



September 4, 2024

Secretary Marlene H. Dortch
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Submitted electronically via <https://www.fcc.gov/ecfs/>

Re: Comment In the Matter of Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements; MB Docket No. 24-211

The Center for American Progress (“CAP”) respectfully submits these comments to the Federal Communications Commission (“Commission” or “FCC”) in response to the above titled Notice of Proposed Rulemaking (“NPRM”) MB Docket No. 24-211.

First, these comments explain that the Federal Election Commission’s authority concerning disclaimers required by the Federal Election Campaign Act does not prevent the FCC from adopting this proposed rule.

Next, these comments explain how the proposed rule would help further the goal of an informed public and reduce confusion by bringing political and issue advertisements aired on television and radio into alignment with other existing requirements including those imposed by major online platforms (e.g. Facebook and YouTube), and those imposed on other programming.

Finally, these comments explain that the proposed rule does not impose a heavy burden on broadcasters as they already have compliance structures in place to deal with political and issue advertisements and can easily adapt them to cover the requirements in this proposed rule.

Regardless of whether the Commission adopts this proposed rule, we encourage broadcasters to continue to abide by their duty to “protect the public from false, misleading or deceptive advertising” when airing political and issue advertisements.¹

¹ *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Adv.*, 74 F.C.C.2d 623 (1961), <https://docs.fcc.gov/public/attachments/FCC-61-1316A1.pdf> (citation omitted). See *Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements*, Notice of Proposed Rulemaking, FCC 24-74, MB Docket No. 24-211, n.6 (2024), <https://docs.fcc.gov/public/attachments/FCC-24-74A1.pdf>.

Please do not hesitate to contact Rebecca Mears (rmears@americanprogress.org) or Adam Conner (aconner@americanprogress.org) with any further questions. We thank the Commission for its efforts on this important issue.

Sincerely,

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The Federal Election Commission’s Authority Concerning Disclaimers in Political Advertisements Does Not Prevent the FCC from Adopting this Proposed Rule

The Federal Election Commission’s (“FEC”) authority concerning certain disclaimers in political advertisements does not prevent the FCC from adopting this proposed rule.

First, the FEC does not have authority over all advertisements. The FEC oversees certain federal election activity. The FEC’s disclaimer requirements apply to four categories of communications:² (i) public communications made by a federal candidate³ or political committee,⁴ (ii) public communications made by any person that expressly advocates the election or defeat of a clearly identified federal candidate, (iii) public communications by any person that solicits a contribution,⁵ and (iv) electioneering communications.⁶

The FEC’s disclaimer requirements do not apply to an advertisement that falls outside of the above four categories. A few examples of advertisements which contain some nexus to politics but do not fall under the FEC’s disclaimer requirements, include advertisements sponsored by an entity other than a federal candidate or political committee (such as a non-profit organization) which:

- inform people when early voting begins in a state and urges people to vote (without reference to a clearly identified federal candidate)
- urge the public to call an elected official to urge that the official oppose a policy or legislation, where the elected official is not a federal candidate
- urge the public to call an elected official to urge that the official oppose a policy or legislation, where the elected official is a federal candidate, but the advertisement is aired outside of the time period necessary to be considered an electioneering communication
- urge the public to vote for or against a ballot measure
- advocate for the election or defeat of a non-federal candidate

² 52 U.S.C. § 30120; 11 CFR § 100.11(a).

³ 11 CFR § 100.3.

⁴ *Id.* § 100.5.

⁵ A contribution is defined for these purposes as “A gift, subscription, loan (except for a loan made in accordance with 11 CFR 100.82 and 100.83), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office” *Id.* § 100.52(a).

⁶ An electioneering communication is “any broadcast, cable, or satellite communication that: (1) Refers to a clearly identified candidate for Federal office; (2) Is publicly distributed within 60 days before a general election for the office sought by the candidate; or within 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate, and the candidate referenced is seeking the nomination of that political party; and (3) Is targeted to the relevant electorate, in the case of a candidate for Senate or the House of Representatives.” *Id.* § 100.29(a).

