



Washington State Association of Broadcasters

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## COMMENTS

### OF THE WASHINGTON STATE ASSOCIATION OF BROADCASTERS ON THE WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION'S PROPOSED PERMANENT RULES: WAC 390-18-050 ("POLITICAL ADVERTISING")

#### INTRODUCTION

The Washington State Association of Broadcasters ("WSAB") appreciates the opportunity to provide these Comments on the Public Disclosure Commission's ("PDC") Proposed Permanent Rules regarding political advertising ("Proposed Rule").

WSAB represents the more than 230 free, over-the-air radio and television stations licensed to and providing service to the residents of the State of Washington. Washington's local broadcasters provide candidates and ballot measure campaigns with the ability to reach voters directly with their campaign messaging through paid advertising and specially produced public affairs programming. Radio and television stations are highly regulated by the Federal Communications Commission ("FCC"), particularly with respect to political advertising. Stations must collect much the same information to comply with the FCC's political broadcasting rules as they do to comply with state law. That information is required to be uploaded to the FCC's web site in the Political Broadcasting section of each station's Public Inspection File. See 47 CFR 73.1943.

#### DISCUSSION

##### **Exemption for broadcasters & cable operators re: FCC rules**

Broadcasters already are required by the FCC to collect specific information regarding political advertising by federal, state and local candidates and ballot measure campaigns that overlaps and/or duplicates information required by WAC 390-18-050. That information is available 24 hours a day, 7 days a week on the FCC's web site to anyone with access to the Internet. The proposed amendments to WAC 390-18-050 create a separate, duplicate and burdensome filing requirement for radio and television stations. WSAB asks that there be a specific exemption for a commercial advertiser who is already maintaining a political public file pursuant to FCC regulations: "This section shall not apply to broadcasters or cable operators that are complying with the FCC's political file public inspection requirements."

##### **Information to be kept WAC 390-18-050(6)(c)**

**Full or partial payment.** The PDC should eliminate the proposed language regarding whether the cost of the advertising has been paid in part or in full. Broadcasters routinely require political

advertisers to pay in advance, so in virtually all cases the amount has been paid in full before the advertising is broadcast.

Method of Payment. There is no justification for recording the method of payment. If the ads were paid-for there is no purpose in disclosing whether payment was made by check, credit card or cash. More importantly, any rule dealing with payment information must specify that public inspection of checks and credit card slips is not required, in order to preserve the financial security of the payors.

### **Keeping a Copy of Political Advertising WAC 390-18-050 (7)**

Lack of Statutory Authority. The Commission lacks the statutory authority to require commercial advertisers to maintain copies of political advertisements for public inspection. RCW 42.17A.345 provides:

- “(1) Each commercial advertiser who has accepted or provided political advertising or electioneering communications during the election campaign shall maintain documents and books of account that shall be open for public inspection during normal business hours during the campaign and for a period of no less than three years after the date of the applicable election. The documents and books of account shall specify:
  - (a) The names and addresses of persons from whom it accepted political advertising or electioneering communications;
  - (b) The exact nature and extent of the services rendered; and
  - (c) The total cost and the manner of payment for the services.
- (2) At the request of the commission, each commercial advertiser required to comply with subsection (1) of this section shall deliver to the commission copies of the information that must be maintained and be open for public inspection pursuant to subsection (1) of this section.

It would be an unreasonably expansive interpretation of the language in RCW 42.17A.345 to suggest that it provides authorization for the PDC to require a commercial advertiser to keep and make available for public inspection and copying political advertising disseminated by the commercial advertiser. It would be an unreasonable interpretation of subsection (1)(b) to expand that language to include a requirement to keep a copy of a political advertisement. The “exact nature and extent of services rendered” includes the cost of advertising time, when the advertising was broadcast, and how many advertisements were broadcast, and any ancillary services provided (production, copy writing, etc.), all of which are included in WAC 390-18-050(7)(c). The PDC should remove this requirement.

