



August 24, 2021

Fred Jarrett, Chair
Washington Public Disclosure Commission
711 Capitol Way South #206
Olympia, WA 98504

RE: Internet Association Recommendations on WAC 390-18-050 (Digital Advertising)

Dear Chair Jarrett and Members of the Commission:

Internet Association (IA) appreciates the opportunity to provide comments on the Washington rules regarding digital advertising for campaigns and electioneering, WAC 390-18-050.

IA valued the opportunity to provide comments on the development of these rules in 2018 and to participate on the panel on digital advertising. As noted in those earlier comments and on the panel, digital advertising is very different from traditional advertising on radio, television and billboards. We provide these comments in the spirit of ensuring transparency and meeting the requirements of the law while recognizing some of the challenges digital advertising faces in compliance.

Should campaigns be required to notify commercial advertisers that an order is political advertising, and what should campaigns be required to report to the PDC about the ads they purchase?

IA recommends political campaigns notify commercial advertisers when they are purchasing advertising they are a Washington state based campaign. As IA noted three years ago, it can be a challenge for social media platforms to track all the political advertisements on their sites, in part because of volume but also, not all campaigns follow the rules and verification procedures established by the platforms.

By not requiring campaigns to self-declare, the PDC is assuming digital platforms will be able to correctly identify what is a political ad 100% of the time. The PDC must recognize digital advertising is self-service, no person interacts with the entity purchasing an ad. The PDC is asking private companies to discern between political free speech and a political campaign ad. It is simply unrealistic to assume these companies have the ability to correctly identify political campaign ads all the time and collect the required information accordingly.

IA members have established procedures for political campaigns to follow to ensure there is transparency in advertising. However, not all political campaigns have followed these rules, which then puts the platforms in a difficult position when it comes to providing all the required information to the PDC or the public. This puts the platform on the hook for collecting information on an advertisement it did not know was a political campaign ad. Again, no one cannot be expected to be 100% correct, 100% of the time.

Three years ago IA offered the following language which we believe would directly address this issue and would recommend the PDC consider adopting this language:



(X) 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

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

(Y) 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

(Z) 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.

By incorporating this language in the WAC 390-18-050 it would not only assist commercial advertisers with ensuring that campaigns declare themselves, but it also assists the PDC in ensuring that information is appropriately collected. IA recognizes not all campaigns will comply with such a requirement but this only provides the PDC an additional tool to pursue bad actors.

Should commercial advertisers be allowed more time to respond to disclosure requests in instances where the sponsor has not told indicated that the order was political advertising?

IA believes the 24-hours allowed under Section (4) is simply not enough time to collect the information, regardless of whether the sponsor has identified the advertising as political. While 24-hour may seem like a reasonable time, it actually is quite difficult to comply with such a quick turnaround. IA is not familiar with any other 24-hour response requirement in any other state law or regulation. For public disclosure requests government agencies are allowed five-days to respond to the requester, not provide all the records but inform them of how much time it will take to respond. Twenty-hours is a difficult time frame to meet.

IA would suggest the following amendment:

(4) Information regarding political advertising or electioneering communications must be made available as promptly as is reasonably possible, an in no event later than 7-days after the later of the date on which within twenty four hours of the time when the advertisement or communication initially has been publicly distributed or broadcast, and within twenty-four hours of any update or change to such information as promptly as reasonably possibly, an in no event



later than 7-days. Such records must be maintained for a period of no less than five years after the date of the applicable election.

What particular details about digital political advertising are important for the public to know? The rule currently requires digital platforms to provide a copy of the ad, the name and address of the person actually paying for the advertising, the total cost of the ad, date and method of payment, demographic targeting, and number of impressions, among other details.

IA believes that Sections (5) and (6) can be amended to realistically capture the information most relevant to the PDC and the public for tracking political campaign advertising dollars without providing undue burden on commercial advertisers and should be consistent across mediums.

First, IA recommends removing the provision which requires a commercial advertiser to track whether an advertisement is in support or opposition to a candidate or ballot measure. As you are very aware, political advertising involves a great deal of nuance, which these commercial advertisers are not necessarily experts. However, if the PDC does require campaigns to declare they are campaigns when they are placing ads, this could also be a provision required of the campaigns placing the ads to declare to the commercial advertiser.

