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Re: Advanced Notice of Proposed Rulemaking, Internet Communication Disclaimers

Twitter, Inc. (“Twitter”) submits this comment in response to the Advanced Notice of Proposed Rulemaking on Internet Communication Disclaimers, originally published by the Federal Election Commission (“FEC” or “Commission”) on October 13, 2011 and reopened for additional comment on October 10, 2017 (“ANPRM”).

Twitter has advanced how elected officials, candidates, and political campaigns communicate with constituents and the electorate, allowing them to connect in real-time on a global scale. At least 856 Twitter accounts belong to heads of state and government and foreign ministers in 178 countries, representing 92 percent of all United Nations member states, with a combined audience of 356 million followers around the world. Because of platforms like Twitter, virtually anyone can share his or her views on issues of local or national importance with government leaders, elected officials, or candidates running for office. As a result, leaders have a stronger understanding of both the people whom they represent and issues of civic interest as well as increased accountability.

In the U.S., President Trump uses Twitter on a frequent basis to share his thoughts and policy positions with more than 37 million followers and with the world. All 100 senators and 427 members of the U.S. House of Representatives have official Twitter accounts, which they use to discuss and debate important policy issues and communicate with their constituents. Twitter also gives Users a front-row seat to the legislative process by regularly live-streaming U.S. House and Senate hearings, allowing Users to watch substantive political proceedings from their smartphones or computers.

To illustrate the magnitude of Twitter’s role in the U.S. political process: during the 2016 presidential election, 17 million related Tweets were generated during the debates, along with 4.6 million live stream views via Periscope, our video application. The Democratic and Republican conventions generated 47.3 million Tweets with the hashtags #DemsinPhilly and #RNCinCLE, with more than half a million people live streaming the convention. Between the last debate and election day, over a billion Tweets about the U.S. presidential election were sent.

In providing a service that fosters and facilitates free and open democratic debate, Twitter is committed to core values such as freedom of expression, privacy, and transparency. As part of that commitment, Twitter has not only published the Twitter Transparency Report on a

semiannual basis since 2012,¹ Twitter has publicly committed to launching an industry-leading transparency center that will offer a number of enhancements to provide Users with more visibility into who is advertising on Twitter (the “Transparency Center”).² The Transparency Center, as discussed in more detail below, is a meaningful step toward significantly increasing transparency and disclosure for all ads running on Twitter, including the political advertisements at issue in the ANPRM.

Factual Background

There are a number of ways Users can engage with the Twitter platform. Users choose what content they see primarily by following or unfollowing other Users. Users generate content on the platform by Tweeting original content, including text, hashtags, photos, GIFs, and videos. Users may also reply to Tweets, Retweet content already posted on the platform, and like Tweets and Retweets, in addition to exchanging messages with Users and accounts they follow through Direct Messaging. Each User has a home timeline, which displays a real-time stream of Tweets from other Twitter accounts the User has chosen to follow, along with advertisements that are targeted to or made available for that particular User.³

In an effort to make it easier for Users to express themselves on the platform, Twitter recently expanded the character limit of Tweets to a maximum of 280 characters per Tweet, which is double the previous limit of 140 characters. While attaching photos, a video, poll, or other media attachment to a tweet results in a URL being automatically generated and added at the end of a Tweet, the URL does not count towards the 280 character limit for Users. On the other hand, URLs that a User manually types or pastes inside a Tweet will be counted towards the User’s character limit.

Advertising on Twitter generally takes the form of Promoted Tweets, which are ordinary Tweets purchased by advertisers to reach a wider group of Users or to engage with existing followers. When an advertiser pays for a Promoted Tweet to be placed on Twitter, the Promoted Tweet is clearly labeled as “promoted.” In many respects, Promoted Tweets look and act just like regular Tweets and can be Retweeted, replied to, and liked.⁴ Similarly, advertisers may purchase Promoted Accounts, Promoted Trends, or Promoted Videos — all of which are clearly marked as “promoted” and are published to Users throughout the platform. Advertisers may also choose to create Promoted-Only Tweets, which behave the same as other Promoted Tweets in that they are promoted and targeted to certain Twitter Users, but Promoted-Only Tweets are not pushed to the

¹ The Twitter Transparency Report provides the public with key metrics about requests from governments and certain private actors for User information, content removal, copyright violations, and most recently, Terms of Service violations.

² Bruce Falck, *New Transparency for Ads on Twitter*, Twitter Blog (Oct. 24, 2017), available at https://blog.twitter.com/official/en_us/topics/product/2017/New-Transparency-For-Ads-on-Twitter.html.

³ The Twitter Glossary, available at <https://support.twitter.com/articles/166337>.