Each of the above advertisements fall outside the scope of the FEC’s disclaimer requirements. However each of the above advertisements, if aired on broadcast television or radio, are subject to the FCC’s sponsorship identification rules.⁷

Second, although the FEC does regulate disclaimers as required by the Federal Election Campaign Act (“FECA”), the FCC’s proposed rulemaking does not conflict with the FEC’s authority over those disclaimers.

In their dissents, FCC Commissioner Carr and Commissioner Simington both assert that the proposed rulemaking conflicts with the FEC’s authority. In support of this claim, they reference the following language from *Galliano v. United States Postal Serv.*: “the FEC is the exclusive administrative arbiter of questions concerning the name identifications and disclaimers of organizations soliciting political contributions.”⁸

However, the sentence which the Commissioners plucked from *Galliano v. United States Postal Serv.* does not accurately reflect the court’s full holding. This case concerned whether the FEC’s authority over disclaimers in political solicitations meant that the U.S. Postal Service could not enforce a statute concerning false representations against a political committee’s solicitation given several alleged false representations including the false representation of a political committee’s name.⁹ The court concluded that the FEC had exclusive authority to determine whether a party violated the disclaimer requirements of FECA, but that the Postal Service could find that the solicitation violated the statute concerning false representations on the basis of other false representations.¹⁰

In fact, this is explained in the very next sentence of the line quoted by the Commissioners: “As to representations not specifically regulated by FECA, however--for example, [a political committee’s] allegedly false statement that in 1982 it raised and contributed over half a million dollars to candidates nationwide--nothing in or about the Act limits the [] enforcement authority of the Postal Service.”¹¹ In other words, the FEC’s authority over one aspect of political

⁷ 47 U.S.C. § 317(a)(1); 47 CFR § 73.1212(a). The Commission has also extended to cable television system operators engaged in origination cablecasting sponsorship identification requirements. 47 CFR § 76.1615.

⁸ Statement, Commissioner Brendan Carr, Federal Communications Commission, Dissenting Re: Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements, Notice of Proposed Rulemaking, MB Docket No. 24-211, p.2, <https://docs.fcc.gov/public/attachments/FCC-24-74A3.pdf> (citing *Galliano v. United States Postal Serv.*, 836 F.2d 1362, 1370 (1988)) (last visited Sept. 4, 2024) [hereinafter Statement, Commissioner Brendan Carr]; Statement, Commissioner Nathan Simington, Federal Communications Commission, Dissenting Re: Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements, Notice of Proposed Rulemaking, MB Docket No. 24-211, p. 2, <https://docs.fcc.gov/public/attachments/FCC-24-74A4.pdf> (citation omitted) (last visited Sept. 4, 2024).

⁹ *Galliano v. United States Postal Serv.*, 836 F.2d 1362, 1371 (1988).

¹⁰ *Id.*

¹¹ *Id.* at 1370.

solicitations does not block another agency from enforcing other laws with regard to political solicitations.¹²

This case does not prohibit the FCC from exercising authority over political advertisements, as the proposed rule does not interfere with the current disclaimer requirements set forth in FECA and regulated by the FEC. Rather, the proposed rule would have broadcasters and other regulated entities add both an on-air notice and a notice to their online political file when a political or issue advertisement includes AI-generated content. Accordingly, the FEC’s authority concerning certain disclaimers in political advertisements does not prevent the FCC from adopting this proposed rule.

The Proposed Rule Would Bring Political and Issue Advertisements Aired on Television and Radio Into Alignment with Existing Requirements Imposed by Major Online Platforms

Contrary to the concerns raised in Commissioner Carr’s July 2024 statement,¹³ passage of this proposed rule would help reduce confusion by bringing political advertisements run on television and radio into alignment with existing standards imposed by major online advertisers.

