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FEDERAL ELECTION COMMISSION
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WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 22-52-B
AGENDA ITEM
For the meeting of December 1, 2022
SUBMITTED LATE

MEMORANDUM

TO: The Commission
The Office of the Commission Secretary

FROM: Allen Dickerson *AD*
Chairman

Shana Broussard *SMB*
Commissioner

DATE: November 28, 2022

RE: REG 2011-02 (Final Rule and Explanation and Justification for
Internet Communication Disclaimers) - Draft B

Attached is a draft Final Rule and Explanation and Justification for REG 2011-02 (Internet Communication Disclaimers and Definition of “Public Communication”) - Draft B. This document will be considered at the Commission’s open meeting of December 1, 2022.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 110

[NOTICE 2022–xx]

Internet Communication Disclaimers and Definition of “Public Communication”

AGENCY: Federal Election Commission.

ACTION: Final Rule.

SUMMARY: The Commission is adopting final rules in 11 CFR parts 100 and 110 to amend its regulations concerning disclaimers on public communications on the internet. The Commission is implementing these amendments in light of technological advances since the Commission last revised its rules governing internet disclaimers in 2006, and to address questions from the public about the application of those rules to internet communications. The Commission’s purpose in promulgating these rules is to apply the Federal Election Campaign Act’s disclaimer requirements to general public political advertising on the internet. The Commission is also revising the definition of “public communication” to clarify how it applies to general public political advertising on the internet.

DATES: The effective date is _____.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Ms. Joanna S. Waldstreicher, Attorney, 1050 First St. NE, Washington, DC 20463, (202) 694-1650 or (800) 424-9530. Documents relating to the rulemaking record are available on the Commission’s website at <http://sers.fec.gov/fosers/rulemaking.htm?pid=74739>.

1 **SUPPLEMENTARY INFORMATION:**

2 The Commission is revising its regulatory definition of “public communication” and
3 requirements regarding disclaimers on certain public communications placed for a fee on the
4 internet.

5 The new regulations are intended to give the American public improved access to
6 information about the persons paying for and candidates authorizing certain internet
7 communications, pursuant to the Federal Election Campaign Act (the “Act”). The regulations
8 clarify how the disclaimer requirements apply to various types of internet communications and
9 allow certain internet communications to provide disclaimers through alternative technological
10 means.

11 **Transmission of Final Rules to Congress**

12 Before final promulgation of any rules or regulations to carry out the provisions of the
13 Act, the Commission transmits the rules or regulations to the Speaker of the House of
14 Representatives and the President of the Senate for a thirty-legislative-day review period.
15 52 U.S.C. 30111(d). The effective date of this final rule is _____.

16 **Explanation and Justification**

17 **I. Background**

18 1. Current Statutory and Regulatory Framework

19 Under the Act and Commission regulations, a “disclaimer” is a statement that must
20 appear on certain communications to identify the payor and, where applicable, whether the
21 communication was authorized by a candidate. 52 U.S.C. 30120(a); 11 CFR 110.11; *see*
22 *Citizens United v. FEC*, 558 U.S. 310, 366-67 (2010) (“*Citizens United*”) (citing *Buckley v.*
23 *Valeo*, 424 U.S. 1, 64, 66 (1976).

1 With some exceptions, the Act and Commission regulations require disclaimers for
2 public communications: (1) made by a political committee; (2) that expressly advocate the
3 election or defeat of a clearly identified federal candidate; or (3) that solicit a contribution.
4 52 U.S.C. 30120(a); 11 CFR 110.11(a). In addition to public communications by political
5 committees, “electronic mail of more than 500 substantially similar communications when sent
6 by a political committee; and all Internet websites of political committees available to the general
7 public” also must have disclaimers. 11 CFR 110.11(a)(1).

8 These final rules modify the definition of “public communication.” 11 CFR 100.26.
9 Specifically, as explained below, the term “public communication” now includes
10 “communications placed for a fee on another person’s website, digital device, application, or
11 advertising platform.”

12 The content of the disclaimer that must appear on a given public communication depends
13 on who authorized and paid for the advertisement. If a candidate, an authorized committee of a
14 candidate, or an agent of either, pays for and authorizes the communication, then the disclaimer
15 must state that the communication “has been paid for by the authorized political committee.”
16 11 CFR 110.11(b)(1); *see also* 52 U.S.C. 30120(a)(1). If a public communication is paid for by
17 someone else, but is authorized by a candidate, an authorized committee of a candidate, or an
18 agent of either, then the disclaimer must state who paid for the communication and that it is
19 authorized by the candidate, authorized committee of the candidate, or an agent of either.
20 11 CFR 110.11(b)(2); *see also* 52 U.S.C. 30120(a)(2). If the communication is not authorized by
21 a candidate, an authorized committee of a candidate, or an agent of either, then “the disclaimer
22 must clearly state the full name and permanent street address, telephone number, or World Wide
23 Web address of the person who paid for the communication, and that the communication is not

1 authorized by any candidate or candidate’s committee.” 11 CFR 110.11(b)(3); *see also*
2 52 U.S.C. 30120(a)(3). Every disclaimer “must be presented in a clear and conspicuous manner,
3 to give the reader, observer, or listener adequate notice of the identity of the person” that paid for
4 the communication. 11 CFR 110.11(c)(1).

5 Commission regulations contain certain exceptions to the general disclaimer
6 requirements. For example, under the “small items exception,” disclaimers are not required for
7 public communications placed on “[b]umper stickers, pins, buttons, pens, and similar small items
8 upon which the disclaimer cannot be conveniently printed.” 11 CFR 110.11(f)(1)(i). Under the
9 “impracticable exception,” disclaimers are not required for “[s]kywriting, water towers, wearing
10 apparel, or other means of displaying an advertisement of such a nature that the inclusion of a
11 disclaimer would be impracticable.” 11 CFR 110.11(f)(1)(ii).

12 2. History of Disclaimers on Internet Communications

13 a. 1994 Rulemaking

14 The Commission first addressed internet disclaimers in its 1994 rulemaking regarding
15 communications disclaimer requirements. The Commission’s initial proposal was silent as to
16 internet communications. *See Communications Disclaimer Requirements*, 59 FR 50708 (Oct. 5,
17 1994). However, after publishing the Notice of Proposed Rulemaking, the Commission
18 considered an advisory opinion request from a political committee that intended to “provide a
19 forum for publicly available information on selected public officials” on its website. *Advisory*
20 *Opinion 1995–09 (NewtWatch)* at 1. The Commission concluded that the committee’s use of a
21 website was “a form of general public political advertising under 11 CFR 110.11”¹ that required

¹ Commission regulations at the time did not define or otherwise reference “public communications.” Instead, in determining whether a communication required a disclaimer, the Commission considered whether the communication used a specific format (*i.e.*, any broadcasting station, newspaper, magazine, outdoor advertising

1 a disclaimer. Advisory Opinion 1995–09 (NewtWatch) at 2. The Commission codified this
2 interpretation in its final rule, explaining that “internet communications and solicitations that
3 constitute general public political advertising require disclaimers” and that “[t]hese
4 communications and others that are indistinguishable in all material aspects from those addressed
5 in [Advisory Opinion 1995-09 (NewtWatch PAC)] will now be subject to” disclaimer
6 requirements. Communications Disclaimer Requirements, 60 FR 52069, 52071 (Oct. 5, 1995).

7 b. BCRA and the 2002 Rulemaking

8 In 2002, Congress enacted the Bipartisan Campaign Reform Act of 2002, Public Law
9 107–155, 116 Stat. 81 (2002) (“BCRA”). In BCRA, Congress added new specificity to the
10 disclaimer requirements, expanded the scope of communications covered by the disclaimer
11 requirements, and enacted “stand-by-your-ad” requirements. Congress also added a new term,
12 “public communication,” which did not reference the internet: “The term ‘public
13 communication’ means a communication by means of any broadcast, cable, or satellite
14 communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone
15 bank to the general public, or any other form of general public political advertising.” *See*
16 52 U.S.C. 30101(22).

17 In implementing BCRA, the Commission promulgated a new regulatory definition of
18 “public communication” that mirrored the statutory language but added that “[t]he term public
19 communication shall not include communications over the internet.” 11 CFR 100.26 (2002);
20 Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49064, 49111
21 (July 29, 2002). The Commission also promulgated new rules to implement BCRA’s changes to
22 the disclaimer provisions of the Act. *See* Disclaimers, Fraudulent Solicitations, Civil Penalties,

facility, poster, yard sign, direct mailing), or if it otherwise constituted “general public political advertising.” *See* 11 CFR 110.11(a)(1) (1995).

1 and Personal Use of Campaign Funds, 67 FR 76962 (Dec. 13, 2002). The new disclaimer rules
2 applied to “public communications” as well as political committee websites and the distribution
3 by political committees of more than 500 substantially similar e-mails. Other than these two
4 specific types of internet-based activities by political committees, however, internet
5 communications were not subject to the disclaimer requirements. *Id.* at 76963–64 (explaining
6 that “[t]his is the Commission’s only divergence from the 11 CFR 100.26 definition of ‘public
7 communication”).

