



Virginia Association of Broadcasters Legal Review



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April 23, 2020

Legal Memorandum

FCC Releases Order Offering Greater Clarification of October 2019 Political File Clarification Order

On Tuesday afternoon, April 21, 2020, the FCC issued an [Order on Reconsideration](#) (the “Order”) further “clarifying” certain aspects of its [October 2019 Political File Clarification Order](#) (the “October Order”). As you likely recall, the October Order resolved 11 political file complaints that had been pending since May 2014 by “clarifying” certain aspects of the Commission’s political file recordkeeping rules, including (1) what constitutes a “political matter of national importance”; (2) what must be disclosed in terms of the subject matter of a spot that communicates a message relating to any political matter of national importance; and (3) broadcasters’ obligations when they are provided by a non-candidate advertiser with what appears to be an incomplete list of the chief executive officers or the board of directors of the purchasing entity. The Order released on April 21 partially resolves a Petition for Reconsideration of the October Order filed by NAB and others, which proposed multiple changes to the rules and standards “clarified” by the FCC in the October Order.

Despite the multiple changes to the October Order that were requested by NAB and others, the Order notes that at this time the FCC has chosen to further clarify only two aspects of its new political file rules and standards; “all other issues” NAB and others had raised for reconsideration “remain pending.” Thus, this is likely not the last word from the Commission on political file record-keeping issues. According to the Order, the FCC is addressing these issues piecemeal so that some certainty may be established before “the height of the 2020 presidential campaign cycle, during which the volume of political advertising and corresponding disclosures required under the Political File Order will reach their peak.”

The affected political file rules and standards—as further clarified by the Order—are as follows:

- (1) the heightened disclosure requirements established by the October Order (such as the requirement to list *all* national issues of public importance to which an advertisement

refers) apply only to so-called issue advertisers whose commercials communicate a message relating to any political matter of national importance (in other words, the political file record keeping requirement relating to a description of national issues of public importance does not apply to candidate-sponsored ads); and

- (2) the Commission plans to apply a standard of “reasonableness and good faith decision-making” when reviewing broadcasters’ efforts to:
 - (a) determine whether, in context, a particular issue ad triggers disclosure obligations;
 - (b) identify and disclose in their online political files all political matters of national importance that are referenced in each issue ad; and
 - (c) determine when it is appropriate to use acronyms or other abbreviations in their online political files when disclosing information about issue ads.

Although the Order was unanimously adopted, Commissioner O’Rielly delivered a separate statement suggesting that the Order’s further clarifications of the prior clarifications might be insufficient to remedy the problems created by the October Order. In particular, Commissioner O’Rielly expressed his concerns that the clarifications “remain[] flawed in many respects as well as constitutionally suspect. Many of the arguments and objections raised by petitioners to the October items are ones I raised during the Commission’s consideration of them, but my arguments at the time simply did not carry the day. And, that’s not to mention the major procedural concerns I had.” Given that the other requested clarifications and reconsiderations remain pending, it’s good to know that at least one Commissioner shares broadcasters’ concerns over the newly clarified and re-clarified political file rules.

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