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Washington Public Disclosure Commission
Joanie Deutsch, Executive Director, Northwest, TechNet

September 26, 2018

On behalf of the member companies of TechNet, thank you for the opportunity to provide public comment on the Commission's proposed political advertising rulemaking Washington Administrative Code (WAC) 390-18. TechNet represents over 85 of the nation's leading technology companies. Our diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over three million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

Our comments are focused on the amendatory section of WAC 390-18-050 Commercial advertisers – public inspection of records.

The language should distinguish between direct and indirect commercial advertisers. There are times when advertising is placed on a digital platform through an intermediary rather than a direct purchase. In these situations it is not practical for a platform, not directly selling the ad space, to be held responsible for collecting the information on those advertisements.

Simply put, commercial advertisers should only be responsible for advertising they directly sell. Our suggested changes, provided in a separate document, strike the necessary balance of clarifying who is responsible for maintaining the records, while continuing to capture all digital election advertising.

The current language that requires disclosure of cost and other details about the payment could, perhaps unintentionally, open digital commercial advertisers to privacy liability. We recommend removal of that requirement and suggest that the Commission consider including a requirement that "commercial advertisers must indicate whether payment is due immediately upon public distribution or broadcast, or after a specified period of time."

The requirement to disclose geographic and audience targeting is also problematic. Targeting capabilities vary by platform and can include relatively non-transparent options like targeting by an uploaded contact list. Information about who has seen the ad is perhaps more transparent than information about the targeted audience. We recommend removing this language.

Finally, we recommend adding to the draft rules language that places notification requirements on the advertiser when purchasing a political advertisement.

Platforms will be dealing with political advertising in a variety of jurisdictions and localities, pertaining to elections and ballot measures that the local ad purchaser will be more familiar. Political campaigns have existing reporting requirements for their expenditures, so it is not be an added burden for them to identify when their ads are political advertisements requiring inclusion in the platform's public records.

Again, on behalf of our member companies I thank you for the opportunity to provide comment on the draft rules.

Sincerely,

Jo Deutsch
Executive Director, Northwest
TechNet

AMENDATORY SECTION (Amending WSR 15-12-058, filed 5/28/15, effective 6/28/15)

WAC 390-18-050 Commercial advertisers—Public inspection of records. (1) RCW 42.17A.005(11) defines "commercial advertiser" as any person who directly sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise. This includes communications such as paid internet or digital advertisements, brochures, fliers and any other means of mass communications used for the purpose of appealing, directly or indirectly for votes or for financial or other support in any election campaign.

(2) RCW 42.17A.005 (8)(b) defines "books of account," in the case of a commercial advertiser, as details of political advertising or electioneering communications provided by the advertiser, including the names and addresses of persons from whom it accepted political advertising or electioneering communications, the exact nature and extent of the services rendered and the total cost and the manner of payment for the services.

(3) Pursuant to RCW 42.17A.345, each commercial advertiser who has accepted or provided political advertising, as defined in RCW 42.17A.005(39), or electioneering communications, as defined in RCW 42.17A.005(22), must maintain documents and current books of account. Such information must be available for public inspection:

- (a) In person during normal business hours;
- (b) Provided electronically promptly upon request; or
- (c) Available online on the commercial advertiser's website, or website created by the commercial advertiser for purposes of publishing the information required by this section.

(4) Any person, without reference to or permission from the ((public disclosure)) commission, is entitled to inspect a commercial advertiser's political advertising or electioneering communications documents and books of account.

((2) No commercial advertiser shall be required to make available for public inspection)) (5) Information regarding political advertising or electioneering communications ((prior to)) must be made available as promptly as reasonably possible, and in no event later than X days

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after the later of the date on which the advertisement or communication has (a) initially received public distribution or broadcast; or (b) is first identified by the sponsor of the political advertisement as a political advertisement or electioneering communication pursuant to Section 9 below. Such records must be maintained for a period of no less than three years after the date of the applicable election.

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((3)) (6) The ((documents)) information and books of account that must be maintained open for public inspection pursuant to RCW 42.17A.345(1) are:

- (a) The name and address of the ((person)) person(s) who sponsored the advertising or electioneering communication;
- (b) The approximate cost of the advertising or electioneering communication;
- (c) Date(s) the commercial advertiser rendered service.

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((4)) (7) In addition to subsection ((3)) (6) of this section and pursuant to RCW 42.17A.345 (1)(b), the documents and books of account open for public inspection must include the advertisement or communication itself, and a description of the major work components or tasks, as specified in (a) through ((f)) (g) of this subsection, that were required to provide the advertising or communications services.

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- (a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.
- (b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.
- (c) For broadcast media: Air time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.
- (d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.
- (e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.
- (f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.
- (g) For digital communication platforms: Approximate number of impressions generated by the advertisement of communication.

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(8) At the request of the PDC, each commercial advertiser required to comply with this section shall deliver to the PDC copies of the information described above.

(9) Any person who uses a commercial advertiser to communicate, product, print, broadcast or distribute political advertising or electioneering communications, upon engaging such services shall:

(a) Expressly notify the commercial advertiser that the advertisement or communication must be included in the documents or book of accounts required by RCW 42.17A.345; and

(b) Provide the commercial advertiser with all information necessary to meet its obligations under paragraph 6 of this section.

(10) A commercial advertiser that creates a mechanism for a person requesting dissemination of a political advertisement or electioneering communication to expressly notify the commercial advertiser if the advertisement must be included in the documents or books of accounts required by RCW 42.17A.345 and to provide all information necessary for the commercial advertiser to comply with the requirements of this section may rely in good faith on the information provided by the advertising person to the commercial advertiser to satisfy the commercial advertiser's obligations under RCW 42.17A.345.

(11) If a commercial advertiser has a publicly stated policy prohibiting the use of its services for political advertisements or electioneering communications, the commercial advertiser may rely in good faith on the representation of users of its services that they are complying with such policy requirements.

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