

Chair Fred Jarrett  
Public Disclosure Commission  
711 Capitol Way, Room 206  
PO Box 40908  
Olympia, WA 98504-0908

November 15, 2021

Re: Proposed Amendments to Regulations Regarding Digital Political Advertising Disclosure

Dear Chair Jarrett and Commissioners:

First, I want to thank you and Commission staff for your careful and considerate work to ensure that Washington elections are as transparent and open as possible. Though I have been critical of the process to amend our state's digital political advertising disclosure rules, I write today broadly in support of these proposed amendments. While I am supportive of the proposed amendments, I also have two general and two specific concerns about them.

I am generally concerned that the timing of these changes may create a less certain and more confusing disclosure environment, both for advertisers and records seekers. The intent of the amendments here is, I believe, to make the disclosure environment clearer for all parties and to encourage participation and compliance by digital commercial advertisers. However, amending the rules while the constitutionality of the current rules and the commercial advertiser disclosure structure is, for the first time, being debated in the state's ongoing Facebook litigation may leave advertisers and requesters in limbo about the constitutional and legal limits applicable to the rules. The only way to eliminate the chance of confusion between the amended rules and the outcome of the Facebook case is to wait to amend the rules until after that case has concluded, and I again urge the Commission to pause adoption of these amendments until it has. I am also concerned that "purchaser," as used in the 390-18-050(5), remains undefined and that this may create confusion for commercial advertisers, purchasers, and records requesters.

I am also specifically concerned that the proposed amendments may allow commercial advertisers to extend disclosure timelines even where they are aware that an order included political advertising or electioneering communications, or to extend disclosure timelines during the voting period. I am also concerned that certain phrasing in amended Section (7)(g) does not provide complete clarity to advertisers and requesters about what information must be disclosed. I have included suggested changes to the proposed amendments, in red and underlined below, addressing those two concerns.

Thank you,

A handwritten signature in black ink, appearing to read "T. Trask". The signature is fluid and cursive, with a large loop at the end.

Tallman Trask

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

(1) "Commercial advertiser" as that term is used in the act and these rules (~~means any person, as defined in the act, including individuals and entities, that sells the service of communicating messages or producing material for broadcast or distribution to the general public or segments of the general public whether through brochures, fliers, newspapers, magazines, television, radio, billboard, direct mail advertising, printing, paid internet or digital communications, or 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~~) is defined under RCW 42.17A.005.

(2) Any person that hosts political advertising or electioneering communications on a digital communication platform or other media is not required to maintain records on such advertising or communications if ~~((it has))~~ the services have been purchased directly through another commercial advertiser, however the commercial advertiser that directly sells the ((advertising or communications to the original purchaser)) services must maintain the information as required in this section. In order to ensure that such commercial advertiser directly makes its books of account available for public inspection, when selling digital media services to be hosted on another platform or other media, the advertiser must include a separate text box or link that automatically appears with the advertisement or communication in a manner that is compatible with the device and technology used to display the advertising, and that reasonably directs the reader to at least one method under subsection (4) of this section for making the required information available. Such methods may include, but are not limited to, an address or location for receiving in-person inquiries, a link to a portal for processing requests, or a link to a website where the required information is maintained.

(3) Pursuant to RCW 42.17A.345, each commercial advertiser who has accepted or provided political advertising, or electioneering communications, ~~((as defined in RCW 42.17A.005,))~~ must maintain current books of account and related materials as required by this section. Information contained in books of account must be updated within 24 hours of the time when an advertisement or communication initially has been publicly distributed or broadcast, and within 24 hours of any update or change to such information. Such records must be maintained for a period of no less than five years after the date of the applicable election.

(4) Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person, and provided:

(a) In person during normal business hours; or

(b) Electronically, in machine readable format and structured in a way that enables the data to be fully discoverable and useable by the end user:

(i) By digital transmission, such as email, promptly upon request, but no later than two business days; or

(ii) By online publication in one of the following formats:

(A) On the advertiser's primary website; or

(B) On a website controlled by the advertiser, created for purposes of publishing the information required by this section, if a link is prominently displayed on the advertiser's primary website directing users to the website on which the information is provided.

~~((4) Information regarding political advertising or electioneering communications must be made available 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. Such records must be maintained for a period of no less than five years after the date of the applicable election.))~~

(5) A commercial advertiser may have, to the extent necessary, up to an additional three business days to update its books of account or respond to a request to inspect its records, regarding any particular political advertising or electioneering communication, or to provide the required identifying link or attachment for digital media as required under subsection (2) of this section, if:

(a) The order was not placed on the date of a general, primary, or special election, or during the eighteen days preceding the date of a general, primary, or special election;

~~((a))~~ (b) At the time the order was placed, the commercial advertiser had asked the purchaser in writing whether the order included any political advertising or electioneering communication, and the purchaser did not provide such information;

(c) The commercial advertiser was not aware, at any time prior to when a request to inspect records was received, that the order had included any political advertising or an electioneering communication; and

(d) The commercial advertiser had not, within the past five years, sold any political advertising or an electioneering communication to the same purchase, unless:

(i) The commercial advertiser had asked the purchaser in writing if that order included any political advertising or an electioneering communication and the purchaser did not provide such information; and

(ii) The commercial advertiser did not later become aware that it had sold political advertising or an electioneering communication to that purchaser.

(6) 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;))~~ A copy of the advertisement or communication in a print or digital graphic record for any media with a visual component, or in an audio or transcribed record for any radio or other media that does not include a visual component;

(b) The name and address of the 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.

~~((6))~~ (7) In addition to subsection ~~((5))~~ (6) of this section and pursuant to RCW 42.17A.345, the materials and books of account open for public inspection must include the political advertisement or electioneering 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.

(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: A description of the demographic information, the statistical characteristics of a population ((e.g.) including but not limited to age, sex, gender, sexual orientation, race, color, ethnicity, religion, creed, language, national origin, citizenship or immigration status, location, marital status, education, occupation, income, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability((ete-))), of the audiences targeted and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business, and the total number of impressions generated by the advertisement ((of) or communication.

((7)) (8) At the request of the PDC, each commercial advertiser required to comply with this section must provide to the PDC copies of the information described above.