



September 21, 2018

Chair Ann Levinson  
Public Disclosure Commission  
711 Capitol Way South #206  
PO Box 40908  
Olympia WA 98504-0908

Dear Chair Levinson and Members of the Commission:

Internet Association (IA) appreciates the opportunity to provide comments on the proposed rule WAC 390-18-050 on political advertising.

IA represents more than 40 of the world's leading internet companies and advances public policy solutions that foster innovation, promote economic growth, and empower people through the free and open internet.

IA and its member companies strongly believe in supporting transparency in elections and election advertising. Our goal in providing our recommended edits is to ensure the public knows who is paying for political advertising and to provide appropriate guidance for companies, as commercial advertisers, that are working to comply with the law.

Placing ads on digital platforms is structured differently than with traditional commercial advertisers. Digital platforms have a variety of ways in which advertisements can be placed, and the cost to place ads is significantly lower than with traditional media. This allows election campaigns of all sizes to be able to reach audiences to which they would otherwise not have access.

IA's recommendations outlined below consider the unique intricacies involved with online advertising while adhering to the goals of transparency set out in the proposed regulation. We hope the Public Disclosure Commission will give serious consideration to these considered changes. IA is available to work with the Commission and the staff on developing a rule which will allow for both transparency and workable compliance options for companies.

First, IA recommends all persons placing political advertisements or electioneering communications declare the ads to be political advertisements. This provision is consistent with state law in California and New York, two states with large populations and a history of rigorous campaign laws. IA and its member companies agree that such a disclosure will go a long way toward helping consumers and the Commission identify political and electioneering advertising. Requiring a public declaration should decrease nefarious activity and will increase IA member companies' ability to comply with your law.

In addition, we recommend additional guidelines that will improve record keeping, such as maintaining the campaign treasurer or point of contact for each campaign rather than the person who placed the advertisement. Knowing which staffer or consultant placed the purchase order for the advertisements is not as relevant as who has authority to purchase them.

IA also recommends changes relating to the data required in reports from websites, applications, and other digital platforms. The changes to Section 5 address the realities of how ads are paid for on digital platforms. An advertiser frequently will request a certain number of impressions (or number of times an ad will be shown), but will not pay for those ads until all conditions have been met, such as when the audience the campaign wishes to reach actually visits the website or application. By allowing for some



leeway in the timeframe for reporting purchasing data, it will better reflect the overall purchase. In Section 7 (g), similar to Section 5, the platform may not be able to provide an exact number but will certainly be able to provide an approximation. The number of impressions shown can change significantly over a week or month timeframe, depending on the conditions of the advertisement purchase.

Section 1 recommends digital platforms only be responsible for retaining information for direct sales of political advertisements or electioneering communications. Some digital platforms rely on intermediary brokers for ad revenue. The intermediary brokers are paid by advertisers to find space on platforms that meet audience criteria specified by the purchaser, such as the geolocation, general age, gender, political preferences, or professions. The intermediary will place an ad when those criteria and price are met, and the ad will be placed on that platform. The platform will not be a direct party to that transaction. The digital platform will be paid for the ad and not by the campaign - rather by the intermediary broker.

The PDC should be aware that today the technology does not exist for the platform to be able to specifically identify if that advertisement is a political advertisement for electioneering communications. It is technologically impossible for digital platforms to be able to secure the information required under the law and this rule for ads purchased through intermediary brokers. IA is requesting the PDC take this technological hurdle into consideration as you develop this rule.

Should the PDC act to ignore this technological reality it could have the consequence of digital platforms prohibiting state and local campaigns from purchasing any political advertisements or electioneering communications on their platforms. This would have a stifling effect on free speech and limit small budget and grassroots campaigns from reaching their desired target audiences.

