



The Broadband Communications Association of Washington appreciates the opportunity to provide feedback on the Commission's proposed political advertising rulemaking in Washington Administrative Code (WAC) 390-18.

We are grateful to have the opportunity to comment on some of these matters in light of the challenges posed by the rapidly-evolving digital advertising marketplace. Most of our comments below focus on how to assure that commercial advertisers are not subject to obligations and liability in circumstances where compliance would be impractical, if not impossible.

We would be happy to discuss our feedback with you, or provide additional information, at your convenience.

Respectfully submitted,

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Here is a summary of our comments, followed by our recommended line-by-line changes:

**Definition of Commercial Advertisers:** Commercial advertisers should only be held responsible for advertising they directly sell. 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.

**Mechanism for public inspection:** Commercial advertisers should have the option of creating a secondary website for the purposes of publishing the information required to be made available pursuant to this section. Further, the timeframe for when the information must be posted should be tied to when a commercial advertiser has received all of the information required for the books of accounts from the advertiser so that compliance is not an impossibility.

**Required information for books of accounts:** For digital communications, only the total cost of the advertisement and a description of the target audience should be included in the books of account instead of the total number of impressions. This will help to avoid scenarios where sensitive competitive pricing information could be inadvertently made public. Further, in some instances, the commercial advertiser will not know the total number of impressions at the time of the ad purchase. In addition, there should be exceptions to the requirement that a copy of the ad be included in the books of account where that would create copyright or other liability exposure for the commercial advertiser.

**Notice requirements and Safe Harbors for Commercial Advertisers:** It should be incumbent upon the political advertising purchaser to provide the commercial advertiser with both a notice that it is disseminating a qualifying paid digital communication to the online platform and the information required by law to be disclosed. Otherwise, the commercial advertiser has no practical ability to disclose or retain information regarding the advertisement.

Conversely, commercial advertisers should not be responsible for disclosing information about a qualifying paid digital communication where the political advertiser does not provide both notice of the communication and also the information required by statute to be disclosed and/or retained. Safe harbor provisions should be included to ensure that commercial advertisers are not held

responsible in the event that an ad buyer does not provide the required disclosures and to ensure that they can rely on the information provided in good faith.

**Exemptions for entities complying with FCC requirements:** Specific exemptions to recordkeeping requirements should be included for broadcasters and cable operators who are already maintaining a political file pursuant to FCC regulations in order to avoid duplicative compliance requirements.

**WAC 390-18-050 Commercial advertisers—Public inspection of records.**

(1) RCW 42.17A.005(11) defines "commercial advertiser" as any person who 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. **For purposes of this section, a “commercial advertiser” is only a person who directly sells the service described in RCW 42.17A.005(11) to the originating purchaser, and does not include a person who sells such service through, or who is, an intermediary such as an ad network, exchange, or marketplace, who does not directly sell the service described in RCW 42.17A.005(11).**

**[Comment: Commercial advertisers should only be held responsible for advertising they directly sell. 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.]**

(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 advertiser's web site **in machine-readable format 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))~~ of the time when the advertisement or communication has initially received public distribution or broadcast **must be made available as soon as reasonably possible once all of the information required pursuant to Section 6 becomes known to the commercial advertiser.**

Such records must be maintained for a period of no less than three years after the date of the applicable election.

[**Comment:** Commercial advertisers should have the option of creating a secondary website for the purposes of publishing the information required to be made available pursuant to this section. Further, the timeframe for when the information must be posted should be tied to when a commercial advertiser has received all of the information required for the books of accounts from the advertiser so that compliance is not an impossibility.]

~~(((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 of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified, and whether the advertising or communication supports or opposes the candidate or ballot measure;
- (b) The name and address of the ~~((person))~~ person(s) who sponsored the advertising or electioneering communication;
- (c) The total cost of the advertising or electioneering communication, ~~how much of that amount has been paid, who made the payment, when it was paid, and what method of payment was used;~~ and
- (d) Date(s) the commercial advertiser rendered service.

~~(((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.

(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: An approximate description of the geographic locations and audiences targeted, ~~and total number of impressions generated by the advertisement of communication~~ **and total cost of the purchased service.**

[**Comment:** For digital communications, only the total cost of the advertisement and a description of the target audience should be included in the books of account instead of the total number of impressions. This will help to avoid scenarios where sensitive competitive pricing information could be inadvertently made public. Further, in some instances, the commercial advertiser will not know the total number of impressions at the time of the ad purchase.]

**Commercial advertisers are not required to produce a copy of the advertisement or communication itself for inspection pursuant to this section when:**

- (i) **doing so would infringe on state or federal copyright protections or create any other legal or potential legal exposure for the commercial advertiser; or**
- (ii) **the commercial advertiser is already complying with the Federal Communications Commission's public file disclosure requirements.**

[**Comment:** Commercial advertisers should not be required to maintain a copy of the ad on file in the books of account where doing so could create copyright or other liability for the commercial advertiser.

(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 originating political ad purchaser who uses a commercial advertiser to communicate, produce, 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 may rely in good faith on the information provided by the originating political advertisement or communication purchaser to the commercial advertiser to satisfy the commercial advertiser's obligations under RCW 42.17A.345.**

**(11) A commercial advertiser will not be held liable for failure to include information required under this section if the originating political advertisement or communication purchaser did not provide (i) notice that the originating political advertisement or communication purchaser intended to disseminate a qualifying paid digital communication or (ii) the information required to be disclosed or maintained by the commercial advertiser.**

[**Comment:** It should be incumbent upon the political advertising purchaser to provide the commercial advertiser with both a notice that it is disseminating a qualifying paid digital communication to the online platform and the information

required by law to be disclosed. Otherwise, the commercial advertiser has no practical ability to disclose or retain information regarding the advertisement.

Conversely, commercial advertisers should not be responsible for disclosing information about a qualifying paid digital communication where the political advertiser does not provide both notice of the communication and also the information required by statute to be disclosed and/or retained. Safe harbor provisions should be included to ensure that commercial advertisers are not held responsible in the event that an ad buyer does not provide the required disclosures and to ensure that they can rely on the information provided in good faith.]

**(12) This section shall not apply to broadcasters or cable operators that are complying with the Federal Communication Commission's political file public inspection requirements.**

[**Comment:** Specific exemptions should be included for entities who are already maintaining a political file pursuant to FCC regulations to avoid duplicative compliance requirements.]