Central Repository at the Public Disclosure Commission. Candidate and political committees that sponsor a political advertisement should be required to submit the advertisement to the PDC to be archived and retained for three years. It is sound policy to have the PDC be the single-source archive of all political advertisements. They would be immediately available to the Commission in the event of a complaint; a member of the public would not have to guess where to find political advertising that she or he wished to review. The Commission could digitize the advertisements and post them on the Commission’s web site.

Retention by the Sponsor. Alternatively, the PDC could require a candidate, candidate’s committee or a political committee that is the sponsor of political advertising keep the advertising for the three year retention period and make it available to the public.

Copyright Concerns. The broadcast of a political advertisement does not give a station the right to copy that ad for distribution. The broadcaster does not own the copyright to any advertisement it broadcasts. The candidate, candidate’s committee or a political committee sponsoring an advertisement regarding a ballot measure is the owner of the copyright of the advertisement.

Requiring a broadcaster to make a copy of a political advertisement could expose the broadcaster to copyright infringement liability.

**Burdensome Requirement for Broadcasters.** Requiring radio and television stations to keep political advertisements and make them available to the public is enormously burdensome and could be a disincentive for broadcasters to accept state, local and ballot measure political advertising, which would be a detriment to the open and vigorous discussion of political issues. Small radio and television stations will be particularly hard hit. These small, often rural, stations have limited staff and resources available to archive, catalogue and create a system for providing the ad hoc, on-demand requirement for audio or video playback when a person drops in to view a political advertisement that was broadcast by the station. The FCC's repeal of its Main Studio Rule in October 2017, coupled with the FCC's Unattended Station Operation rule, 47 CFR 73.1300, plus the widespread use of automation by local radio stations has resulted in many stations having no personnel present at the studio location for significant portions of regular business hours.

If a station's studio not located in its community of license, the FCC permits the station to locate the file at another accessible location within the city of license, such as a library. It is unclear how a library could address the ad hoc, on-demand requirement for an audio or video playback system if a station chose to exercise its option of locating the political section of its Public Inspection File at a library.

### **Network Ads.**

Stations have no control over political ads inserted by a network. The station would not have the information required by the proposed rule, which would reside at the network level. In addition, the station would never receive a copy of the advertisement because it is broadcast as part of the network feed to the station and is not resident at the station. The Commission should adopt an exception where the broadcaster is not the one inserting the ad, i.e., that is aired by a broadcaster that is part of the content of a network feed.

### **Digital Impact**

Many broadcasters may not have the ability to provide an "approximate description of the geographic locations and audiences targeted and the approximate total number of impressions generated by the advertisement or communication." Small market stations would be particularly disadvantaged by this requirement.

Broadcasters have the same concern about to ad insertion on digital platforms as they do for ad insertion by broadcast networks. From station websites to streams and podcasts, there may be ads included on the site that are served up by ad networks or other programmatic sellers, where the website owner (streaming provider or podcast producer) does not have access to that information. This type of ad could wind up on a station's website without the station really doing anything to put it there, or even knowing it's there. There should be an exception where the website or digital media provider is not the one inserting the ad.

### **Safe Harbor for Commercial Advertisers**

It is not unusual for the sponsor of a political advertisement to try to withhold information that is required by statute or rule. Broadcasters face this problem frequently when attempting to collect information required by the FCC and post on the FCC's web site. The PDC should provide a specific safe harbor provision that provides immunity from liability for a commercial advertiser

who, in good faith, relies on the representations of the sponsor of a political advertisement, and which representations turn out to be incomplete or incorrect.

### **CONCLUSION**

The Washington State Association of Broadcasters thanks the Public Disclosure Commission for its consideration of the Association's Comments. WSAB appreciates the delicate balancing job that the PDC faces, enhancing the transparency of political campaign messaging, while minimizing the regulatory burden on the communication services through which candidates and political committees reach out to voters at election time. WSAB appreciates the opportunity to present the thoughts and concerns of the local, free, over-the-air radio and television stations that serve the residents of Washington. We look forward to continuing to work with the PDC and its staff in the future.

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Respectfully submitted,  
WASHINGTON STATE ASSOCIATION OF BROADCASTERS

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