8 c. The *Shays* Litigation and Subsequent Internet Communications
9 Rulemaking

10 In 2004, the U.S. District Court for the District of Columbia considered a case in which
11 the plaintiffs alleged, *inter alia*, that the Commission had erred in requiring that a “coordinated
12 communication” could only be a “public communication” or “electioneering communication”
13 because this would mean that internet communications, “no matter how closely they are
14 coordinated with political parties or a candidate’s campaign, cannot be considered ‘coordinated’
15 under the [Commission’s] regulations” by virtue of being specifically excluded from the
16 definition of “public communication.” *Shays v. FEC*, 337 F. Supp. 2d 28, 65 (D.D.C. 2004)
17 (“*Shays*”), *aff’d*, 414 F. 3d 76 (D.C. Cir. 2005), *reh’g en banc denied* (Oct. 21, 2005). The court
18 agreed with the plaintiffs, finding that “Congress intended all other forms of ‘general public
19 political advertising’ to be covered by the term ‘public communication.’” *Shays* at 70. The court
20 reasoned that “[w]hile all Internet communications do not fall within this descriptive phrase,
21 some clearly do.” *Id.* at 67. The court concluded that “[w]hat constitutes ‘general public
22 political advertising’ in the world of the Internet is a matter for the FEC to determine.” *Id.* at 70.

1 Following that ruling, the Commission amended the definition of “public
2 communication” to include “internet communications placed on another person’s Web site for a
3 fee.” 11 CFR 100.26; Internet Communications, 71 FR 18589 (Apr. 12, 2006) (“2006 Internet
4 E&J”). Under the new definition, “when someone such as an individual, political committee,
5 labor organization or corporation pays a fee to place a banner, video, or pop-up advertisement on
6 another person’s Web site, the person paying makes a ‘public communication.’” 2006 Internet
7 E&J, 71 FR at 18594. Furthermore, “the placement of advertising on another person’s Web site
8 for a fee includes all potential forms of advertising, such as banner advertisements, streaming
9 video, popup advertisements, and directed search results.” *Id.*; *see also id.* at 18608 n.52 (noting
10 that, as used in a different context, the “terms ‘website’ and ‘any internet or electronic
11 publication’ are meant to encompass a wide range of existing and developing technology”
12 including “social networking software”). The Commission explained that the revised definition
13 of “public communication” also affects, among other provisions, “the requirement to include
14 disclaimer statements on certain communications pursuant to 11 CFR 110.11.” *Id.* at 18589 n.2.

15 After the adoption of these regulations in 2006, the Commission considered several
16 advisory opinion requests that concerned the application of disclaimers to internet
17 communications. The queries centered on whether certain communications are exempt from the
18 disclaimer requirements under the impracticable or small items exceptions at 11 CFR
19 110.11(f)(1) or whether they may incorporate technological modifications to satisfy the
20 disclaimer requirements.²

² See Advisory Opinion 2017-12 (Take Back Action Fund); Advisory Opinion 2010-19 (Google); *see also* Advisory Opinion Request 2013-18 (Revolution Messaging) (Sept. 11, 2013); Advisory Opinion Request 2011-09 (Facebook) (Apr. 26, 2011). In addition to the advisory opinion requests concerning internet advertisements, another advisory opinion request asked the Commission to apply the impracticable exception in support of

1 The Commission was first asked to apply the small items exception or impracticable
2 exception to text-limited internet advertisements in 2010. Google proposed to sell AdWords
3 search keyword advertisements limited to 95 text characters; the proposed advertisements would
4 not include disclaimers but would link to a landing page (the purchasing political committee’s
5 website) on which users would see a disclaimer. *See* Advisory Opinion 2010-19 (Google). The
6 Commission concluded that Google’s proposed AdWords program “under the circumstances
7 described . . . [was] not in violation of the Act or Commission regulations,” but the advisory
8 opinion did not answer whether Google AdWords ads would qualify for the small items or
9 impracticable exception. *Id.* at 2.

10 In response to two subsequent advisory opinion requests concerning the possible
11 application of the small items exception or impracticable exception to small internet
12 advertisements, the Commission was unable to issue advisory opinions by the required four
13 affirmative votes. *See* Advisory Opinion Request 2011-09 (Facebook) (Apr. 26, 2011)
14 (concerning application of exceptions to zero-to-160 text character ads with thumbnail size
15 images); Advisory Opinion Request 2013-18 (Revolution Messaging) (Sept. 11, 2013)
16 (concerning application of exceptions to mobile banner ads).

17 Finally, the Commission considered an advisory opinion request in 2017 asking whether
18 paid image and video ads on Facebook “must . . . include all, some, or none of the disclaimer
19 information specified by 52 U.S.C. 30120(a).” Advisory Opinion Request 2017-12 (Take Back
20 Action Fund) at 4. The Commission issued an opinion concluding that the proposed Facebook
21 image and video advertisements “must include all of the disclaimer information” specified by the

truncating a political committee’s name in disclaimers on its mass emails and on its website. *See* Advisory Opinion 2013-13 (Freshman Hold’em JFC *et al.*) at n.4.

1 Act, but, in reaching this conclusion, Commissioners relied on two different rationales, neither of
2 which garnered the required four affirmative votes. Advisory Opinion 2017-12 (Take Back
3 Action Fund) at 1.

4 d. Current Rulemaking

5 On October 13, 2011, the Commission published in the Federal Register an Advance
6 Notice of Proposed Rulemaking (“ANPRM”) soliciting comment on whether to modify
7 disclaimer requirements at 11 CFR 110.11 for certain internet communications, or to provide
8 exceptions thereto, consistent with the Act. The Commission received eight comments in
9 response. Six of the commenters agreed that the Commission should update the disclaimer rules
10 through a rulemaking, though commenters differed on how the Commission should do so.

11 On October 18, 2016, the Commission solicited additional comment in light of legal and
12 technological developments during the five years since the ANPRM was published. The
13 Commission received six comments, all but one of which supported updating the disclaimer
14 rules. Commenters, however, differed on whether the Commission should allow modified
15 disclaimers for all online advertisements or exempt paid advertisements on social media
16 platforms from the disclaimer requirements.³

³ On November 2, 2016, the Commission published in the Federal Register a Notice of Proposed Rulemaking in a separate rulemaking: Technological Modernization, 81 FR 76416 (Nov. 2, 2016); *see also* 87 FR 54915 (Sept. 8, 2022) (request for additional comment). That NPRM proposed changing the reference to “Web site” in the definition of “public communication” to “website or internet-enabled device or application.” The purpose of the proposed change was to reflect post-2006 changes in internet technology — such as the development of mobile applications (“apps”) on smartphones and tablets, smart TVs and devices, interactive gaming dashboards, e-book readers, and wearable network-enabled devices such as smartwatches and headsets — and to make the regulatory text more adaptable to the development of future technologies. The Commission asked several questions about its proposed change, including whether the term “internet-enabled device or application” is a sufficiently clear and technically accurate way to refer to the various media through which paid internet communications can be sent and received; whether there is a better way to refer to them; and whether it would help to provide examples of such paid media. The Commission has decided to amend the definition of “public communication” in the instant rulemaking because the term is closely tied to the internet communication disclaimer requirements. *See* NPRM at 12865.

1 On October 10, 2017, the Commission again solicited additional comment in light of the
2 ongoing legal, factual, and technological developments in this area. During this reopened
3 comment period, the Commission received submissions from 149,772 commenters (including
4 persons who signed on to others' comments), of which 147,320 indicated support for updating or
5 strengthening the disclaimer rules or other government action; 2,262 indicated opposition to such
6 efforts; and 190 did not indicate a discernable preference.

7 On March 26, 2018, the Commission published in the Federal Register a Notice of
8 Proposed Rulemaking in this rulemaking. *See* Notice of Proposed Rulemaking, Internet
9 Communication Disclaimers and Definition of "Public Communication," 83 FR 12864 (Mar. 26,
10 2018) ("NPRM"). During the comment period, the Commission received submissions from
11 165,801 commenters (including persons who signed on to others' comments), of which a large
12 majority supported one or the other of two alternative proposals or supported revising disclaimer
13 rules generally. In addition, the Commission received three comments and twelve *ex parte*
14 communications after the comment period.

15 As discussed above, this NPRM proposed to revise the definition of "public
16 communication" to include communications placed for a fee on another person's "internet-
17 enabled device or application," in addition to communications placed for a fee on another
18 person's website. In addition, the Commission requested comment on two proposed revisions to
19 its disclaimer rules that were intended to clarify, for various types of paid internet public
20 communications, the disclaimers required and, in certain circumstances, when a paid internet
21 public communication could employ a modified approach to the disclaimer requirements.
22 Alternative A proposed applying the full disclaimer requirements that apply to radio and
23 television communications to public communications distributed over the internet with audio or

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1 video components. Alternative A also proposed applying the type of disclaimer requirements
2 that apply to printed public communications to text and graphic public communications
3 distributed over the internet. Finally, Alternative A proposed allowing certain small text or
4 graphic public communications distributed over the internet to satisfy the disclaimer
5 requirements through an “adapted disclaimer.” Alternative B proposed to treat internet public
6 communications differently from public communications disseminated via print and broadcast
7 media. Alternative B proposed a requirement that disclaimers on internet communications be
8 clear and conspicuous and meet the same general content requirements as other disclaimers,
9 without imposing the additional disclaimer requirements that apply to print, radio, and television
10 communications. Alternative B also proposed to allow certain paid internet advertisements to
11 satisfy the disclaimer requirements through an adapted disclaimer, depending on the amount of
12 space or time necessary for a clear and conspicuous disclaimer as a percentage of the overall
13 advertisement. In the event that an advertisement could not provide a disclaimer even through a
14 technological mechanism, Alternative B proposed to create an exception to the disclaimer
15 requirement specifically for paid internet advertisements.

