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For meeting of June 20, 2019

SUBMITTED LATE

June 19, 2019

MEMORANDUM

TO: Commission Secretary

FROM: Matthew S. Petersen
Vice Chairman

Caroline C. Hunter
Commissioner

SUBJECT: Internet Communication Disclaimers, Proposed Rule

We heard from many, many members of the public during the course of this rulemaking. We read their comments carefully and listened closely to their testimony. Their input was invaluable as we worked to find the best way forward in this rulemaking.

A common refrain in the comments and the testimony was the importance of adopting rules that are flexible and adaptable — two key characteristics of the internet. We believe that it is incumbent on the Commission to strive to do so, both to maintain the rules' currency in the face of ongoing technological change and to enhance the public's ability to comply. Candidates, parties, political committees, persons of modest means, and other political speakers must be able to continue to avail themselves of the numerous low-cost advertising options on the internet. Rules that are rigid or are rooted in 20th century technology would not serve these objectives.

With these considerations in mind, we ask that this memorandum and the attached proposed rule be made public and placed on the Commission's Open Meeting agenda for June 20, 2019.

We look forward to continuing to work with our colleagues on this matter.

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

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(c) * * *

(5) Specific requirements for internet communications.

(i) For purposes of this section:

(A) Internet communication means electronic mail of more than 500 substantially similar communications when sent by a political committee; all internet websites of political committees available to the general public; and any internet public communication as defined in paragraph (c)(5)(i)(B) of this section;

(B) Internet public communication means any communication placed for a fee on another person's website or internet-enabled device or application;

(C) Technological mechanism refers to any use of technology that enables the person reading, observing, or listening to an internet public communication to read, observe, or listen to a disclaimer satisfying the general requirements of paragraphs (b) and (c)(1) of this section without navigating more than one step away from the internet public communication. A technological mechanism may take any form including, but not limited to, hover-over; mouse-over; voice-over; rollover; pop-up screen; scrolling text; rotating panels; and click-through or hyperlink to a landing page; and

(D) Indicator refers to any visible or audible element associated with an internet public communication that is presented in a clear and conspicuous manner and gives notice to persons reading, observing, or listening to the internet public communication that they may read, observe, or listen to a disclaimer satisfying the general requirements of paragraphs (b) and (c)(1) of this section through a technological mechanism. An indicator may take any form including, but not limited to, words such as "Paid for by," "Paid by," "Sponsored by," or "Ad by"; website URL; image; sound; symbol; or icon.

(ii) (A) Every internet communication for which a disclaimer is required by paragraph (a) of this section must satisfy the general requirements of paragraphs (b) and (c)(1) of this section.

(B) Any internet public communication that cannot reasonably provide a disclaimer on the face of the communication must provide a disclaimer that

satisfies the general requirements of paragraphs (b) and (c)(1) of this section by means of an indicator and technological mechanism. An internet public communication that provides a disclaimer by means of an indicator and technological mechanism shall nevertheless provide on its face, in a clear and conspicuous manner, the full name of each person who paid for the communication or a clearly recognized abbreviation or acronym by which that person is commonly known, unless such information cannot reasonably be provided on the face of the communication because of character or space constraints.

(C) For an internet public communication with text or graphic components, a disclaimer, indicator, name, abbreviation, or acronym presented in a clear and conspicuous manner includes, but is not limited to, a disclaimer, indicator, name, abbreviation, or acronym that appears on the face of the communication in letters at least as large as the majority of the other text in the communication, and is displayed with a reasonable degree of color contrast against the background of the communication, such as black text on a white background or if the degree of color contrast between the background and text is no less than the color contrast between the background and the largest text used in the communication.

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