



**The Washington State Public Disclosure Commission (“PDC”): How to Improve Digital
Political Advertising Disclosure in the State**

comments from the
Network Advertising Initiative (NAI)

filed with the
WA Public Disclosure Commission

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Introduction

The Network Advertising Initiative (NAI) appreciates the opportunity to provide comments on the Washington state Public Disclosure Commission (“Commission” or “PDC”) deliberations on How to Improve digital political advertising. The NAI strongly supports industry practices and public policies to ensure that digital political advertising meets the highest standards of transparency. This is essential to enable an effective electoral process where citizens can make informed political choices, and ultimately to enable a thriving U.S. democracy.

The NAI is the leading self-regulatory organization dedicated to responsible data collection and use by advertising technology companies engaged in Tailored Advertising and Ad Delivery and Reporting in the United States. The NAI, a non-profit self-regulatory organization and trade association, was formed in 2000 and has over 100 member companies, each of which is required to adhere to the strong digital advertising best practices set forth in the NAI Code of Conduct (Code), which the NAI enforces through annual compliance reviews, and which implements stringent consumer privacy protections.

Free and fair elections require transparency throughout the political process. As voters continue moving away from traditional television, radio, and print media to their online equivalents, political campaigns are rapidly moving in the same direction. While the NAI Code is focused on enhancing consumer privacy, the elements of transparency and empowering informed decisions by consumers aligns well with consensus objectives around digital advertising. The NAI Code requires disclosure of political segments. All Members that use interest segments based on political information or interests for Tailored Advertising are therefore required to disclose these on their websites. We recognize that political advertising may factor into a consumer’s decision to opt out of Tailored Advertising, and so we require a high level of transparency from Member companies.

The NAI is also a founding organization and Board Member of the Digital Advertising Alliance (DAA), an organization created in 2010 to establish and enforce responsible privacy practices throughout the entire digital advertising industry, and to create a uniform icon to provide transparency and choice for consumers across all Personalized Ads. In 2018 the DAA launched the PoliticalAds program and a unique icon as a tool across the internet to provide transparency around political advertising, directly on the ads themselves. This program provides clear, meaningful and prominent information to the public about the political ads they see across the internet, revealing key information about the political advertisers who providing the ads.

The NAI and our partners that comprise the DAA remain committed to promoting political advertising transparency through a voluntary, uniform solution and recognizable icon that can gain substantial traction across all jurisdictions across the U.S., and beyond. To that end, we are encouraged that the PoliticalAds program has been recognized in Elections Canada and the Province of Ontario, Canada. This reflects both national and provincial level support for the PoliticalAds program to serve as a legally appropriate way to provide disclosure inside digital

ads. We urge you to recognize the PoliticalAds program as a complimentary regime to enable this uniform, industry-led effort to benefit citizens across Washington.

The digital advertising ecosystem is comprised of a broad and diverse set of companies. As representatives of the third-party advertising technology industry, the NAI represents primarily companies that are small and medium-sized ad-tech businesses, in contrast to the large technology platforms who are also leaders in the digital advertising industry. Regardless of their size, there are a wide range of entities engaged throughout the process of delivering digital ads on websites and platforms across the internet. We urge you to consider these market dynamics as you contemplate changes to the transparency requirements in Washington.

As we discuss throughout these comments, the current legal and regulatory landscape in Washington poses significant challenges, and these provide an impediment to digital advertising companies, both large and small, participating in this market. In general, the transparency requirements placed on ad-tech companies are impractical given their role in the ecosystem, particularly those that are smaller companies and lack the substantial resources of the large platforms.

The unfortunate results of the current regulatory landscape are twofold: First, responsible digital advertising companies forgoing the opportunity to engage in this marketplace; and Second, campaigns seeking to engage in digital advertising may be forced to partner with companies who maintain lower standards for transparency legal compliance. For our members to broadly engage in the Washington market for digital political advertising, significant regulatory changes are necessary.

Please find below answers to the specific questions you have raised in your request for information (RFI), as well as a set of general recommendations to help achieve our mutual goal of enhanced transparency for digital political advertising in Washington. We look forward to working with you and welcome the opportunity to provide additional input as you further consider these issues.

1. 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?

The regulations primary focus for recordkeeping and disclosure requirements should be on the campaigns and political speakers themselves. As highlighted above, the digital advertising industry is eager to assist in the transparency process, but at the same time, we are not well positioned to comply with the current regulations. It is therefore essential that political campaigns, or sponsors, be legally required to expressly notify advertisers of any order that is for political advertising. Given the shared responsibilities that Commercial Advertisers have for providing transparency regarding these ads, this requirement is absolutely essential for compliance, and it stresses the recordkeeping aspect of the process.

In the absence of a clear designation by a campaign of the political nature of an ad, there are two primary problems for commercial advertisers to meet the current requirements. First, in many cases they may not routinely be in the business of reviewing the ad content. This is the case for self-serve campaigns run by many intermediaries. Even if these commercial advertising companies are in a position to review all of the ads where they facilitate placement, they are also not reasonably positioned to be the arbiters of categorizing types of speech—this is an extreme burden that these companies are not practically equipped to comply with.

Further, given that commercial advertisers have requirements to make available additional data elements about the political advertisements, it should be explicitly required that political campaigns disclose all of the related information for the commercial advertiser to be able to comply with the legal and regulatory requirements, whether facilitating it in real time through the PoliticalAds program, or through recordkeeping to comply with requests at a later date. After all, commercial advertisers are ultimately service providers for campaigns. This approach would align the policies for digital political advertising with other media and platforms.