As a result of these technological realities, we also recommend adding Sections 9, 10, and 11 to help ensure digital platforms can come into compliance. When a platform works with the purchasing advertiser and intermediaries, it must be able to rely on the representations made that the advertisement is political, since the systems will not automatically recognize that fact. Further, in order to give accurate reports on the details of the advertising purchase, which may result in impressions on various differing websites and applications, the campaign must provide the information needed for the digital platform to comply. Finally, if platforms choose not to run political advertisements, they will be clear about this in policy, and should not be caught up in the nefarious actions of lawbreakers who would flout legal requirements and the policies of the platform.

IA appreciates how difficult it is for the PDC, with its limited funding, to be able to monitor and enforce all the laws and regulations under your jurisdiction. IA and its member companies want to work with the Commission and the staff to find solutions for transparency and ease of access to this important information.

IA appreciates your consideration of our recommendations and looks forward to working with you.

Sincerely,

A handwritten signature in black ink that reads "Rose Feliciano".

Rose Feliciano  
Director, State Government Affairs  
Northwest Region

Internet Association recommended edits.

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.

**Commented [RF1]:** Sometimes advertising is placed on some digital platforms not through a direct purchase of an ad but through an intermediary. It is not practical for a company which is not directly selling the ad space to be responsible for collecting the information on those advertisements.

Commercial advertisers should only be responsible for advertising they directly sell. All digital election advertising will be captured with this recommendation, but this will clarify who is responsible for maintaining the records.

(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 campaign treasurer or point of contact, the exact nature and extent of the services rendered and the total cost and the manner of payment for the services.

**Commented [RF2]:** As mentioned above advertising is not always purchased and sold directly but at times through an intermediary.

(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~~the advertiser's web site in machine-readable format.~~

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

(5) Information regarding political advertising or electioneering communications must be made available as promptly as is reasonably possible, and in no event later than 7 days after the later of the date on

**Commented [RF3]:** IA is requesting some reasonable leeway in being able to respond.

~~which of the time when~~ 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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**Commented [RF4]:** IA is proposing Section 9 below requiring person purchasing ads to declare if they are political advertisements. Which is consistent with other states' requirements.

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

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~~(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;~~

**Commented [RF5]:** IA believes this declaration should be made by the person purchasing the advertisement or communication, as suggested to be required in Section 9.

~~(b)~~ The name and address of the ((person)) person(s) who sponsored the advertising or electioneering communication;

If you do not include Section 9, then IA believes this requirement is unnecessary. It is unreasonable for the commercial advertiser to decipher the position of ads or communication purchased, especially given the volume of ads purchased during an election cycle.

~~(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, the campaign treasurer or point of contact and what method of payment was used;~~ and

**Commented [RF6]:** IA has concerns about having to provide who made the payment (what campaign staffer or consultant) and the method of payment (credit card, check). We believe this could open digital commercial advertisers to privacy liability.

~~(d)~~ Date(s) the commercial advertiser rendered service.

In addition, it is not practical to collect how much each payment was, when it was paid and who made the payment. For businesses who are required to put information into the archive immediately upon the ad running to likewise update payment information instantly when clients may be extended 30 or 60 days terms, for example.

(7) In addition to subsection (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 (g) of this subsection, that were required to provide the advertising or communications services.

IA would recommend eliminating this entirely. Rather than these requirements the PDC could 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."

(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.

Our goal here is to ensure digital commercial advertisers can comply and provide the information to the public.

(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 or reached, and total approximate number of impressions generated by the advertisement of communication.

**Commented [RF7]:** IA believe information about who has seen the ad is equally (if not more) transparent than information about who was targeted. This is because targeting capabilities vary by platform and can include relatively non-transparent options like targeting by an uploaded contact list.

(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.

**Commented [RF8]:** IA is recommending "approximate" since impression counts are constantly evolving (and would be difficult to update accurately in real time), we would prefer a margin for approximate numbers to be included.

**IA recommends the following two sections be added to the rule:**

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[(9) Any person 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

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(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 shall require the requester 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]

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(11) If a commercial advertiser has a publicly stated policy regarding 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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