16 In May 2018, the Commission held a hearing on the regulatory changes proposed in the
17 NPRM and received testimony from 18 witnesses over the course of two days. The witnesses
18 included campaign finance reform organizations, experts in technology and advertising, and
19 political party committees. The witnesses testified on issues relating to defining “public
20 communications,” how internet advertising has evolved and how it is used, incorporating
21 flexibility in the regulations to accommodate new technologies as well as business decisions, and
22 how internet communications are different from print and broadcast media.

1 Finally, on June 20, 2019, the Commission made public two alternative proposals from
2 Commissioners, seeking additional public comment on updated proposed revisions. Proposal A
3 would have provided that “[t]he term general public political advertising shall not include
4 communications over the internet, except for (1) communications produced for a fee and those
5 placed or promoted for a fee on another person’s website or digital device, application, service,
6 or platform, and (2) such communications included in section (1) that are then shared by or to a
7 website or digital device, application, service, or platform.”⁴ It would have provided that
8 internet public communications must include full disclaimers similar to those already required
9 for print, radio, and television communications, including the stand-by-your-ad requirements for
10 radio and television advertisements. Proposal A also provided that the small items and
11 impracticable exceptions would not apply to internet public communications, but that an adapted
12 disclaimer may be used for a communication containing text or graphic components when it
13 would be impracticable to include a full disclaimer “due to factors inherent to the technology.”
14 Internet Ad Disclaimers Rulemaking Proposal (June 20, 2019) (“Proposal A”).⁵

15 Proposal B did not include a proposed revision to the definition of “public
16 communication,” and provided that an adapted disclaimer may be used for “[a]ny internet public
17 communication that cannot reasonably provide a disclaimer on the face of the communication.”
18 Internet Communication Disclaimers, Proposed Rule (June 20, 2019) (“Proposal B”).⁶ In
19 response to these proposals, the Commission received five comments, three of which did not

⁴ <https://sers.fec.gov/fosers/showpdf.htm?docid=402921>.

⁵ <https://sers.fec.gov/fosers/showpdf.htm?docid=402921>.

⁶ <https://sers.fec.gov/fosers/showpdf.htm?docid=403127>.

1 express a preference for one of the alternative proposals, and two of which supported Proposal
2 A.

3 **II. Revised 11 CFR 100.26—Definition of “Public Communication”**

4 As set forth below, the Commission is revising section 100.26, defining “public
5 communication,” to clarify how it applies to general public political advertising over the internet,
6 and—in light of the nuances of internet advertising and the rapid pace of technological change—
7 to ensure that the disclaimer rule also applies appropriately to newer forms of general public
8 political advertising over the internet.

9 Commission regulations require a disclaimer for any “public communication” that
10 contains express advocacy or solicits a contribution, and for all public communications by
11 political committees. 11 CFR 110.11(a). The current definition of “public communication”
12 includes only those internet communications “placed for a fee on another person’s Web site.” 11
13 CFR 100.26. Since the Commission promulgated this definition in 2006, internet activity has
14 expanded from blogging, websites, and listservs to include social media networks (Facebook,
15 Twitter, and LinkedIn), media sharing networks (YouTube, Instagram, TikTok, and Snapchat),
16 streaming applications (Netflix, Hulu), and mobile devices and applications, as well as wearable
17 devices (smart watches, smart glasses), home devices (Amazon Echo), virtual assistants (Siri,
18 Alexa), and smart TVs and devices (home appliances, digital commercial billboards, and
19 displays). As one commenter noted in response to the ANPRM, “[a]s consumers move toward
20 virtual and augmented reality services, wearable technology, screenless assistants, and other
21 emerging technologies, there is every reason to predict that advertisers will demand the ability to
22 reach voters and customers on those technologies, and, in turn, new advertising configurations
23 that have not yet been imagined will be developed.”

1 In the instant NPRM, the Commission cited its earlier proposal in the Technological
2 Modernization rulemaking to update the definition of “public communication” to account for
3 new technologies. NPRM at 12868 (citing Technological Modernization (“Technology
4 NPRM”), 81 FR 76416 (Nov. 2, 2016)). In both NPRMs, the Commission proposed to revise the
5 definition of “public communication” to clarify how the definition applies to newer forms of
6 general public political advertising on the internet. NPRM at 12868 (citing Technology NPRM).
7 Specifically, the Commission proposed to revise the definition to include communications placed
8 for a fee on another person’s “internet-enabled device or application,” in addition to the existing
9 inclusion of communications placed for a fee on another person’s website. *Id.*; Technology
10 NPRM at 26433-34. In both NPRMs, the Commission highlighted the fact that when it
11 promulgated the existing definition of “public communication” in 2006, it “focused on websites
12 because that was the predominant means of paid internet advertising at the time,” and explained
13 that in 2006 it “analogized paid advertisements on websites to the forms of mass communication
14 enumerated in the definition of ‘public communication’ in the [Act] because ‘each lends itself to
15 distribution of content through an entity ordinarily owned or controlled by another person.’”
16 NPRM at 12864 (citing 2006 Internet E&J, 71 FR at 18594); 52 U.S.C. 30101(22)); *see also*
17 Technology NPRM at 76433.

18 The purpose of the change proposed in both NPRMs was “to reflect post-2006 changes in
19 internet technology—such as the development of mobile applications (‘apps’) on smartphones
20 and tablets, smart TVs and devices, interactive gaming dashboards, e-book readers, and wearable
21 network-enabled devices such as smartwatches and headsets—and to make the regulatory text
22 more adaptable to the development of future technologies.” NPRM at 12864-65; *see also*
23 Technology NPRM at 76433-34. In pursuit of its goal of updating the definition of “public

1 communication” to reflect recent technological changes and to accommodate future changes, the
2 Commission asked “whether revising the definition to include communications placed for a fee
3 on another person’s ‘internet-enabled device or application,’ in addition to communications
4 placed for a fee on another person’s website, would be a clear and technically accurate way to
5 refer to the various media through which paid internet communications can be and will be sent
6 and received.” NPRM at 12868. The Commission asked whether it was clear that both the
7 placement-for-a-fee element and the third-party element would apply to websites, internet-
8 enabled devices, and internet applications.

9 All but one commenter supported the revisions proposed by the Commission, though a
10 subset of supporters suggested the Commission make additional revisions. For instance, one
11 commenter stated that the proposed definition of “public communication” “is generally
12 appropriate and will remain relevant as technology advances, but that it could be modified
13 slightly to be clearer”—specifically, to “more accurately capture[] the requirement for payment
14 and a website, platform or device other than the speaker’s own.” Several commenters argued
15 that “placed for a fee” should be included in the definition to include any future communication
16 methods. Others suggested revising the definition by adding the term “services” in order to
17 make the term more expansive to include future technology, or to add the term “promoted for a
18 fee” to capture individuals paid to share content in cases where no payment is made to a
19 platform. One commenter supported adding those who promote advertisements to the definition
20 on the grounds that promotion multiplies the benefit of a given advertisement by widening its
21 distribution to different audiences and all audiences should be aware of the sponsorship
22 information. One commenter opined that the cost of producing content should trigger a

1 disclaimer even if the content is posted for free. Other commenters proposed adding references
2 to additional types of digital media, such as social media, platforms or video games.

3 Only one commentator opposed revision of the current definition, recommending instead
4 that the Commission evaluate each new technology under the current definition on a case-by-
5 case basis. In the alternative, this commenter suggested that if the definition is to be revised, it
6 should apply only to communications above a specific monetary threshold, whether calculated
7 on a per-communication basis, or based on an aggregate amount per speaker. The commenter
8 also proposed that the term “internet-enabled device or application” be replaced with references
9 to specific technologies.

10 Based on the comments received, the Commission has decided to revise the definition of
11 “public communication” to better accommodate technological changes and reflect the range of
12 “media through which paid internet communications can be and will be sent and received.” In
13 doing so, it intends to regulate only communications placed for a fee “through an entity
14 ordinarily owned or controlled by another person,” analogous to the forms of “public
15 communication” already included in the definition. NRPM at 12868. The Commission is not
16 otherwise altering its existing interpretation of the term “public communication” or “general
17 public political advertising.”

18 The new definition of “public communication” includes “communications placed for a
19 fee on another person’s website, digital device, application, or advertising platform.” This new
20 definition implements the Commission’s goals of including the range of current internet media
21 and being adaptable to the development of future technologies. It also reflects the Commission’s
22 determination that—for purposes of the definition of “public communication”—there is no basis
23 to distinguish between paid advertising on a “website” and paid advertising via other internet-

1 enabled technologies. The new definition therefore explicitly includes communications not only
2 in the form of paid ads on websites, but also paid ads that otherwise meet the definition of
3 “general public political advertising” and are disseminated via the internet or media that rely on
4 the connectivity of the internet (including social media networks, streaming platforms, mobile
5 applications, and wearable devices). This is because, like the more traditional forms of paid
6 communications that are specifically listed in the existing definition of “public communication,”
7 these forms of paid internet communications are inherently owned or controlled by third parties.

8 In response to the NPRM, the Commission received numerous comments stating that
9 while the proposed additions to the definition were appropriate, they were not sufficient to cover
10 the range of paid internet communications in current use or flexible enough to cover those yet to
11 be developed. The Commission also received comments stating that in addition to “placing” a
12 communication for a fee, internet advertising is generally understood to include “promoting” a
13 communication for a fee to amplify its reach and that omitting paid promotion from the
14 definition of “public communication” would similarly leave the definition incomplete.

