



SEPTEMBER 21, 2018

**COMMENTS OF GOOGLE LLC REGARDING THE WASHINGTON PUBLIC
DISCLOSURE COMMISSION'S PROPOSED PERMANENT RULES ON POLITICAL
ADVERTISING**

Google appreciates the opportunity to provide these comments on the Public Disclosure Commission's ("PDC" or "the Commission") Proposed Permanent Rules regarding political advertising (the "Proposed Rule").

Overview

Google's products and services provide candidates running for any office - from city council to governor - the opportunity to communicate with voters, and enable government officials to communicate with their constituents. Candidates and elected officials who may find traditional advertising mediums such as broadcast, cable, or newspapers to be cost-prohibitive can log into Google's self-service portal, Google Ads, and purchase cost-effective advertising for their campaigns at any budget. Google serves tens of billions of ads every day, including ads by state and local candidates who use self-service Google Ads without ever interacting with anyone at Google.

Google supports the Commission's goals for a Proposed Rule related to online political advertising. The people of Washington state deserve more information about the political communications they're receiving online. We hope the Commission continues to engage a wide variety of stakeholders as it drafts a final rule that promotes political transparency while also preserving the important role the Internet plays in the political process, especially at the state and local levels.



In these comments, we would like to take the opportunity to describe the steps we have taken to increase accountability and transparency in federal elections advertising on our own platforms. Based on the lessons we have learned in implementing our own measures, we would also like to discuss several aspects of the Proposed Rule that we think warrant the Commission's further, careful consideration as it continues to develop its final rule.

Google's Enhanced Transparency and Accountability Measures for Federal Political Ads

Google is leading efforts to build more transparency in political advertising. This year we have implemented several policy and technological changes to how we approach federal elections ads on our platforms.¹ These new transparency and accountability measures include: (1) a procedure by which we verify the identity of certain federal political advertisers and verify that they are US citizens or lawful permanent residents; (2) in-ad disclosures of the identities of individuals or organizations paying for certain federal political ads; (3) a transparency report detailing the sponsors of certain federal political ads, the approximate amount spent on such ads, and other descriptive information;² and (4) a political ad library where members of the public can search and view certain federal political ads on Google platforms, including by specific advertiser.³

Building these tools and incorporating them into our advertising products is bringing more transparency into online political ads for federal elections, and we look forward to bringing these tools to state political ads. We hope the Commission sees Google's experience and the solutions we are implementing as a roadmap for technologically feasible measures that provide clarity to voters about who is paying for the political ads they see online, with sufficient flexibility to avoid overly burdening political speech on the Internet.

¹ <https://blog.google/topics/public-policy/supporting-election-integrity-through-greater-advertising-transparency/>

² <https://transparencyreport.google.com/political-ads/overview>

³ <https://transparencyreport.google.com/political-ads/library>



The Proposed Rule Should Place the Burden of Identifying Which Communications Meet the Definition of “Political Advertising” or “Electioneering Communication” on Sponsors of Digital Communications, not on Commercial Advertisers

Washington statutes and the Commission’s Proposed Rule require commercial advertisers to maintain “books of account” regarding political advertising and electioneering communications disseminated through the commercial advertiser’s system, and to make the books of account publicly available on the commercial advertiser’s website.⁴ In Washington, “political advertising” is a term of art that as of June 2018 is defined broadly to encompass digital communications or any other “mass communication, used for the purpose of appealing, directly or indirectly, for votes or other support or opposition in any election campaign.”⁵ “Electioneering Communication” is likewise a defined term that as of June 2018 includes, in relevant part, any digital communication that “clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate *without using the candidate’s name*.”⁶ Among the information that the Proposed Rule would require commercial advertisers to disclose about any digital political communication is whether the communication supports or opposes a particular candidate or ballot measure.⁷

Taken together, these new requirements place an enormous burden on commercial advertisers to make a series of legal judgments regarding every digital communication disseminated through the commercial advertiser’s platform to determine if the communication meets Washington’s definition of “political advertising” or “electioneering communication.” First, to know if a sponsor’s communication is an electioneering communication, the commercial advertiser must be able to identify all candidates in the state not only by name, but also by image or in some other manner that identifies the candidate “without using the candidate’s name.” Second, the commercial advertiser must examine every ad to determine whether the communication has the

⁴ RCW § 42.17A.345; Proposed Rule § 390-18-050(3).

⁵ RCW 42.17A.005(39).