⁴ Because promoted Tweets are presented to our Users from accounts they have not yet chosen to follow, Promoted Tweets must adhere to a robust set of policies that prohibit, among other things, ads for illegal goods and services, ads making misleading or deceptive claims, ads for drugs or drug paraphernalia, ads containing hate content, sensitive topics, and violence, and ads containing offensive or inflammatory content.

timelines of Users who follow the advertiser's account, and do not appear in the profile page of the advertiser's account.⁵ Promoted-Only Tweets are identified as "promoted," and otherwise act like normal Tweets and can receive replies, be shared, Retweeted, liked, etc. Political campaigns often purchase both Promoted Tweets and Promoted-Only Tweets in order to expand the reach of their content.

Twitter's Transparency Efforts Moving Forward

Under current FEC regulations, "communications placed for a fee on another person's Web site" must include a disclaimer to identify who paid for the ad, and where applicable, whether the communication was authorized by a federal candidate.⁶ For these purposes, a typical disclaimer ranges from 30 to 100 characters in length. For example, a standard "Paid for by" disclaimer consumes about 45 characters, while a longer disclaimer that indicates an advertisement is "not authorized by any candidate or candidate's committee" could consume more than 100 characters.⁷ As mentioned above, with Tweets character-limited to 280 characters, a full in-Tweet FEC disclaimer could account for as much as 35 percent of the content of a Tweet. Even if the disclaimer was in a separate portion of the Tweet, cramming all of this information in the same space could significantly alter the way Users engage with the platform on mobile devices.⁸ Twitter would like the FEC to consider ways for character-constrained platforms to fulfill the public disclosure in ways that reflect such constraints while providing disclosure consistent with the product, and elsewhere through links.

In part because of these technological confines that pose serious challenges to the practicability of including existing FEC disclaimers within a Tweet, Twitter has committed to creating the Transparency Center to provide visibility into who is advertising on Twitter, including who is sponsoring "electioneering ads" on the platform (as defined below), without compromising or sacrificing the content of a User's Tweet.

First, all paid advertisements – not just ads related to politics or elections - currently running on Twitter will be subject to the requirements of the new Transparency Center. Specifically, the Transparency Center will show (i) all ads that are currently running on Twitter, including Promoted-Only ads; (ii) how long the ad has been running; and (iii) creative associated with the ad campaign. Through the Transparency Center, Users can also report inappropriate ads or give negative feedback to the company for every ad running on Twitter, whether the ad targets the User or not. By providing Users with details on the sponsor of each advertisement, the Transparency Center will assist Users in evaluating each ad that comes up on their timeline by providing information on the sponsor and source of the advertisement. Such visibility will also help avoid any confusion Users might have when engaging with a particular ad.

⁵ Note that Promoted-Only Tweets are publicly accessible via the URL to that particular Tweet.

⁶ 11 C.F.R. § 100.26; *see also* Internet Communication Disclaimers, 76 Fed. Reg. 63,567 (Oct. 13, 2011).

⁷ FEC Adv. Op. 2002-09 (Target Wireless), at 2.

⁸ Notably, 80 percent of Users who login to Twitter do so via a mobile device.

Second, to make clear to Users when they are seeing or engaging with an “electioneering ad” the ad will identify itself as such through a visual political ad indicator (an example of which is below), similar in appearance to how ads currently indicate that they are “promoted”. The political ad indicator will include a brief statement identifying the political account that is promoting the ad. For these purposes, Twitter defines “electioneering” ads to include ads that refer to a clearly identified candidate (or party associated with that candidate) for any elected office, that are targeted to the relevant electorate for that candidate and are publicly distributed within 30 days of a primary election or 60 days of a general election. Twitter is also defining electioneering ads for purpose of the political ad indicator to include any ad run on Twitter at any time that expressly advocates for a clearly identified political candidate.



Sample Disclosure for Electioneering Ad.

Third, there will be a separate section of the Transparency Center devoted just to electioneering ads, which will provide a list of all the electioneering ads currently running, or that have run on Twitter, including Promoted-Only ads. Users will be able to obtain information on each electioneering ad, including how much money was spent by the advertiser, which organization is funding the ad, which demographics are being targeted to see the ad (i.e., age, gender, geographic region), and historical data on the amount of money spent by that particular advertiser on electioneering ads. As part of Twitter’s new policy on electioneering ads, Twitter is also updating requirements on who can place electioneering ads, limiting the targeting options for electioneering ad campaigns, requiring electioneering advertisers to self-identify as such, and introducing stronger penalties for electioneering advertisers who violate these policies.

We applaud the FEC for reopening this ANPRM to provide clarity to Users, as well as platforms, on what is and will be required for paid political advertising in the future. In providing a brief summary of our own solutions for transparency and disclosure, we hope the FEC will take Twitter's recently-adopted policies into account as it formulates any new requirements for the platform and its Users, while also recognizing the limited and valuable space available for political advertisements run on Twitter.