15 The Commission is further revising the definition of “public communication” to clarify
16 that it covers general public political advertising on various types of internet media that may not
17 be captured by the existing definition (*i.e.*, communications on digital devices, applications, or
18 advertising platform). This is to ensure that the same disclaimer requirements apply to general
19 public political advertising across the internet ecosystem. As one commenter stated, “[w]ebsites
20 are only one type of digital communication that use the internet, and they are carrying a
21 decreasing portion of internet traffic. Indeed, many, and perhaps most, political communications
22 are not on websites.” This commenter also noted that smartphones, tablet apps and video
23 streaming are better characterized as “devices,” “platforms,” or “applications,” rather than

1 websites, and that the “internet of things” will likely become increasingly prevalent in the future.
2 The Commission agrees and has revised the definition of “public communication” to include not
3 only communications on another person’s “website,” but also those on another person’s “digital
4 device, application, or advertising platform.” *See* NPRM at 12865 (“[t]he Commission has
5 decided to reintroduce the proposed change to the definition of ‘public communication’ in this
6 rulemaking for the limited purpose of determining whether the term ‘internet-enabled device or
7 application’ is a sufficiently clear and technically accurate way to refer to the various media
8 through which paid internet communications can be sent and received.”).

9 The Commission does not agree with a commenter who opposed changing the definition
10 on the theory that it “presumptively extend[s] federal regulation to all future technology
11 indefinitely” and that the Commission instead should continue to assess emerging technologies
12 on a case-by-case basis to see whether they are included in the definition. The definition does
13 not extend to “all future technology,” but only to general public political advertising whose
14 “placement” is “for a fee,” and which is distributed via a “website, digital device, application, or
15 advertising platform” or analogous form of internet-enabled technology owned or controlled by a
16 third party. Moreover, a system wherein the Commission would be called upon to determine
17 whether a given technology falls within the definition on a case-by-case basis is inefficient and
18 cumbersome for both regulated parties and the Commission. As internet communications
19 continue to constitute greater proportions of political speech, revising the definition to explicitly
20 encompass more than website communications provides clearer guidance to the public as to how
21 the rule applies.

1 **New 11 CFR 110.11—Disclaimer Requirement for Internet Public Communications and**
2 **Adapted Disclaimers**

3 1. New 11 CFR 110.11(c)(5)—Disclaimer Requirement for Internet Public
4 Communications

5 The Act and Commission regulations impose specific requirements for disclaimers on
6 printed, radio, and television communications. *See* 52 U.S.C. 30120(a), (d); 11 CFR
7 110.11(c)(2)–(4). For printed communications, requirements for type size, color contrast, and
8 placement on the page are designed to ensure that the disclaimers will be visible. 11 CFR
9 110.11(c)(2). Requirements for disclaimers on radio and television communications vary,
10 depending on whether a candidate or another person pays for or authorizes the communication.
11 Radio communications paid for or authorized by a candidate must include an audio statement
12 spoken by the candidate, identifying the candidate and stating that the candidate has approved
13 the communication. 52 U.S.C. 30120(d)(1)(A); 11 CFR 110.11(c)(3)(i). Radio communications
14 that are not paid for or authorized by a candidate must include an audio statement identifying the
15 person paying for the communication and that that person “is responsible for the content of this
16 advertising.” 52 U.S.C. 30120(d)(2); 11 CFR 110.11(c)(4)(i). Television, broadcast, cable, or
17 satellite communications paid for or authorized by a candidate must include a statement by the
18 candidate, identifying the candidate and stating that the candidate has approved the
19 communication, either through a full-screen view of the candidate making the statement or by a
20 voice-over accompanied by a “clearly identifiable photographic or similar image” of the
21 candidate; these communications must also include a similar statement “in clearly readable
22 writing” at the end of the communication. 52 U.S.C. 30120(d)(1)(B); 11 CFR 110.11(c)(3)(ii)–
23 (iii). Television, broadcast, cable, or satellite communications that are not paid for or authorized

1 by a candidate must include the audio statement required by 11 CFR 110.11(c)(4)(i) and
2 conveyed by a “full-screen view of a representative” of the person making the statement or in a
3 voice-over by such person; these communications must also include a similar statement “in
4 clearly readable writing” at the end of the communication. 52 U.S.C. 30120(d)(2); 11 CFR
5 110.11(c)(4)(ii)–(iii).

6 In the years since the definition of “public communication” was revised to include paid
7 website advertising, technological developments have expanded the available formats and
8 functionality of internet advertising. Many internet advertisements today include video, audio,
9 and graphic components beyond the limited text available in earlier internet advertising
10 considered by the Commission, as well as beyond the text and audiovisual components of print
11 and broadcast media.

12 Thus, the Commission proposed in the NPRM to add regulatory provisions clarifying, for
13 various types of paid internet public communications, when and how the disclaimer requirements
14 apply. The Commission sought comment on two alternative approaches, noting that “[t]he two
15 proposals need not be considered as fixed alternatives; commenters are encouraged to extract the
16 best elements of each, or suggest improvements or alternatives, to help the Commission fashion
17 the best possible rule.” NPRM at 12864. Alternative A would have applied the full disclaimer
18 requirements that now apply to radio and television communications, including the stand-by-
19 your-ad content requirements, to public communications distributed over the internet with audio
20 or video components, “based on the premise that these advertisements are indistinguishable from
21 offline advertisements that may be distributed on radio or television, broadcast, cable, or satellite
22 in all respects other than the medium of distribution.” NPRM at 12870. Further, the
23 Commission noted that the disclaimer requirements for radio and television communications

1 “have been in operation for 15 years and are, therefore, familiar to persons paying for,
2 authorizing, and distributing communications. Moreover, by applying the specifications for
3 radio and television communications to audio and video communications distributed over the
4 internet, the proposed regulations would ensure that internet audio ads could air on radio and
5 internet video ads could air on television without having to satisfy different disclaimer
6 requirements.” NPRM at 12870. Alternative A also proposed to apply disclaimer requirements
7 that now apply to printed public communications to text and graphic public communications
8 distributed over the internet and proposed to establish a “safe harbor” for disclaimers appearing
9 in “letters at least as large as the majority of the other text in the communication”—tracking the
10 current approach for disclaimers in printed materials—without making it a requirement.

11 Alternative B proposed to treat internet communications differently from
12 communications disseminated via print and broadcast media, on the basis that the internet is a
13 unique medium of communication and internet advertising is “inherently more diverse than a
14 simple transition of similar content from print or broadcast television,” as it includes varying
15 platforms, sizes, devices, individualized settings, interactivity, and duration. NPRM at 12871.
16 Alternative B, therefore, would have required disclaimers on internet communications to be clear
17 and conspicuous and to meet the same general content requirement as other disclaimers, but
18 without imposing additional specific disclaimer requirements that apply to print, radio, or
19 television communications, such as type sizes, duration, or specific content.

20 Both alternatives also proposed to allow alternative means of satisfying the disclaimer
21 requirement for internet public communications that could not accommodate full disclaimers.
22 These proposals, discussed further below, would have allowed for adapted disclaimers that

1 provided the name of the person who paid for a communication and a technological means of
2 accessing a full disclaimer.

3 The Commission received comments supporting and opposing aspects of both proposals.
4 On the question of applying existing radio and television stand-by-your-ad requirements to their
5 analogues in internet communications, commenters were roughly equally divided.

6 Commenters supporting Alternative A noted that under this alternative, more information
7 would be available to the viewer, that it was flexible while promoting transparency, and that
8 Alternative A was more likely to lead to disclaimer information appearing on the face of the
9 communication, which, they argued, should be the default position. One commenter noted that
10 where there is a divergence between the nature of online and traditional advertising, this
11 difference supported more Commission scrutiny rather than less because of the availability of
12 microtargeting for internet advertising.

13 One commenter argued that it would be anomalous to apply the stand-by-your-ad
14 requirements to a television advertisement distributed through a cable television network, but not
15 to apply those requirements to the same advertisement distributed on a streaming internet
16 platform by the same television station. The commenter also argued that stand-by-your-ad
17 requirements do not impose any additional cost on the advertiser in the online space, and that if
18 questions arise concerning their application to unusual formats, the Commission should address
19 these scenarios case-by-case rather than afford digital communications a general exemption.

20 In support of requiring disclaimers to appear on the face of a communication, one
21 commenter stated that the click-through rate for ads containing links is less than 1 percent. Some
22 commenters expressed their conviction that technical innovation will increasingly enable the
23 requisite information to appear on the face of the communication, and that Alternative B would

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1 remove an incentive for technology companies to innovate by exempting communications from
2 disclaimer requirements even when technical constraints would not preclude a disclaimer. Some
3 comments noted that under Alternative B it would be possible to manipulate the content of the
4 ad, such as the name of the sponsor, in order to qualify for exemption from disclaimer
5 requirements. One commenter stated that “[a]lthough at first glance 10% appears to be an
6 objective standard, in reality it is largely within the control of the advertiser. For example, a
7 person seeking to avoid disclaimers might form an independent-expenditure-only committee or a
8 501(c)(4) nonprofit with an intentionally overlong name that would exceed 10% of many digital
9 advertisements.”

10 One commenter, expressing a preference for Alternative A, recommended modifying it to
11 require ad sponsors to report their shortened as well as their full names (see discussion below for
12 more detail) if they use their shortened names in the communication, and to require that
13 disclaimers be placed in text as a title or headline of ads containing multimedia aspects. One
14 commenter supported Alternative A’s rule for allowing an adapted disclaimer (discussed below)
15 but opposed specific requirements for internet ads. One commenter recommended that the
16 Commission require that disclaimers be made accessible to those with disabilities, who
17 constitute, according to the commenter, nearly 20 percent of the population.

