

A Political Quagmire

The FCC has issued new requirements that pertain to companies' online political files. **SALLY BUCKMAN** explains the complexities.

Dear Expert,

Is it true that broadcasters are now required to review every issue ad they receive and include a list of every candidate and issue mentioned in an ad in their political file? Does the FCC understand how many ads my station receives during a political season? *Grumbling in Greensboro, NC*

Dear Greensboro,

Unfortunately, what you've heard is true. Although the Federal Communications Commission (FCC) has been asked to reconsider certain recent decisions, for now companies are required to comply with new and complex political file requirements. They have heightened importance during the 2020 election cycle because political files are part of a licensee's online public inspection files. That makes it easy for political consultants, public interest groups and the FCC to review them.

Political files maintained by TV and radio stations, cable operators that originate programming and satellite television and radio providers must include the following information: rates charged; dates and times spots air; the type of time (e.g. non-preemptible or preemptible); and the name of the candidate, election or issue referenced.

For issue ads, the name of the entity purchasing the ad is required, along with contact information and a list of executive officers or board members. Generally, licensees include in their files a PB-18 order form published by the National Association of Broadcasters (or another similar form created by a licensee) and an invoice. The FCC requires the information to be put in the file immediately, which is generally interpreted to mean within one day. However, invoices can be uploaded as soon as they are prepared.

Three decisions released by the FCC in late 2019, which resolved complaints against

several television stations, made the process more difficult.

Licensees are now required to identify for each ad all political matters of national importance referenced, including the names of all federal candidates (and offices they are running for), as well as all elections for federal office and all national issues discussed. Also, an ad that references a federal candidate but not a specific election would still trigger disclosure obligations.

In one decision the FCC concluded that a Georgia TV station whose form referenced the number of a Congressional district race – GA CD-6 – should have included the name of the candidate and specific race. In another decision, the commission stated that a Democratic Congressional Committee ad that referenced a congressional candidate and criticized his lobbying for a special interest group that received taxpayer funds at a time when the country faced record debt should have referenced the candidate and identified national debt as an issue even though the substance of the ad did not discuss it.

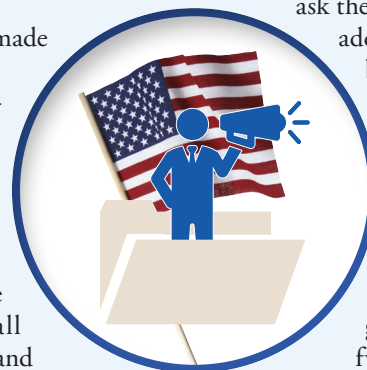
Another station was admonished for identifying the sponsor of an ad with an abbreviation – DSCC-IE – rather than Democratic Senatorial Campaign Committee. The FCC admonished the stations subject to complaints but said that in the future stations that failed to comply would be subject to fines.

The FCC's decisions also make clear that political files must disclose the list of chief executive officers or board members of a sponsoring organization. If a form given to a licensee only lists one official associated with a sponsoring entity, the licensee must ask the advertiser whether there are additional persons who should be disclosed.

Broadcasters and cable operators have asked the FCC to reconsider several aspects of the commission's recent decisions. They urge the FCC to rely on their reasonable, good faith efforts to identify and disclose the elections, races and issues that political ads reference. Given the frenetic pace of ad sales during political seasons, the media companies point out the fundamental unfairness of requiring stations to guess how FCC staff will interpret the requirement to adequately identify and describe various elections, races and issues. They also asked the FCC to

confirm that the clarifications apply only to issue ads not candidate ads.

The 2020 election season will likely be well underway by the time the FCC issues additional guidance regarding these concerns. In the meantime, companies must do their best to comply with the new requirements by carefully reviewing the information included in their political files.



Broadcasters and cable operators have asked the FCC to reconsider several aspects of the commission's recent decisions.



Sally Buckman is a member of the law firm Lerman Senter PLLC, which represents media companies. She can be reached at (202) 429-8970 or sbuckman@lermansenter.com.

Do you have a professional puzzle that MFM and BCCA experts might be able to answer? We'll mine the contact base and find the right person to answer your question. Just contact TFM editor Janet Stilson at TFMeditor@mediafinance.org.