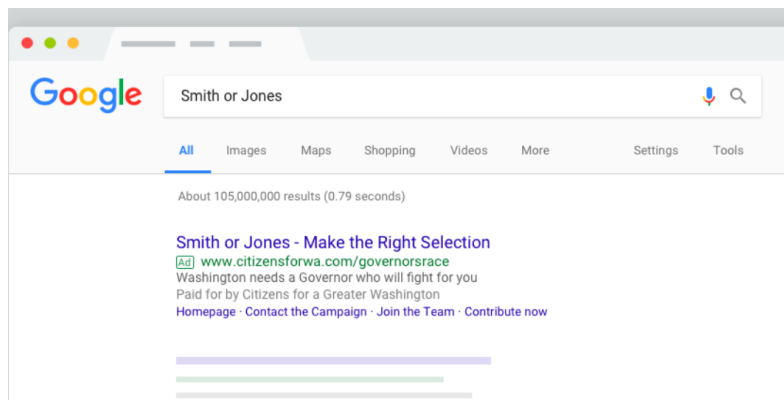
⁶ *Id.* 42.17A.005(22) (emphasis added).

⁷ Proposed Rule § 390-18-050(6)(a).



purpose “of appealing, directly *or indirectly*, for votes or other support or opposition” in any election in the state. If the commercial advertiser determines that a communication is political advertising or an electioneering communication, it must then exercise its own judgment to determine which side of the debate the sponsor’s communication sits, so the commercial advertiser can meet its obligation to disclose whether the communication supports or opposes a particular candidate or ballot measure.

The Proposed Rule not only places the burden of these legal judgments on the commercial advertiser, rather than on the sponsor of the communication, but it does so under a mistaken assumption that commercial advertisers always possess perfect, real-time information about every advertisement placed through their products. This is often not the case for online advertising outlets. Self-service ads - which are among the most cost-effective for campaigns - are placed by state and local candidates who may never interact with anyone at the online advertising platform. Even in cases where the online advertising platform does interact with the sponsor of the ad, it is not always clear based on the sponsor’s identity or the face of the communication itself whether the ad clearly identifies any given candidate or supports or opposes a candidate or ballot measure.





In short, proper compliance with the Proposed Rule requires commercial advertisers to make a series of legal and political judgments to determine which communications fall within the scope of the Proposed Rule's regulation. Instead of placing the onus on commercial advertisers to assess other people's communications, the Commission should promulgate a final rule that requires the *sponsors* of political advertising and electioneering communications to self-identify the nature of their communications when purchasing online ads. In other words, the sponsor of each communication - rather than the commercial advertiser - should be required to (1) make the legal judgment of whether its own communication is political advertising or an electioneering communication (and, if so, whether the communication supports or opposes a given candidate or ballot measure); and (2) notify the commercial advertiser of all information necessary for the commercial advertiser to fulfill its own transparency obligations under the Proposed Rule.

Given the self-service nature of many digital political advertisements, the final rule should also contain a safe harbor that allows commercial advertisers to rely in good faith on the representations - or absence thereof - that sponsors of communications make to the commercial advertiser. These requirements and safeguards are both practical and reasonable: they put commercial advertisers on notice that they must comply with the legal requirements related to books of accounts, while shifting the burden of legal adjudication of every single communication to the sponsors responsible for the communications, thereby reducing the risk of accidental noncompliance on the part of commercial advertisers. Just as Washington places the burden of compliance on political advertising disclaimer rules on the sponsor of the advertisement, and not on the media outlet that carries the advertisement,⁸ so too should the Commission require sponsors to play a role in ensuring compliance with the new enhanced transparency requirements under the Proposed Rule.

⁸ RCW § 42.17A.340.



Certain Aspects of the Proposed Rule’s “Book of Account” Disclosure Obligations Are Impracticable and Risk Driving Commercial Advertisers Out of the Market for Political Communications in Washington

Google supports increasing the amount of information about political communications available for the public to search and access, as demonstrated by the recent launch of our political advertising transparency report and political ad library for federal elections. Based on our recent experience building this report and library, however, some aspects of the Proposed Rule’s “information and books of account that must be maintained for public inspection” will be impracticable for commercial advertisers to achieve, and will require disclosure of confidential and proprietary information of both commercial advertisers and sponsors of political communications. In some cases, it is unclear how the extra information the Proposed Rule would require furthers the statute’s goal of meaningful transparency for political ads.