18 Commenters supporting Alternative B stated that they preferred its flexibility, with one
19 commenter suggesting modifying Alternative B to allow audio disclaimers of no more than four
20 seconds. These commenters stated that Alternative B’s greater flexibility would render it more
21 readily applicable to potential future technologies.

22 Several commenters also questioned whether Alternative A’s extension of current radio
23 and television disclaimer specific requirements to internet communications is supported by

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1 statutory authority, noting that section 30120(a) applied to radio and television communications
2 when originally enacted, and that it might be overbroad for the Commission to apply the law to
3 internet activity. In response, other commenters argued that current statutory authority would
4 support extending the current disclaimer regime to the internet, with one commenter noting that
5 although section 30120(a) does not refer to the internet, it does not expressly preclude
6 application to the internet either.

7 One commenter observed that Alternative B has parallels in existing regulatory
8 exceptions for small and impracticable items. One commenter stated that “Alternative B’s most
9 important feature is its inclusion of a safe harbor provision, allowing speakers to use alternative
10 disclaimers when the standard disclaimer would occupy more than 10% of the time or space of
11 the underlying communication. Adopting this policy would ensure the Commission does not
12 unduly burden speakers, interfere with their communications, or increase the cost of their
13 communications.” One commenter argued that Alternative B provides a bright line for
14 advertisers that could be further enhanced by defining other phrases, such as “on the face of the
15 communication” or “clear and conspicuous.” The commenter stated that if the Commission were
16 to adopt a more nuanced approach, the standards should be geared to the advertiser’s chosen
17 communication medium. Another commenter argued that, to the extent that it might render
18 certain short-form advertisements too expensive or impractical, Alternative A might be
19 unconstitutional. Several commenters stressed the degree to which the current communicative
20 landscape differs from that contemplated when the stand-by-your-ad requirements were enacted.
21 One commenter noted that the current disclaimer regime dates from a time when radio and
22 television were prominent, while the Commission’s 2006 Internet rulemaking contemplated
23 graphic website advertisements. This commenter opined that rules promulgated now, in an

1 environment of social media and apps, need flexibility for future technical innovation. One
2 commenter noted that the former advertising environment was simpler; there were radio,
3 television, newspapers, magazines and billboards, in which there were one-to-one relationships
4 between stations, companies and advertisers. The commenter stated that in the online
5 environment, in contrast, different components of an advertisement might be delivered or
6 mediated by different servers. Other commenters noted that the online advertisement differs
7 from the traditional advertisement by virtue of its greater interactivity with the user.

8 Some commenters found aspects of both alternatives unsatisfactory. One commenter
9 urged the Commission to allow the market to determine the appropriate threshold for when an
10 adapted disclaimer would be appropriate. The commenter argued that disclaimers are not as
11 important as the substance of the advertising, that individuals click on links in advertisements not
12 so much to find disclaimers as to learn whether the advertisement is true, and that making
13 assumptions based on an organization's name can be misleading. Another commenter stated a
14 preference for not applying disclaimer rules to ordinary internet users and expressed the view
15 that both alternatives are overbroad and need to incorporate more technical specifications. Other
16 commenters argued that both alternatives could impose a burden on speech and that any
17 disclaimer requirement would detract from the speaker's ability to communicate a message.

18 The Commission agrees with the commenters who generally support the establishment of
19 a disclaimer rule specific to internet public communications. Some commenters also noted that
20 private standards enforced by platforms vary widely and that some form of standardization is
21 necessary to ensure consistency. One platform apprised the Commission of efforts it had
22 undertaken in this regard, but as another commenter pointed out, these may change at any time
23 for legitimate commercial reasons. The Commission disagrees with the argument that any

1 application of disclaimer rules to general public political advertising on the internet would be
2 unconstitutional.

3 Based on the comments received, the Commission is adding a new paragraph (c)(5) to
4 section 110.11, setting forth specific disclaimer requirements for internet public
5 communications. New section 110.11(c)(5)(i) first defines “internet public communication” as
6 “any public communication over the internet that is placed for a fee on another person’s website,
7 digital device, application, or advertising platform.” This language parallels the revised
8 definition of “public communication” in section 100.26, and is similar to language proposed in
9 Alternative B. The definition of “internet public communication” applies for the purposes of
10 section 110.11 and serves to streamline references to this type of communication in the text of
11 the regulations.

12 The Commission does not agree with one commenter’s argument that providing a
13 definition of “internet public communication” that includes those who adopt others’ political
14 speech as their own by paying to place that speech on the internet (such as by paying a social
15 media platform to ensure more advantageous treatment of a third-party’s advertisement in the
16 platform’s search or prioritization algorithm), rather than confining the definition to those who
17 originally pay to place the speech, would present a “constitutional infirmity” under the final rule.
18 Like the revised definition of “public communication,” the defined term “internet public
19 communication” relies on the characteristics of the communication itself, not the role any
20 persons may have had in its creation or distribution, and it encompasses only paid
21 communications. Therefore, individuals who share someone else’s speech without paying to
22 distribute it will not be affected by this revision.

1 New paragraph (c)(5)(ii) provides that “[a]n internet public communication must include
2 a disclaimer that complies with the requirements of paragraphs (b) and (c)(1) of this section. The
3 disclaimer requirement under this paragraph applies to any person that pays to place an internet
4 public communication, regardless of whether that person originally created, produced, or
5 distributed the communication.” This provision states the requirement that disclaimers must be
6 included on internet public communications, and clarifies that, as with the existing disclaimer
7 requirements, the provision applies to any communication that meets the definition of an
8 “internet public communication,” without examining who may have played various roles in the
9 creation and dissemination of the communication beyond the identity of the payor and whether a
10 candidate authorized the communication.

11 Finally, new 11 CFR 110.11(c)(5)(iii) sets forth the disclaimer requirements that are
12 specific to particular types of internet public communications, in addition to the existing
13 requirements of paragraphs (b) and (c)(1) that apply to all communications requiring disclaimers.
14 Paragraphs (c)(5)(iii)(A)–(C) provide that a disclaimer required for an internet public
15 communication must: (a) for such communications with text or graphic components, include the
16 required written disclaimer, such that the disclaimer can be viewed without the viewer taking any
17 action; (b) be of sufficient type size to be clearly readable by the recipient of the communication;
18 and (c) be displayed with a reasonable degree of color contrast between the background and the
19 disclaimer’s text. New paragraph (c)(5)(iii) also includes requirements specific to video and
20 audio communications. The new provision at paragraph (c)(5)(iii)(D) requires that for an
21 internet public communication in which the disclaimer is displayed within a video, the disclaimer
22 must be visible for at least 4 seconds and appear without the recipient of the communication
23 taking any action. For an internet public communication with an audio component and no video,

1 graphic, or text components, paragraph (c)(5)(iii)(E) states that the disclaimer must be included
2 within the audio component of the communication.

3 New paragraph (c)(5) therefore combines aspects of Alternatives A and B by treating
4 internet public communications similarly to print, radio, and television communications insofar
5 as it imposes specific requirements on particular types of communications that are analogous to
6 those imposed on print and broadcast media, while also accounting for the ways in which
7 internet public communications differ from print and broadcast media in other respects. The new
8 internet disclaimer provisions do not impose the stand-by-your-ad requirements applicable to
9 radio and television advertisements on internet public communications.

10 Paragraphs 110.11(c)(5)(iii)(A)-(C) do not apply to audio-only internet public
11 communications. These provisions concern written disclaimers and set readability requirements
12 for their text size and contrast, and thus are inapplicable to audio-only communications. In
13 contrast, paragraph (c)(5)(iii)(E) applies solely to audio-only internet public communications,
14 specifying that for such communications the disclaimer must be an audio statement contained
15 within the audio communication.

16 One commenter stated that because disclaimers on video communications may appear
17 only for four seconds, a viewer who does not watch the part of the ad with the statement would
18 not see the disclaimer. The Commission acknowledges that not all recipients of internet public
19 communications will necessarily see or hear required disclaimers, but does not consider this a
20 sufficient reason to not require their inclusion. The new rule is similar to the longstanding rule
21 for television communications, which likewise requires disclaimers to appear for at least four
22 seconds. See 11 CFR 110.11(c)(3)(iii)(B), (c)(4)(iii)(B).

1 The new regulation follows aspects of Alternative A by treating internet public
2 communications similarly to print and broadcast media depending on the type of communication:
3 (1) type size and contrast of written disclaimers must meet readability requirements similar to
4 those required of print media and television; (2) disclaimers for internet communications
5 consisting solely of an audio component (that is, without video, graphics, or text) must be
6 provided within the audio component of the communication, similar to the existing requirement
7 that radio communications must include audio disclaimers; and (3) disclaimers within internet
8 video communications must be visible for at least 4 seconds, similar to the existing duration
9 requirement for disclaimers on television communications. *See* 11 CFR 110.11(c)(2), (3)(i),
10 (3)(iii).

11 The new regulation retains the principle of Alternative B that internet public
12 communications may differ from print and broadcast media. First, new paragraph (c)(5)(iii)(A)
13 requires that “an internet public communication with text or graphic components must include
14 the written disclaimer required by this paragraph, such that the disclaimer can be viewed without
15 taking any action.” Therefore, any internet public communication that contains text or graphic
16 elements must include a written disclaimer, even if the communication also includes video or
17 audio components. For example, an audio advertisement might be presented on a social media
18 platform within a panel also containing a written description. Paragraph (c)(5)(iii)(A) requires
19 that because the communication includes a text component, it must include a written disclaimer.