In his statement, Commissioner Carr expressed concerns that if the FCC adopts this proposed rule, it would “mire voters in confusion”¹⁴ because “AI-generated political ads that run on traditional TV and radio [would] come with a government-mandated disclaimer but the exact same ad that runs on a streaming service or social media site would not.”¹⁵

This argument actually cuts in favor of adopting the proposed rule. Commissioner Carr’s worry is already reality, but in the reverse: An advertisement that contains AI-generated content requires a disclaimer if it is posted on Facebook¹⁶ or YouTube,¹⁷ but the exact same advertisement currently is not required to carry a disclaimer on broadcast television or radio. If

¹² “[W]e do not hold that solicitations for political contributions are entirely immune from Postal Service scrutiny Apart from the name of a political organization and the presence or absence of a sponsorship disclaimer, much may appear in a solicitation for political contributions that could materially deceive readers and thereby constitute a false representation under [39 U.S.C. § 3005].” *Id.* at 1371.

¹³ Statement, Commissioner Brendan Carr, p.2.

¹⁴ *Id.*

¹⁵ *Id.* at p.5.

¹⁶ “About digitally created or altered media disclosures,” Meta, <https://www.facebook.com/business/help/1486382031937045> (last visited Sept. 4, 2024).

¹⁷ Google, “Advertising Policies Help - Political Content,” https://support.google.com/adspolicy/answer/6014595?hl=en&ref_topic=1626336&sjid=9047409362161546348-NA#zippy=%2Cunited-states-us-election-ads (last visited Sept. 4, 2024); Google, “Advertising Policies Help - Ad Requirements for YouTube,” <https://support.google.com/adspolicy/answer/10249050?sjid=7949706856681805541-NA> (last visited Sept. 4, 2024).

voters are indeed mired in confusion due to a lack of disclaimers in one location and not others, it is actually the FCC’s lack of action on AI-generated content that is amplifying this confusion, and adoption of the proposed rule would help reduce confusion.

Google and Meta have already established their own requirements when it comes to online political advertisements which contain synthetic or digitally altered content. Combined, these organizations make up a significant share of all online political advertising.¹⁸

Google requires that advertisers “disclose all election ads that contain synthetic or digitally altered content by selecting [a] checkbox . . .” then Google will either “generate an in-ad disclosure based on that checkbox” or require that the advertiser “provid[e] a prominent disclosure. The disclosure must be clear and conspicuous, and must be placed in a location where it is likely to be noticed by users.”¹⁹ This same policy also applies to advertisements on YouTube.²⁰ This policy has been in place since November 2023.²¹

Meta, the parent company of Facebook and Instagram, requires that advertisers on those platforms disclose “whenever an ad about social issues, elections or politics contains a photorealistic image, video or realistic-sounding audio that was digitally created or altered to depict any of the following:

- A real person as saying or doing something they didn’t say or do
- A realistic-looking person that doesn’t exist
- A realistic-looking event that didn’t happen
- Altered footage of a real event that happened
- A realistic event that allegedly happened, but that’s not a true image, video or audio recording of the event.”²²

¹⁸ In fact, when you look at their share when compared to *all* U.S. political spending, the two organizations account for nearly ten percent of all U.S. total political advertising spending. “Google is one of the main digital destinations for political ad spending, with its political ad revenues set to surpass \$553.2 million in 2024 Meta’s platforms—mainly Facebook—make up the largest share of social media spending. Spending on Meta’s platforms will jump 86.1% in 2024 . . . to reach \$568.7 million.” EMarketer, “2024 Political Ad Spending Will Jump Nearly 30% vs. 2020,” January 11, 2024, <https://www.emarketer.com/press-releases/2024-political-ad-spending-will-jump-nearly-30-vs-2020/>.

¹⁹ Google, “Advertising Policies Help - Political Content,” https://support.google.com/adspolicy/answer/6014595?hl=en&ref_topic=1626336&sjid=9047409362161546348-NA#zippy=%2Cunited-states-us-election-ads (last visited Sept. 4, 2024).

²⁰ Google, “Advertising Policies Help - Ad Requirements for YouTube,” <https://support.google.com/adspolicy/answer/10249050?sjid=7949706856681805541-NA> (last visited Sept. 4, 2024).

²¹ “A.I.-generated voices, images in political ads to require disclosure on Google and YouTube,” CBS News, September 6, 2023, <https://www.cbsnews.com/sanfrancisco/news/ai-artificial-intelligence-political-ads-google-youtube-disclosure/>.

²² “About digitally created or altered media disclosures,” Meta, <https://www.facebook.com/business/help/1486382031937045> (last visited Sept. 4, 2024).