Timing of Disclosures: The Proposed Rule’s requirement that commercial advertisers make the information regarding a specific ad available for public inspection “as of the time when the advertisement or communication has initially received public distribution”⁹ is unrealistic, especially given the broad scope of information that the Proposed Rule requires commercial advertisers to assemble and disclose. Self-service ads are not like broadcast ads where the sponsor of the ad buys specific air time. The timing and placement of many digital ads varies based on user queries, advertising auctions, and other factors. This information necessarily takes time to collect.

Thus, to provide completely and accurately the disclosures the Proposed Rule requires, commercial advertisers must be allowed an interval of time to gather and verify their records regarding ads placed through the commercial advertiser’s platform. After the commercial advertiser first makes information regarding the ad available for public inspection, it should only be required to update the information regarding the ad periodically, on no more frequently than

⁹ Proposed Rule § 390-18-050(5).



on a weekly basis. Weekly updates will vindicate the public's interest in disclosure, while accommodating the practical challenges that commercial advertisers face in complying with large-scale disclosure requirements.

Amount of Cost of Ad Paid: The Proposed Rule requires commercial advertisers to disclose not only the specific total cost of an advertisement, but also how much of the total cost has been paid.¹⁰ By revealing this information, commercial advertisers will be forced to disclose information about their business practices; i.e., specifically how their campaign is run and how their funds are spent. Google Ads gives candidates several ways to place ads, depending on what matters most to them and their campaign, that they can update as often as they wish. Many advertisers run multiple campaigns, with different goals and budgets, simultaneously. Google's machine learning algorithms can analyze up to 70 million signals within 100 milliseconds, quickly interpreting all possible data combinations, and then rapidly evaluate vast sets of data signals to proactively set the optimal bid and ad placement, often in real time, for each advertiser. Further, the advertiser is only charged once the ad has been viewed or clicked upon. Thus this rule will impose a burden on commercial advertisers to constantly update the record as the sponsor continually pays for new clicks and views of an ad. Reporting the total cost of the ad within a range (for example, rounded to the nearest \$10,000 or \$50,000) is sufficient to satisfy the intent of the statute and provide transparency and accountability in political ads, while also enabling commercial advertisers to comply with this disclosure obligation.

Who Paid for the Ad: It is not clear what precise information the Proposed Rule seeks when it requires commercial advertisers to disclose "who paid for the ad."¹¹ Sponsors of an advertisement commonly purchase ad space through an intermediary or third party, such as an advertising agency, who actually makes payment to the commercial advertiser. The Commission's final rule should clarify that commercial advertisers are required to disclose the

¹⁰ *Id.* § 390-18-050(6)(c).

¹¹ *Id.*



identity of the underlying sponsor of the ad, and not the third party that physically makes payment to the commercial advertiser.

Audience Targeted: The Proposed Rule requires commercial advertisers to disclose “[a]n approximate description of the geographic locations and audiences targeted.”¹² Notably, this requirement extends only to digital ads, not to broadcast or print ads. Depending on the breadth of this requirement, such disclosures will force commercial advertisers to reveal confidential, strategic information about campaigns’ operations. As a result, there is a risk that sponsors of political communications will effectively be driven out of the online advertising marketplace rather than face public disclosure of their confidential, campaign strategies. An appropriate balance of sponsors’ and the public’s interests is to require commercial advertisers to disclose the gender, age range, and geographic location of the audience the advertiser seeks to reach. This provides sufficient information for citizens and users to understand why an advertisement is reaching them without giving away a candidate’s “playbook.” Additionally, this disclosure matches the reach information that can be inferred by candidate advertisement buys on cable and broadcast television.

Impressions Generated: The Proposed Rule also requires commercial advertisers to disclose the “total number of impressions generated by the advertisement of communication.”¹³ Based on our experience in launching our own advertising transparency report and political ad library, it is impracticable to provide a real-time accounting of the precise number of impressions generated by a communication. Requiring commercial advertisers to disclose an approximation of impressions (for example, rounded to the nearest 50,000) updated on a weekly basis would provide valuable insight into the reach of the ads, without overly-burdening the online political advertising marketplace.

¹² *Id.* § 390-18-050(g).

¹³ *Id.*



Conclusion

The Internet is a marketplace of ideas accessible to all political advertisers. As the need for transparency and accountability in political advertising increases, the essential democratic nature of online advertising must be preserved. Accordingly, Google appreciates the opportunity to share our viewpoint on these issues. We look forward to the Commission's proposed final solutions for new rules that will promote transparency while preserving the Internet as a dynamic marketplace for political discourse.