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

As noted above, it is essential to establish requirements for campaigns to disclose to commercial advertisers all political advertisements and key details of these ads. Ultimately, a requirement on commercial advertising companies to disclose any information that they have not been furnished will continue to have a chilling effect on the market for these advertisements across the State because they are likely to be found in non-compliance in certain cases, regardless of their best efforts. Therefore, commercial advertisers should only be required to comply with recordkeeping and disclosure requirements where they have been provided the specified elements of information. This change would provide for enforcement of bad actors to fall on the campaigns that do not meet their requirements, and it would likely open-up substantial opportunities for digital political advertising in Washington, while also providing for the highest level of transparency.

As currently drafted, the Washington Administrative Code requires Commercial Advertisers to turn over information regarding political advertising or electioneering communications within 24 hours of when the ad is made publicly available. It is important to remember that commercial advertisers vary significantly in terms of resources. While some of these companies are large platforms with greater resources, others are small and medium-sized ad-tech businesses, and therefore fielding and complying with disclosure requests can be more difficult. Even with advanced knowledge of the political nature of an advertisement, furnishing this information in all cases within such a short period of time will ultimately be impractical. Therefore, while

we will continue to strive for real-time disclosures where possible, requirements to furnish the information incorporating greater flexibility where necessary would be a more practical approach.

3. 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.

Under the DAA's guidance, we have identified the following key areas where we believe disclosures are important for citizens, and that these can be done in an efficient, and practical manner. Therefore, participating members are required to turn over the following categories of information:

- The name of the political advertiser;
- The advertiser's phone number, address, website, or an alternative and reliable contact information for the advertiser;
- Any information and disclaimers required by applicable federal or state law for such notices;
- A link to a government database of contributions and expenditures for the advertiser;
- The name(s) of the advertiser's CEO, executive committee, board of directors, or treasurer.

Ideally, there could be a national standard to establish a consistent set of details for digital political ads. Of course, that is not currently the case. This is why the DAA PoliticalAds program specifically recognizes the need to also supply differing state requirements. However, certain types of information required to be disclosed under Washington's current requirements pose significant additional challenges. These are as follows:

- **Ballot measures** – Identifying a ballot measure is well within the scope of desired political transparency. However, given the subjective nature of various issue campaigns, this requirement underscores the need for initial disclosure requirements on the part of the campaign or ad sponsors—the nuance of ballot issues and campaigns are even greater than those of ads in support or opposition to specific candidates.
- **Demographic targeting** – Requiring the disclosure of demographic information for who the ad was targeted to is also a laudable objective, but it is also one that is not entirely practical in many cases. As a practical matter, if a campaign seeks to target a certain ethnicity, gender, race, or other demographic categories, then these should be established as target audiences and explicitly disclosed by the

campaign in a transparency report pertaining to the political advertisement, and they can then be retained and made available by commercial advertisers. However, in many cases, this information will not be known by commercial advertisers who are not first-party platforms and rely on pseudonymous identifiers. Ultimately, most ad tailoring—or targeting as it is also known—is based on inferences, or expectations of a demographic category, rather than actually knowing this information. Additionally, campaigns might seek to target on other interests, such as environmental or any other number of potential audience segments, and in these cases there might not be any indications of traditional demographic information. Importantly, if demographic information is required to be shared, where identified by the campaign as an intended audience, it should be clearly defined. To that end, the regulations should clarify what it means for a commercial advertiser to collect demographic information “as part of its regular course of business.”

- **Total number of impressions** – Parameters indicating the scope of a political advertisement is an important element of transparency for political ads. However, determining the exact number of ad impressions can be difficult depending on the circumstances of ad placements due to the nature of programmatic advertising. The current requirement is to report on the total number of ad impressions. This information is often difficult or impossible for advertisers to disclose. Instead, the regulations should call for an approximate number of impressions and could specify that approximation be rounded to the nearest hundred or thousand to account for the possibility that excess ad inventory appears outside of the initial target audience, or if a campaign ultimately generates less impressions to ad suppression or other measures.

Other issues to consider for enhancing transparency of digital political ads in Washington, and improving opportunities for commercial advertisers to aid in this process.

- **Clarification of Key Terms**
Multiple terms are used that could be applied to technology companies that facilitate the placement of digital political ads. Key terms used are “commercial advertiser,” and “digital communication platforms.” These terms are overlapping and should be clarified, particularly whether it is the intention for the former to encompass. It appears the state contends that they are the same. For example, “digital communications” is within the definition of “commercial advertiser.” In many ways, it could be practical to maintain this distinction if it is clarified, because platforms have different capabilities than smaller ad-tech companies who generally have less resources.

- **Establishment of a Central Database**

The regulations contemplate the creation of a central database, a step that could substantially aid transparency. However, in the absence of such a platform open to all commercial advertisers, smaller companies in the space are ultimately challenged more than large platforms by recordkeeping requirements to store extensive amounts of information, particularly over longer periods of time. Ideally this is the type of resource that could be provided across all U.S. states. The NAI welcomes the opportunity to engage further on this topic and would support Washington State's creation of a central repository, either independently or in conjunction with other states.

Again, thank you for the opportunity to provide input into this important process. The NAI looks forward to working collaboratively with the PDC as it further considers amendments to the current regulations.