IA also believes the campaigns should be providing the person who is authorized to place the advertisement(s). The current rule is simply asking for who conducted the transaction. This could be an intern, a consultant or another person who is not necessarily responsible for making decisions on whether to place an ad or not. IA believes the spirit of the law is to know who is responsible for these actions, not necessarily who administratively processes the transaction.

In addition, it is not clear what the need for “method of payment” is for transparency. It is unlikely any of these transactions are occurring on a cash basis and with the ease of online payments it does not make sense to collect this information.

Digital advertising is a fluid process. A campaign will request a certain profile be targeted and they will request a certain number of impressions. The commercial advertiser or the third party broker will set a price for those parameters. However, those parameters may not be fully met. So a campaign may request a specific demographic with X number of hits. However, the number of hits may not occur because the profile may not be realized to the number desired. The commercial advertiser or broker will only charge for the number of impressions actually made. Those numbers may not be trued up until after the campaign is concluded.

For transparency purposes it makes more sense to respond to the audiences *targeted OR reached*, rather than *targeted AND reached*. That also holds true for providing an approximate number or a range of impressions rather than a total number of impressions because those may not be known until after the campaign is concluded. Many platforms currently have tools which could provide this information. However, it would not necessarily be possible to provide *targeted AND reached, it would be one or the other*. Again, we believe this information could be provided and we hope to work with the Commission to determine a solution that provides for transparency and is easy for companies to comply.

Finally, IA has concerns regarding the collection of demographic information. No other medium is required to collect demographic information. This type of information goes to the heart of political campaign strategy. In addition, this also raises concerns about privacy. Why does the PDC need to know



demographic information from digital advertisements and no other medium? IA believes the approximate number of impressions or total number after the campaign is concluded is sufficient for transparency purposes.

To address the concerns IA raised, we would recommend the following language:

Section (5) The information and books of account that must be maintained open for public inspection pursuant to RCW **42.17A.345** 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 campaign treasurer or point of contact ~~sponsoring person or persons actually~~ paying for the advertising or electioneering communication, including the federal employee identification number, or other verifiable identification, if any, of an entity, so that the public can know who paid for the advertising or communication, without having to locate and identify any affiliated entities;
- (c) The total cost of the advertising or electioneering communication, or initial cost estimate if the total cost is not available upon initial distribution or broadcast, how much of that amount has been paid, as updated, ~~who made the payment, when it was paid; and what method of payment was used;~~ and
- (d) Date(s) the commercial advertiser rendered service.

Section (6) (g) For digital communication platforms: ~~(g) For digital communication platforms: A description of the demographic information (e.g., age, gender, race, location, etc.) of An~~ approximate number of the audiences targeted OR and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business, and the ~~total approximate~~ approximate number of impressions generated by the advertisement of communication.

Finally, IA would like to provide some additional comments related to these rules. Currently, digital platforms have chosen to not allow political campaigns to advertise in Washington State because of the complexity of their ability to comply with the rules.

As we have seen, even with that prohibition political campaigns have not complied with the private companies rules and have continued to advertise on their platforms. This has resulted in these companies not collecting the required information because these bad actors have ignored the policies of the companies. Unfortunately, this puts the commercial advertiser with all the liability and no liability on the campaign acting in bad faith.

Also, without having access to digital political campaign advertisements the ones truly negatively impacted are candidates and campaigns which most benefit from low-cost advertising. Candidates from communities of color, candidates challenging incumbents and down-ballot races and campaigns are left with no other options to be able to reach voters. While it is not the mission of the PDC to ensure access to political campaign advertisements, the rules adopted by the PDC does impact who will have the ability to run a campaign for office or support/oppose a ballot measure.



IA appreciates the PDC is reviewing WAC 390-18-050 to ensure appropriate information is collected and whether additional tools for digital commercial advertisers are needed. IA members support transparency in political advertising and look to partnering with the PDC to ensure digital commercial advertisers have clear guidelines in order to comply with the law.

Should you have questions please contact me at rose@internetassociation.org or 206-326-0712.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rose Feliciano', with a long horizontal line extending to the right.

Rose Feliciano
Director, State Government Affairs Northwest Region