

Public Interest Group Calls for Additional Disclosure for Political Advertisements

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On March 22, 2011, the Media Access Project (MAP) filed a Petition for Rulemaking seeking to amend the Federal Communications Commission's (FCC or Commission) rules to require additional disclosure for political advertisements. The petition, which Commissioner Michael Copps quickly endorsed, seeks to impose new obligations upon broadcasters to determine the true source of funding for political advertisements and to disclose that information over-the-air.

At issue is whether the FCC, through individual broadcasters, should require "citizens organizations" and other groups to identify their sources of funding. MAP has claimed that, in the wake of *Citizens United v. Federal Election Commission*^[1], there has been a new wave of spending for political advertisements by organizations which are not required to disclose the identities of their donors under the Internal Revenue Code or the Federal Election Campaign Act, and that the FCC has interpreted its own rules so as to allow funders to hide behind "front" groups. MAP's proposal would require that broadcasters:

- Broadcast the names of all donors contributing at least 25% of the funding for a political advertisement;
- Maintain in their public file the names of all donors contributing at least 10% of the funding for a political advertisement; and
- Obtain sworn statements from political advertisers about their largest sources of funding and maintain such statements in their public file.

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MAP's proposal would represent a departure from current FCC requirements and the practices of most broadcasters. Section 317 of the Communications Act of 1934, as amended, requires that broadcasters announce at the time that paid material is broadcast that the material is "paid for or furnished, as the case may be, by such person." But the FCC has broad discretion to waive this requirement if it determines that the "public interest, convenience, or necessity" do not require the announcement.

The Petition focuses on the current FCC requirement that the on-air announcement "fully and fairly disclose the true identity of the person or persons, or corporation, committee, association, or other unincorporated group" sponsoring the message.^[2] A subsequent interpretation by the Commission, however, states that a broadcaster can meet its duty to perform "reasonable diligence" by naming the organization that claims it had editorial control over the announcement.^[3]

By requiring broadcasters to obtain a sworn statement of an advertiser's ownership, MAP would expand the "reasonable diligence" obligation. It is unclear when or if the FCC will issue a Notice of Proposed Rulemaking in response to MAP's petition. Certainly, if the Commission acts, it is likely the proposed rule would be challenged by broadcasters and political advertisers, including on First Amendment, statutory authority, and other administrative law grounds.

[1] Wiley Rein represented the Chamber of Commerce in *Citizens United v. FEC*. View Supreme Court decision.

[2] See 47 C.F.R. § 73.1212(e).

[3] *VOTER*, 46 RR2d 350 (1979).