



Washington State Association of Broadcasters
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Public Disclosure Commission
State of Washington
P.O. Box 40908
Olympia, WA 98504

Via Email: pdc@pdc.wa.gov

RE: 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") 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 in compliance with the political file public inspection requirements of the Federal Communications Commission.”*

Central Repository at the Public Disclosure Commission: WAC 390-18-050(4).

WSAB applauds the provisions in WAC 390-18-050(4) that looks ahead to the PDC providing an open access platform on its website. 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. WSAB would be interested in working with the PDC to secure funding from the Legislature to further that project.

Keeping a Copy of Political Advertising: WAC 390-18-050(6)(a) & (7). 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. While it might seem a simple matter to archive every broadcast political advertisement, it is beyond the capability of many stations. It is not just the matter of adequate storage capacity to retain these records for five years. Broadcast stations today have limited staff and resources available to archive, catalogue and create a system for satisfying 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. This rule will require stations, whether large or small to incur substantial personnel costs. As the only variable cost broadcasters have today is labor, implementation of this policy will most assuredly result in loss of jobs in the industry in our state.

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. The sponsor of the political advertising should be responsible for archiving and maintaining the advertising for public inspection during the five-year period following the relevant election.

Refusal of a Sponsor of Political Advertising to Provide the Required Information: WAC 390-18-050(5)(a). It is not uncommon for the sponsor of an electioneering communication to refuse to provide the required information; or, to not provide the information within the time limit established by WAC 390-18-050(5)(a). The PDC must provide a “safe harbor” for a commercial advertiser that cannot obtain the required information due to the refusal of the sponsor to provide it. The commercial advertiser should not be punished following a good faith effort to obtain the information

Federal Employer Identification Number: WAC 390-18-050(6)(b). This subsection requires that the information to be made available include the federal employer identification number (EIN) of the sponsor of the political advertising. This could be a significant problem for some sponsors of electioneering communications. It is not uncommon for individuals to sponsor an electioneering communication in their personal capacity, but who otherwise do not have a need to obtain a federal EIN. For example, broadcast stations have been approached by individuals wishing to purchase advertising to support a personal friend who is running for office (or to oppose a candidate who is their friend's opponent). This requirement could be one instance of a station's inability to comply with WAC 390-18-050(5)(a) wherein the sponsor cannot supply the required information because it does not exist. WSAB does not suggest that the Commission require the sponsor's Social Security Number as an alternative because the broadcasters would be very reluctant to include that in records that must be made available to the public.

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.

Respectfully submitted,

WASHINGTON STATE ASSOCIATION OF BROADCASTERS

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