20 In addition, in some cases a viewer must take action to access some or all of the
21 components of an internet public communication by, for example, clicking on a link or opening a
22 pop-up window. New paragraphs (c)(5)(iii)(A) and (D) specify that disclaimers must be
23 viewable without the recipient of the communication taking any additional action. For example,

1 a graphic or video advertisement may be accompanied by a caption that contains a link to
2 additional information. In the case of such a communication, new paragraph (c)(5) requires that
3 the disclaimer be visible in the graphic or video, or in the caption, without the viewer having to
4 take any additional action beyond viewing or watching the advertisement, such as clicking on or
5 hovering over a link. Similarly, new paragraph (c)(5)(iii)(E) requires that for an internet public
6 communication that contains an audio component but no video, graphic, or text component, the
7 disclaimer must be included in that audio component, so that a recipient need not take any
8 additional action beyond listening to the advertisement to obtain the disclaimer information.

9 New paragraph (c)(5)(iii) also accounts for the variability and flexibility of internet
10 communications by setting forth requirements for text size and contrast that allow for varying
11 platforms, formats, and devices. New paragraph (c)(5)(iii)(B) requires that a disclaimer on an
12 internet public communication “must be of sufficient type size to be clearly readable by the
13 recipient of the communication. A disclaimer that appears in letters at least as large as the
14 majority of other text in the communication satisfies this requirement.” New paragraph
15 (c)(5)(iii)(C) requires that the disclaimer “must be displayed with a reasonable degree of color
16 contrast between the background and the disclaimer’s text. A disclaimer satisfies this
17 requirement if it is displayed in black text on a white background, or if the degree of color
18 contrast is no less than the color contrast between the background and the largest text used in the
19 communication.”

20 The safe harbor for disclaimer text size is similar to that proposed in Alternative A, which
21 provided that the text size requirement is satisfied if the disclaimer appears in “letters at least as
22 large as the majority of the other text in the communication.” NPRM at 12873.

1 In addition to the text size requirement, which parallels the text size requirement for print
2 and television communications to ensure readability and prevent circumvention of the disclaimer
3 requirement, the new rule also incorporates a color contrast requirement that similarly parallels
4 the contrast requirement for print communications. Also, like the text size requirement, the color
5 contrast requirement offers safe harbors: a disclaimer will satisfy the requirement if it is
6 “displayed in black text on a white background, or if the degree of color contrast is no less than
7 the color contrast between the background and the largest text used in the communication.” As
8 with the text size requirement, the color contrast requirement is intended to ensure readability.

9 In adopting these provisions, the Commission is not applying the stand-by-your-ad
10 requirements to internet communications. The statutory provision requiring stand-by-your-ad
11 statements expressly applies only to radio and television ads. 52 U.S.C. 30120(d). Accordingly,
12 the Commission does not have statutory authority to require stand-by-your-ad statements in
13 internet public communications.

14 The Commission is not adopting two commenters’ suggestions that any required
15 disclaimers be machine-readable. These commenters pointed out that having machine-readable
16 disclaimers would provide certain advantages for users. One commenter suggesting this
17 observed that with machine-readable disclaimers, users could opt to receive monthly reports of
18 ads they receive over time. Smart disclosure, which this commenter recommended be adopted in
19 conjunction with machine readability, could warn users of bad links and could allow groups of
20 users using browser extensions to track malicious links and alert the Commission of these. The
21 Commission is not adopting this proposal because it is beyond the scope of the Commission’s
22 statutory authority.

1 2. New CFR 110.11(g)—Adapted Disclaimers

2 To clarify how the disclaimer requirements apply to internet public communications that
3 are not capable of including a full disclaimer, the Commission is adding a new paragraph (g) to
4 section 110.11, setting forth an alternative that applies specifically to internet public
5 communications where a full disclaimer cannot be included due to character or space constraints
6 intrinsic to the advertising product or medium. As discussed above, Commission regulations
7 already contain certain exceptions to the general disclaimer requirements, namely the small items
8 and impracticable exceptions. 11 CFR 110.11(f)(1).

9 Alternatives A and B both proposed that some internet public communications could
10 satisfy the disclaimer requirement by means of an “adapted disclaimer,” which would include an
11 abbreviated disclaimer on the face of the communication, and an indicator that a technological
12 mechanism was available to access a full disclaimer. Both alternatives proposed that “an internet
13 public communication that provides an adapted disclaimer must provide some information on the
14 face of the advertisement, and both alternatives require such information to be clear and
15 conspicuous and to provide notice that further disclaimer information is available through the
16 technological mechanism.” NPRM at 12875.

17 The two alternatives differed as to when an adapted disclaimer could be used in place of a
18 standard disclaimer. Alternative A would have allowed the use of an adapted disclaimer when a
19 full disclaimer could not fit on the face of a text or graphic internet communication “due to
20 external character or space constraints.” NPRM at 12874. Under this alternative, the
21 determination of whether an internet communication could use an adapted disclaimer was
22 intended to be an objective one: “the character or space constraints intrinsic to the technological
23 medium are intended to be the relevant consideration, not the communication sponsor’s

1 subjective assessment of the ‘difficulty’ or ‘burden’ of including a full disclaimer.” NPRM at
2 12874.

3 Alternative B would have allowed the use of an adapted disclaimer when a full disclaimer
4 would occupy more than a certain percentage of an internet public communication’s available
5 time or space. Further, under Alternative B, two tiers of adapted disclaimers would have been
6 permissible, depending on the time or space available in the communication to accommodate the
7 disclaimer. The proposed first-tier adapted disclaimer would have required the identification of
8 the payor plus an indicator on the face of the communication, while the proposed second-tier
9 adapted disclaimer would have required only an indicator on the face of the communication.

10 The two alternatives also differed as to what information must be presented on the face of
11 the communication. Alternative A proposed that an “adapted disclaimer” would have consisted
12 of “an abbreviated disclaimer on the face of a communication in conjunction with an indicator
13 through which a reader can locate the full disclaimer” required. NPRM at 12875. Alternative A
14 would have further required that the adapted disclaimer identify the person or persons who paid
15 for the communication, “in letters of sufficient size to be clearly readable by a recipient of the
16 communication.” NPRM at 12875–76.

17 Under Alternative B’s proposed two-tiered approach, the first tier would have allowed for
18 an adapted disclaimer that included both the payor’s name, either in full or by “a clearly
19 recognized abbreviation, acronym, or other unique identifier by which the payor is commonly
20 known,” along with an indicator similar to that included in Alternative A. NPRM at 12876.

21 Under Alternative B, the flexibility to use either a payor’s full name or a clearly recognized
22 abbreviation or acronym was “intended to address internet public communications that might not
23 otherwise conveniently or practicably accommodate the payor’s name, such as character-limited

1 ads, or where the payor’s name is unusually lengthy, or where the payor wishes to use the ad to
2 promote its social media brand.” NPRM at 12877. If the space or time necessary for a clear and
3 conspicuous tier-one adapted disclaimer would occupy more than ten percent of the
4 communication, the proposed second tier would have required only an indicator on the face of
5 the communication. NPRM at 12877.

6 Both alternatives proposed “that a technological mechanism used to provide access to a
7 full disclaimer must do so within one step,” that the additional step be “apparent in the context of
8 the communication,” and that the disclaimer, once reached, be clear and conspicuous. NPRM at
9 12877. Both alternatives also provided similar illustrative lists of examples of technological
10 mechanisms that could be used as part of an adapted disclaimer. For both alternatives these
11 included, but were not limited to, “hover-over mechanisms, pop-up screens, scrolling text,
12 rotating panels, or hyperlinks to a landing page with the full disclaimer.” NPRM at 12878.
13 Alternative B also proposed to include “voice-over,” “mouse-over,” and “roll-over” mechanisms.
14 NPRM at 12879.

15 Alternative B also proposed an exception to the disclaimer requirements for “any public
16 communication that can provide neither a disclaimer in the communication itself nor an adapted
17 disclaimer.” NPRM at 12879. This exception was intended to replace, for internet public
18 communications, the existing small items and impracticable exceptions.

19 Commenters were generally split on whether an adapted disclaimer should be available
20 when a full disclaimer cannot fit due to external constraints, as proposed in Alternative A, or
21 when a full disclosure would exceed a bright line in terms of space or time, as proposed in
22 Alternative B. Several commenters felt that adapted disclaimers should only be used as a last
23 resort when “character or space constraints intrinsic to the technological medium,” as opposed to

1 self-imposed limitations merely reflecting the preferences of an online advertiser or platform,
2 would not allow for a full disclaimer. One commenter noted that Alternative A’s “cannot fit”
3 language references impossibility and is, therefore appropriate. Another commenter believed
4 that permitting adapted disclaimers on “public communications with text or graphic features but
5 without a video or audio component” that had character or space limits intrinsic to the medium
6 was a “forward-thinking” approach applicable to all platforms.

7 Other commenters found Alternative A’s use of “technological constraints” that “cannot
8 fit” too ambiguous, needing further clarification. Two commenters noted that rules or a
9 framework based on communication size are not practical or effective, because the same ad
10 could be used “across different platforms.” Another found that Alternative A did not account for
11 the “burden” experienced by the speaker and is too restrictive. One commenter noted that rules
12 focused on pixels, characters, seconds, font size, contrast and other visual factors were “too
13 inflexible to withstand future technological” advancements. Another commenter recommended
14 allowing “business decisions” about ad size, made in the ordinary course of business by ad
15 sellers, to justify the use of an adapted disclaimer. One commenter expressed strong support for
16 adapted disclaimers, preferring Alternative B because it allows more flexibility, arguing that
17 Alternative A is too oriented toward print and broadcast media. However, the commenter stated
18 that both alternatives are insufficiently sensitive to future technological changes, predicting that
19 speech recognition technology will one day be the primary means of interacting with the internet.
20 At the same time, this commenter argued that both alternatives should develop an adapted
21 disclaimer scheme for all audio, video and banner ad formats; Alternative A in particular did not
22 do this for video and audio, according to the commenter.