The disclosure takes the form of a disclaimer which appears near the “paid for by” disclaimer in advertisements.²³ This policy has been in place since January 11, 2024.²⁴

By adopting this proposed rule, the FCC is not furthering confusion, but rather reducing confusion by helping finally bring political advertisements run on television and radio into alignment with the standards required by major online advertisers.

Moreover, by taking this action, the FCC can help drive further alignment among the various platforms by setting a clear standard which other platforms can look to for guidance when designing their own policies. For instance, in 2022 Hulu, which is owned by Disney, announced that they would align their political advertising policies to be consistent with Disney’s sports and entertainment cable networks.²⁵ Additionally, since online video political advertisements are often repurposed broadcast advertisements and vice versa, this alignment and standardization reduces the burdens on advertisers by allowing them to make fewer modifications to advertisements based on where they air.

The Proposed Rule Would Bring Political and Issue Advertisements Into Alignment with Requirements on Other Programming and Advertisements Aired on Television and Radio

The proposed rule would also help further the goal of an informed public and reduce confusion by bringing political advertisements into better alignment with existing requirements on other television and radio advertisements and programming.

A web of existing rules and requirements already requires that certain television and radio advertisements contain disclaimers to help the public be better informed about the truth of what they are seeing and hearing. For instance, some major networks impose standards which require advertisements containing certain fictionalized material to include a disclaimer disclosing the

²³ *Id.*

²⁴ “Helping People Understand When AI Or Digital Methods Are Used In Political or Social Issue Ads,” Meta, November 8, 2023 (updated January 3, 2024), <https://www.facebook.com/government-nonprofits/blog/political-ads-ai-disclosure-policy>.

²⁵ Michael Scherer and John Wagner, “Hulu reverses policy, will use cable standards for political ads,” The Washington Post, July 27, 2022, <https://www.washingtonpost.com/politics/2022/07/27/hulu-democrats-campaign-ads/>.

fictionalized elements. A brief, non-exhaustive search reveals that ABC,²⁶ NBCUniversal,²⁷ and TelevisaUnivision²⁸ prohibit simulations and fictionalized dramatizations unless there is a clear disclosure that the depiction is a simulation, dramatization, or reenactment. Thus, it is possible that television advertisements which contain certain AI-generated content may be required by a network to include a disclaimer noting that the advertisement contains a reenactment or fictionalized dramatization.

The FCC also already has a regulation which prohibits certain false programming unless it carries a disclaimer. The FCC's regulation concerning broadcast hoaxes "prohibits broadcast licensees or permittees from broadcasting false information concerning a crime or a catastrophe if: 1) the licensee knows this information is false; 2) it is foreseeable that broadcast of the information will cause substantial public harm; and 3) broadcast of the information does in fact directly cause substantial public harm."²⁹ However, if the programming is accompanied by a disclaimer that "clearly characterizes the program as a fiction" and it "is presented in a way that is reasonable under the circumstances" it will be presumed to not pose foreseeable harm and thus not be prohibited.³⁰

Additionally, the Federal Trade Commission ("FTC") imposes requirements on many television and radio advertisements. The FTC broadly prohibits false and deceptive commercial advertisements.³¹ However, an advertiser may be able to prevent an advertisement from being considered deceptive if they use a clear and conspicuous disclaimer to clarify claims for consumers.³² Thus, it is common for the public to already encounter television and radio advertisements with disclaimers that clarify certain claims. The FTC has also warned that AI-generated content poses harms to the public, and that using such content in advertisements (such

²⁶ ABC's advertising standards and guidelines states: "A dramatization is a fictionalized depiction created solely for the purpose of the advertising to portray the event, product or service involved. A reenactment is a recreation of an actual event, utilizing either the actual persons involved or actors portraying those persons. A simulation is an imitative representation of the performance of a product. Advertising that utilizes any of these techniques must include a clear disclosure identifying it as such." "Advertising Standards and Guidelines," ABC Television Network, 2023, p. 18, <https://files.disneyadvertising.com/MediaKit/ABC-Brands/ABC-Guidelines.pdf>.

