proposed Oct. 13, 2011) (to be codified at 11 C.F.R. pt. 110), <http://sers.fec.gov/fosers/showpdf.htm?docid=357882>.

CCIA supports disclaimer requirements that will show users who the speaker is, and CCIA appreciates that the FEC's primary intent, with the proposed Alternatives A and B, is "to give the American public easy access to information about the persons paying for and candidates authorizing . . . internet communications".⁴ Indeed, the Federal Election Campaign Act (FECA) clearly identifies that the speakers of election-related ads must disclose who they are. FECA and the FEC's rules apply to a candidate or candidate's committee,⁵ person or committee authorized by the candidate,⁶ and persons not authorized by the candidate or candidate's committee.⁷ Disclaimers identifying who paid for the communication, for example, those that identify whether the communication was paid for or authorized by a candidate, help voters and nonvoters understand who is trying to influence them. Disclaimers also help voters and nonvoters know whether the information conveyed in the ad came from the candidate, committee, or person who paid for the ad, and they can help voters and nonvoters verify information conveyed in ads. Voters should know the source of the information they are presented, so it is important for the FEC's rules to maintain that the speaker has the responsibility to include the disclaimer information in the ad.

I. Adapted Disclaimers.

CCIA appreciates the FEC's efforts to recognize the dynamism of the Internet and the FEC's consideration of how disclaimer requirements would function on the various different

⁴ NPRM at 12864.

⁵ See 52 U.S.C. § 30120(a)(1) (2012) ("[I]f paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee"); 11 CFR 110.11(b)(1).

⁶ See 52 U.S.C. § 30120(a)(2) ("[I]f paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee"); 11 CFR 110.11(b)(2).

⁷ See 52 U.S.C. § 30120(a)(3) ("[I]f not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee."); 11 CFR 110.11(b)(3).

options for Internet-enabled advertising, especially considering that these options are constantly evolving.⁸ The NPRM seeks to provide for an “adapted disclaimer”, through alternatives A and B, that would require the disclaimer’s “information to be clear and conspicuous and to provide notice that further disclaimer information is available through the technological mechanism.”⁹ This will ensure that the FEC’s requirements are appropriate and understandable given spatial and temporal constraints that are unique to different types of advertising on internet-enabled platforms. The adapted disclaimer proposals would allow for a link to “the payor’s website, if a reader could move his or her cursor over the words or link to a landing page and see the full disclaimer.”¹⁰ This would be consistent with the most recent application of the rules, the Google Advisory Opinion,¹¹ in which the FEC found it permissible to provide the URL of the ad sponsor’s website and “a full disclaimer that would appear on the landing page that appears when a user ‘clicks through’ a text ad.”¹² Providing a link to the payor/speaker’s website will help the recipient of the message understand who is actually speaking, and it will help the recipient find out more information about the payor/speaker.

II. Recent Industry Actions to Promote Transparency.

Industry participants have responded with enhancements to how political advertisements are shown on their platforms. Facebook has focused on increasing transparency for all ads, and has introduced new steps for election-related ads.¹³ Facebook will require that advertisers

⁸ NPRM at 12871 (quoting Comments of the Computer & Communications Industry Association at 9, 11).

⁹ *Id.* at 12869.

¹⁰ *Id.* at 12877.

¹¹ ADVISORY OPINION 2010-19, Fed. Election Comm’n (Oct. 8, 2010), <http://saos.fec.gov/aodocs/AO%202010-19.pdf>.

¹² *Id.*

¹³ Rob Goldman and Alex Himel, *Making Ads and Pages More Transparent*, FACEBOOK (Apr. 6, 2018), <https://newsroom.fb.com/news/2018/04/transparent-ads-and-pages/>; Rob Goldman, *Update on Our Advertising Transparency and Authenticity Efforts*, FACEBOOK (Oct. 27, 2017), <https://newsroom.fb.com/news/2017/10/update-on-our-advertising-transparency-and-authenticity-efforts/>.

“verify and confirm who they are and where they are located in the US”,¹⁴ and they cannot run ads until they have been authorized. To accomplish this, Page admins will need to provide government-issued IDs and a physical mailing address; Facebook will then mail a physical letter to that address with a specific access code for only that Facebook account; and Facebook will require that advertisers disclose their candidate, organization, or business.¹⁵ Election-related ads will be clearly marked in the top left corner as a “Political Ad”, and next to the ad there will be a “paid for by” disclosure in Facebook and Instagram feeds. Facebook will also have a public archive of political ads.

Google has imposed additional requirements on advertisers seeking to place election-related ads.¹⁶ To purchase an election ad on a Google platform in the U.S., prospective advertisers will have to verify that they are a U.S. citizen or lawful permanent resident with a government-issued ID. Google will also require that “ads incorporate a clear disclosure of who is paying for it.”¹⁷ This summer, Google will produce a transparency report on election ads that will explain who buys election-related ads on Google platforms and how much money is spent is spent on these ads. Google will also provide a searchable library of election ads.

Last year, Twitter announced that electioneering advertisers would have to identify their campaigns, and ads will include a visual political ad indicator to further indicate to users that the ad is a political ad and not just a regular or promoted tweet.¹⁸ Twitter’s new Advertising Transparency Center will provide users with additional information, including disclosures about

¹⁴ *Hard Questions: What is Facebook Doing to Protect Election Security?*, FACEBOOK (Mar. 29, 2018), <https://newsroom.fb.com/news/2018/03/hard-questions-election-security/>.

¹⁵ *Id.*

¹⁶ Kent Walker, *Supporting election integrity through greater advertising transparency*, GOOGLE (May 4, 2018), <https://blog.google/topics/public-policy/supporting-election-integrity-through-greater-advertising-transparency/>.

¹⁷ *Id.*

¹⁸ Bruce Falck, *New Transparency for Ads on Twitter*, TWITTER (Oct. 24, 2017), https://blog.twitter.com/official/en_us/topics/product/2017/New-Transparency-For-Ads-on-Twitter.html.

total campaign ad spending by certain advertisers, information about the identities of organizations behind campaigns, and information about targeting demographics.¹⁹

III. Conclusion.

CCIA welcomes the FEC's efforts to update its rules to ensure that voters and nonvoters receive critical information about who is actually trying to speak to them about political candidates. The FEC should balance the need for new disclaimer regulations with the temporal, spatial, and aesthetic constraints inherent in some forms of Internet-enabled advertising, as well as possible chilling effects on legitimate, open political discourse. Depending on how the FEC addresses comments on this NPRM, the FEC should hold another round of comments and allow the public more time to provide additional feedback, especially if the FEC departs from these two considerably different policy alternatives.

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Respectfully submitted,

/s/ John A. Howes, Jr.
Policy Counsel
Computer & Communications Industry
Association (CCIA)
655 15th Street, NW Suite 410
Washington, D.C. 20005
(202) 783-0070
jhowes@ccianet.org

¹⁹ *Id.*