1 At least two commenters suggested that the advisory opinion process could resolve when
2 an adapted disclaimer was appropriate on a case-by-case basis and viewed the advisory opinion
3 process as a way to handle questions surrounding digital advertisements’ continuing complexity
4 and one commenter suggested that perhaps an expedited advisory opinion process could be
5 designed for these questions. Another commenter expressed skepticism, however, about the
6 utility of resorting to the advisory opinion process to resolve ambiguities in interpretation and
7 expressed a preference for bright-line rules because of this while a second commenter opined
8 that it would be difficult to resort to the advisory opinion process for this purpose close to an
9 election; rather, if this situation were faced, the commenter would be inclined not to run the
10 advertisement.

11 Commenters were also split on the 10% rule proposed in Alternative B. Several
12 commenters noted that a 10% bright line would provide advertisers with the “opportunity to
13 game the rules to deny the public disclaimer information.” One commenter felt that the choice
14 of 10% was based on untested assumptions rather than empirical data. Others described the 10%
15 proposal as “arbitrary” and “not technologically neutral” or “impractical and confusing” and
16 “hard to apply and enforce.” Two commenters opined that Alternative B’s two-step process was
17 too complicated and unclear, and sacrificed clarity for expediency.

18 Some commenters found 10% to be a reasonable percentage that “provides for disclosure
19 but does not infringe on the message of the ad.” Other commenters supported a “bright line”
20 because it imposes less of a burden on speech. For example, one commenter stated that
21 “[r]equiring potential speakers to spend the time and resources to seek an advisory opinion []
22 imposes burdens of a constitutional magnitude, especially in a medium conducive to speakers
23 with limited resources.” Another commenter stated that “[w]hile the First Amendment does not

1 require that a speaker’s message take a certain percentage of the advertisement space, taking
2 10% of the advertisement space for which a speaker has paid is far more reasonable than taking
3 33% of the space.” Other commenters worried that any bright line was arbitrary and a “one-click
4 away rule” would be a better choice. Some commenters, while agreeing in principle with a
5 defined percentage, suggested different percentages. One suggested 4%, while another,
6 interpreting the *Citizens United* decision to tolerate 4-second disclaimers in 10-second
7 advertisements, argued that any percentage up to 40% would be tolerable. Other commenters,
8 however, argued against a 40% threshold.

9 Several commenters argued that even with an adapted disclaimer, the face of the
10 advertisement should at a minimum contain a “paid for by” statement with the name of the
11 sponsor. Certain commenters favoring this position cited empirical studies showing that only a
12 small percentage of links in online advertisements are actually clicked by users. Commenters
13 also stated their preference for having the full information appear only one click away if a
14 technological mechanism were to be used. Two commenters in this category opined that in
15 addition to these, the user should be able to learn why he or she received the advertisement – one
16 commenter referring to this as “algorithmic transparency,” signifying that advertisers should be
17 required to disclose their targeting methods and that voters should be able to learn why they have
18 been targeted.

19 One commenter argued that the Commission should adopt a provision that the disclaimer
20 requirements could be satisfied by an icon it had developed in the online commercial advertising
21 domain that would be adapted by the commenter’s organization to the realm of political
22 advertising, and which it characterized as widely recognized and understood. Other commenters
23 opined on this proposed self-regulatory approach, arguing that Commission oversight would still

1 be needed, and noting that as a private entity, the commenter or any other provider of an online
2 advertising medium could modify or rescind the program at any time based upon considerations
3 unrelated to ensuring implementation of the Act.

4 After considering the comments received, the Commission has decided to provide an
5 adapted disclaimer option for internet public communications. The new 11 CFR 110.11(g)
6 provides that the disclaimer requirement may be satisfied with an adapted disclaimer when the
7 full disclaimer “cannot be provided or would occupy more than 25 percent of the communication
8 due to character or space constraints intrinsic to the advertising product or medium.” The
9 Commission has previously allowed for a modified disclaimer under certain circumstances,
10 recognizing that, although the “physical and technological limitations” of a communication
11 medium may “not make it impracticable to include a disclaimer at all,” technological or physical
12 limitations may extend to “one particular aspect of the disclaimer” requirements. Advisory
13 Opinion 2004-10 (Metro Networks) at 3. In such circumstances, the Commission concluded that
14 a disclaimer was required but permitted modifications or adaptations of the technologically or
15 physically limited aspects of the communication medium. *See id.* at 3-4 (concluding that
16 reporters reading sponsorship message live from aircraft or mobile units could read stand-by-
17 your-ad language, rather than candidate who was not physically present). In the new 11 CFR
18 110.11(g), an “adapted disclaimer” is defined as “a clear statement that the internet public
19 communication is paid for, and that identifies the person or persons who paid for the internet
20 public communication using their full name or a commonly understood abbreviation or acronym
21 by which the person or persons are known, which is accompanied by: (1) an indicator and (2) a
22 mechanism.” New 11 CFR 110.11(g)(1)(i). An “indicator” is defined as “any visible or audible
23 element associated with an internet public communication that is presented in a clear and

1 conspicuous manner and gives notice to persons reading, observing, or listening to the internet
2 public communication that they may read, observe, or listen to a disclaimer satisfying the
3 requirements of paragraphs (b) and (c)(1) of this section through a mechanism.” New 11 CFR
4 110.11(g)(1)(ii). A “mechanism” is defined as “any use of technology that enables the person
5 reading, observing, or listening to an internet public communication to read, observe, or listen to
6 a disclaimer satisfying the requirements of paragraphs (b) and (c)(1) of this section after no more
7 than one action by the recipient of the internet public communication.” New 11 CFR
8 110.11(g)(1)(iii).

9 The new 110.11(g) combines elements of both Alternative A and Alternative B in setting
10 forth the threshold for use of an adapted disclaimer. An adapted disclaimer may be used instead
11 of a full disclaimer when a standard disclaimer “cannot be provided or would occupy more than
12 25 percent of the communication due to character or space constraints intrinsic to the advertising
13 product or medium.” This rule incorporates the concept of time and space constraints inherent to
14 the advertising medium from Alternative A, and the proposal from Alternative B to permit an
15 adapted disclaimer depending on the percentage of the communication that would be occupied
16 by a full disclaimer. In doing so, the Commission has adopted an objective and bright-line
17 standard that will give the sponsors of internet public communications clear guidance as to when
18 an adapted disclaimer may be used.

19 The new rule’s reference to “character or space constraints intrinsic to the advertising
20 product or medium,” similar to language proposed in Alternative A, is based on long-standing
21 Commission precedent where the Commission allowed communications to include modified
22 disclaimers due to the technological or physical limitations of the communication medium. The

1 language is intended to make clear that the time or space available for a disclaimer depends on
2 the limitations of the medium or technology used in a particular advertisement.

3 The Commission has decided to also use a percentage of the communication as the
4 threshold for use of an adapted disclaimer, as proposed in Alternative B, with the intention that
5 this will serve as a bright-line rule that enables speakers to determine for themselves whether
6 they may avail themselves of this provision, rather than seek advisory opinions before engaging
7 in political advertising online. The Commission has chosen not to specify how to measure the
8 percentage (*i.e.*, by pixels, seconds, characters, etc.), in order that the rule may remain flexible as
9 new technologies are developed, and that speakers may use the most appropriate measurement
10 for their communication. The Commission’s proposal of 10% in Alternative B elicited several
11 comments opposing this threshold. Although one commenter approved of this threshold, some
12 commenters noted that such a threshold would be easy to evade by lengthening or shortening of
13 the name of the sponsoring organization appearing in the ad. Some commenters also argued that
14 this percentage approach would be hyper-technical. Nevertheless, the Commission agrees with
15 one commenter’s observation that a fixed-percentage approach is preferable to a potentially more
16 complicated approach tailored to particular kinds of communications, which might then
17 necessitate new definitions of the terms relating to the medium and additional revisions to the
18 rule. The Commission has adopted a 25% threshold.

19 The definition of “adapted disclaimer” requires that the communication state on its face
20 that it is a paid communication, as proposed in Alternative A. It is especially important to
21 clearly identify paid communications on the internet, where paid content can be targeted to a
22 particular user and appear indistinguishable from the unpaid content that user views, unlike print
23 and broadcast media, where paid content is transmitted to all users in the same manner and is

1 usually offset in some way from editorial content. As one commenter observed, “[w]ith many
2 forms of social media, a political ad may be transmitted and retransmitted such that a viewer
3 would have no idea that it is paid advertising.” The Commission agrees with another commenter
4 that “paid for” is necessary to ensure that the adapted disclaimer is easily interpreted by the
5 viewer. An adapted disclaimer that includes an indicator but does not state that it is a paid
6 communication would make it less likely that a viewer would understand the function of the
7 indicator and access the mechanism to obtain the full disclaimer. As one commenter noted,
8 “[t]he average click-through rate . . . for Facebook ads across all industries is .90%.”