²⁷ NBCUniversal's advertising standards and guidelines states: "Dramatizations and reenactments of actual events must be clearly disclosed as such." "Advertising Guidelines," NBCUniversal, November 2023, p. 18, <https://corporate.univision.com/wp-content/uploads/2021/04/AdComplianceGuidelines.pdf>.

²⁸ Similarly, TelevisaUnivision's U.S. advertising standards and guidelines states: "Advertising containing dramatizations or reenactments of actual events must include a disclosure informing the viewers that the event is a dramatization or a re-enactment." "U.S. Advertising Standards and Guidelines (All Media) 2023, Televisa Univision, p. 8, <https://corporate.univision.com/wp-content/uploads/2021/04/AdComplianceGuidelines.pdf>.

²⁹ 47 C.F.R. § 73.1217(a).

³⁰ *Id.* § 73.1217(b).

³¹ 15 U.S.C. §§ 41-58, as amended.

³² See Lesley Fair, "Full Disclosure," Federal Trade Commission: Business Blog, September 23, 2014, <https://www.ftc.gov/business-guidance/blog/2014/09/full-disclosure>. The FTC also requires disclosures in certain circumstances including when a person endorsing a product is not an actual consumer of the advertised product. 16 C.F.R. § 255.2(c).

as misleading consumers via doppelgängers and deepfakes) can result in FTC enforcement actions.³³

Commissioner Carr is right that a “a patchwork of inconsistent rules” can create confusion. But the issue is not the FCC’s proposed rule. The issue is the fact that political and issue advertisements containing AI-generated content³⁴ can be allowed to air on television and radio without disclaimers, while other television and radio advertisements require disclaimers in the above instances. It also defeats the shared goal among First Amendment scholars of all schools of thought and weakens one of the foundational pillars of American democracy - an informed public. The proposed rule would help further the goal of an informed public and reduce confusion by bringing political advertisements into better alignment with other types of advertisements and programming.

The Proposal that Broadcasters Include a Notice in Their Political Files when an Advertisement Contains AI-Generated Content is Reasonable and Simple

The proposed rule that broadcasters include a notice in their political file when an advertisement contains AI-generated content is both reasonable and simple. Broadcasters are already required to gather information from sponsors of political and issue advertisements and make it available for public inspection. Broadcasters have developed methods to comply with this duty and can use their same compliance structures to also include information about whether a political or issue advertisement contains ai-generated material.

As noted in the NPRM, broadcasters must comply with certain recordkeeping requirements when the material broadcast is a “political matter or matter involving the discussion of a controversial issue of public importance” and make such records available for public inspection.³⁵ Among these responsibilities, broadcasters must make available for public inspection a “list of the chief executive officers or members of the executive committee or of the board of directors” when the sponsor of the advertisement is a corporation, committee, association or other unincorporated group, or other entity.³⁶

³³ Michael Atleson, “Chatbots, deepfakes, and voice clones: AI deception for sale,” Federal Trade Commission: Business Blog, March 20, 2023, <https://www.ftc.gov/business-guidance/blog/2023/03/chatbots-deepfakes-voice-clones-ai-deception-sale>.

³⁴ Which as defined in the proposed rule is something that is not real, but rather fabricated by a computer: “an image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual’s appearance, speech, or conduct, or an event, circumstance, or situation, including, in particular, AI-generated voices that sound like human voices, and AI-generated actors that appear to be human actors.” In the Matter of Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements, 89 Fed. Reg. 63381, 63384 (Aug. 5, 2024), <https://www.federalregister.gov/documents/2024/08/05/2024-16977/disclosure-and-transparency-of-artificial-intelligence-generated-content-in-political-advertisements/>.

³⁵ 47 CFR § 73.1212(e).

³⁶ *Id.*

To comply with this requirement, many broadcasters use a standardized form created by the National Broadcasters Association which includes questions to ensure that the necessary information is provided.³⁷ Broadcasters will generally send this form to a sponsor and require that it be filled out and returned before the broadcaster will allow them to purchase any advertising time. This both ensures that the information is reported accurately, and drastically reduces any potential burden on the broadcaster.