9 The definition of “adapted disclaimer” requires that the payor be identified “using their
10 full name or a commonly understood abbreviation or acronym by which the person or persons
11 are known.” This is similar to language proposed in Alternative B, which would have permitted
12 an adapted disclaimer to identify the payor by full name or by “a clearly recognized abbreviation,
13 acronym, or other unique identifier by which the payor is commonly known.” NPRM at 12876.
14 Including the payor’s name on the face of the communication ensures that even persons viewing
15 the communication without accessing the full disclaimer will be able to know who is speaking
16 and will be better able to evaluate the content of the advertisement. Allowing a payor to use an
17 acronym or abbreviation will offer flexibility for internet public communications that might not
18 otherwise conveniently or practicably accommodate the payor’s name, such as character-limited
19 ads, or where the payor’s name is unusually lengthy. Most commenters supported allowing an
20 acronym or abbreviated name of a payor organization. However, some questioned whether an
21 abbreviated name or acronym would likely be recognized. The Commission opted not to
22 constrain the use of abbreviated names or acronyms beyond the condition that any such
23 abbreviation or acronym be commonly understood or be one by which the payor is known. The

1 provision is modeled after a longstanding provision in the Commission’s regulations that allows
2 a separate segregated fund to include in its name a “clearly recognized abbreviation or acronym
3 by which [its] connected organization is commonly known.” 11 CFR 102.14(c). Thus, many
4 political speakers are already familiar with this standard and may have adopted abbreviations or
5 acronyms for frequent use that are already “commonly understood.”

6 The Commission has decided not to adopt the second-tier adapted disclaimer proposed as
7 part of Alternative B, which would have permitted a speaker to include only an indicator on the
8 face of a communication, without the name of the payor, if the space or time necessary for a
9 clear and conspicuous tier-one adapted disclaimer would exceed a certain percentage of the
10 overall communication.

11 By requiring that an indicator be “clear and conspicuous,” the new rule will aid voters in
12 evaluating the message they are viewing or hearing. As set forth in paragraph (c)(1), a
13 disclaimer “is not clear and conspicuous if it is difficult to see, read, or hear, or if the placement
14 is easy to overlook.” 11 CFR 110.11(c)(1). An indicator also must be presented in a clear and
15 conspicuous manner and therefore must not be difficult to see, read, or hear, or have a placement
16 that is easy to overlook. The definition further provides that “[a]n indicator may take any form
17 including, but not limited to, words, images, sounds, symbols, and icons.” This provides
18 flexibility to speakers in determining the type of indicator that best serves their needs and their
19 communication so long as it also satisfies the requirements of the regulation. Because the final
20 rules permit an adapted disclaimer to be used for audio and video communications as well as text
21 and graphic communications, the Commission is adopting the “clear and conspicuous”
22 requirement as proposed in Alternative B, rather than “clearly readable” as proposed in

1 Alternative A, in order to afford further flexibility to speakers in determining how to satisfy the
2 requirement. *See* NPRM at 12876.

3 Similar to the definition of an “indicator,” the definition of “mechanism” makes clear that
4 a wide array of technologies may be used to provide access to full disclaimers, “including, but
5 not limited to, hover-over text, pop-up screens, scrolling text, rotating panels, and hyperlinks to a
6 landing page.” The Commission agrees with commenters who recommended that the adapted
7 disclaimer be “tech-agnostic.” This non-exhaustive list of technologies affords speakers a great
8 deal of flexibility in determining the best way to provide access to a full disclaimer depending on
9 the platform or type of message, as well as flexibility to accommodate changes in technology and
10 types of mechanisms that have yet to be developed.

11 Alternatives A and B both proposed one of the key characteristics of a technological
12 mechanism used in an adapted disclaimer: that the technological mechanism allow the person
13 reading, observing, or listening to an internet public communication to read, observe, or listen to
14 a full disclaimer “without navigating more than one step away” from the communication.
15 NPRM at 12880; *see also* 12877–78. Both proposals explained that this meant “the additional
16 technological step should be apparent in the context of the communication” and the disclaimer,
17 once reached, should be “clear and conspicuous.” NPRM at 12878. There was nearly universal
18 agreement by commenters that the mechanism require no more than one action by the viewer in
19 order to reach the full disclaimer information. The final rule incorporates this principle into the
20 definition of a “mechanism,” providing that a mechanism used as part of an adapted disclaimer
21 must enable access to a full disclaimer “after no more than one action by the recipient of the
22 internet public communication.” The Commission is incorporating this requirement into the
23 final rule to ensure that recipients of communications can access full disclaimer information with

1 a minimum of additional effort beyond what would ordinarily be required to view a full
2 disclaimer on the face of a communication.

3 **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

4 The Commission certifies that the attached rules would not have a significant economic
5 impact on a substantial number of small entities. The rules would clarify and update existing
6 regulatory language to reflect changes in technology and would codify certain existing
7 Commission precedent regarding disclaimers on internet communications. The rules would not
8 impose new recordkeeping, reporting, or financial obligations on political committees or
9 commercial vendors. The Commission therefore certifies that the rules would not have a
10 significant economic impact on a substantial number of small entities.

11

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13 **List of Subjects**

14 11 CFR Part 100

15 Elections.

16 11 CFR Part 110

17 Political committees and parties.

18

19

1 For the reasons set out in the preamble, Subchapter A of Chapter I of Title 11 of the Code of
2 Federal Regulations is amended as follows:

3 **PART 100 – Scope and Definitions (52 U.S.C. 30101)**

4 1. The authority citation for part 100 continues to read as follows:

5 Authority: 52 U.S.C. 30101, 30104, 30111(a), and 30114(c).

6 2. In § 100.26, revise the second sentence to read as follows:

7 **§ 100.26 Public communications (52 U.S.C. 30101(22))**

8 * * * * *

9 The term general public political advertising shall not include communications over the internet,
10 except for communications placed for a fee on another person’s website, digital device,
11 application, or advertising platform.

12

13 **PART 110 – Contribution and Expenditure Limitations and Prohibitions**

14 1. The authority citation for Part 110 continues to read as follows:

15 Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2), 30104(i)(3), 30111(a)(8), 30116, 30118,
16 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.

17 2. Add paragraph (c)(5) as follows:

18 **§ 110.11 Communications; advertising; disclaimers (52 U.S.C. 30120)**

19 * * * * *

20 (c) * * *

21 (5) Specific requirements for internet public communications

- 1 (i) For purposes of this section, internet public communication means any
2 public communication over the internet that is placed for a fee on another
3 person’s website, digital device, application, or advertising platform.
- 4 (ii) An internet public communication must include a disclaimer that complies
5 with the requirements of paragraphs (b) and (c)(1) of this section. The
6 disclaimer requirement under this paragraph applies to any person that
7 pays to place an internet public communication, regardless of whether that
8 person originally created, produced, or distributed the communication.
- 9 (iii) In addition to the requirements of paragraphs (b) and (c)(1) of this section,
10 a disclaimer required by paragraph (a) of this section that appears on an
11 internet public communication must comply with the following:
- 12 (A) Except as provided by paragraph (g) of this section, an internet
13 public communication with text or graphic components must
14 include the written disclaimer required by this paragraph, such that
15 the disclaimer can be viewed without taking any action.
- 16 (B) The disclaimer must be of sufficient type size to be clearly
17 readable by the recipient of the communication. A disclaimer that
18 appears in letters at least as large as the majority of other text in the
19 communication satisfies this requirement.
- 20 (C) The disclaimer must be displayed with a reasonable degree of color
21 contrast between the background and the disclaimer’s text. A
22 disclaimer satisfies this requirement if it is displayed in black text
23 on a white background, or if the degree of color contrast is no less

1 than the color contrast between the background and the largest text
2 used in the communication.

3 (D) If the disclaimer is displayed within a video, the disclaimer must
4 be visible for at least 4 seconds and appear without the recipient of
5 the communication taking any action.

6 (E) An internet public communication with an audio component but
7 without video, graphic, or text components must include a
8 disclaimer that satisfies the requirements of paragraphs (b) and
9 (c)(1) of this section within the audio component.

10 3. Redesignate paragraph (g) as paragraph (h), and add paragraph (g) as follows:

11 (g) Adapted disclaimers

12 (1) Definitions. For purposes of this section,

13 (i) Adapted disclaimer means a clear statement that the internet public
14 communication is paid for, and that identifies the person or persons who
15 paid for the internet public communication using their full name or a
16 commonly understood abbreviation or acronym by which the person or
17 persons are known, which is accompanied by: (1) an indicator and (2) a
18 mechanism. An adapted disclaimer must satisfy the requirements of
19 paragraph (c)(1) and paragraphs (c)(5)(ii) and (iii) of this section.

20 (ii) Indicator means any visible or audible element associated with an internet
21 public communication that is presented in a clear and conspicuous manner
22 and gives notice to persons reading, observing, or listening to the internet
23 public communication that they may read, observe, or listen to a

1 disclaimer satisfying the requirements of paragraphs (b) and (c)(1) of this
2 section through a mechanism. An indicator may take any form including,
3 but not limited to, words, images, sounds, symbols, and icons.

4 (iii) Mechanism means any use of technology that enables the person reading,
5 observing, or listening to an internet public communication to read,
6 observe, or listen to a disclaimer satisfying the requirements of paragraphs
7 (b) and (c)(1) of this section after no more than one action by the recipient
8 of the internet public communication. A mechanism may take any form
9 including, but not limited to, hover-over text, pop-up screens, scrolling
10 text, rotating panels, and hyperlinks to a landing page.

11 (2) When a disclaimer described by paragraphs (b) and (c)(1) of this section cannot
12 be provided or would occupy more than 25 percent of the communication due to
13 character or space constraints intrinsic to the advertising product or medium, an
14 adapted disclaimer may be used within the communication instead.

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On behalf of the Commission,

Allen J. Dickerson,
Chairman
Federal Election Commission.

26 DATED: _____
27 BILLING CODE 6715-01-P
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