The Commission’s proposed rule would only require broadcasters to include the following statement in the political file “This message contains information generated in whole or in part by artificial intelligence.”³⁸ If this proposed rule is adopted, broadcasters could simply add an additional question to the form they currently use and require the sponsor to fill out the form.

While this proposed rule would provide the public with valuable information about the advertisement, it may be worth considering whether the proposed rule should be amended to require that broadcasters include more specific information such as a time stamp and description of the AI-generated content in the political file so the public can locate which portions of the advertisement contain AI-generated content.³⁹

The Proposal that Broadcasters Inquire Whether Advertisements Contain AI-Generated Content is Reasonable and Simple

The NPRM asks several hypothetical questions about compliance with this proposal including what to do if the sponsor requesting airtime fails to respond to a station’s inquiry, and what if a third party asserts that a political ad contains AI-generated content where there was no previous affirmative response to the station’s inquiry.

Broadcasters are already well positioned to handle these concerns as they arise. Broadcasters can use the same policies and practices they currently use to navigate similar questions when it comes to ensuring that the required sponsorship information is provided and when checking whether a statement in an advertisement is defamatory.

³⁷ Nat’l Ass’n of Broadcasters (NAB), Political Broadcast Agreement Forms, PB-19, https://www.deltaradio.net/wp-content/uploads/2020/02/NAB-PB-19_CandidateAdvertisements.pdf. There is also a similar NAB form designed for non-candidate/issue advertisements.

³⁸ In the Matter of Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements, 89 Fed. Reg. 63381, 63384 (Aug. 5, 2024), <https://www.federalregister.gov/documents/2024/08/05/2024-16977/disclosure-and-transparency-of-artificial-intelligence-generated-content-in-political-advertisements/>.

³⁹ Commissioner Carr in theory should agree with this addition to the proposed rule given he also mentioned he was concerned that viewers would see a disclosure but have “no more insight about what parts of the ad uses AI and which parts do not.” Statement, Commissioner Brendan Carr, p. 5.

For example, a station may handle a third party assertion that a political ad contains AI-generated content where there was no previous affirmative response to the station's inquiry, in the same way a station handles an assertion that an advertisement is defamatory and must be pulled from air.

When a non-candidate entity sponsors an advertisement containing negative claims about a federal candidate, it is common for a station to receive a complaint asserting that the negative claim is false and defamatory and the station must pull the advertisement off the air. Stations have devised routine methods to deal with such concerns. These methods can include asking the sponsor to respond to the complaint and explain why the advertisement should not be removed, as well as requesting that the sponsor provide factual information supporting the claim to show that it is not defamatory. If a station's lawyer determines that the advertisement should be pulled, then the broadcaster pulls the advertisement.

Stations sometimes will request that sponsors provide factual information for each advertisement before even agreeing to air an advertisement. In turn, sponsors generally will already have this information on hand given they had to go through the process of producing the advertisement and it is in their own interests in defending against claims of defamation to be able to point to the factual basis for each claim.

Broadcasters can use similar methods to deal with complaints that may arise from third parties about the use of AI-generated content that was not reported. Just as sponsors have documentation supporting the claims made in advertisements, they also should have (or be able to access) information about whether content is AI-generated; production teams generally keep documentation about the source of each image, audio, and clip used in the advertisement.

Accordingly, the proposed rule does not impose a heavy burden on broadcasters as they already have compliance structures in place to deal with political and issue advertisements and can easily adapt them to cover the requirements imposed by this proposed rule.

Conclusion

We thank the Commission for this opportunity to provide input. Our comments explain that the FEC's authority concerning disclaimers required by FECA does not prevent the FCC from adopting this proposed rule; how the proposed rule would help further the goal of an informed public and reduce confusion by bringing political and issue advertisements aired on television and radio into alignment with other existing requirements imposed by major online platforms and required on other programming; and that the proposed rule does not impose a heavy burden on broadcasters as they already have compliance structures in place to deal with political and issue advertisements which can be adapted to fit the requirements of this proposed rule.

Please do not hesitate to contact Rebecca Mears (rmears@americanprogress.org) or Adam Conner (aconner@americanprogress.org) with any further questions. We thank the Commission for its efforts on this important issue.