

FCC Provides Further Guidance Regarding Political File Rules

April 23, 2020

On April 21, 2020, the Federal Communications Commission (FCC or Commission) issued an Order on Reconsideration (Reconsideration Order) to clarify orders released in October and December 2019 regarding compliance by broadcasters with Section 315 of the Communications Act and the Commission's political file rules. In response to petitions for reconsideration filed by the National Association of Broadcasters and a number of broadcast licensees, the FCC clarified in the Reconsideration Order that: (1) the interpretations provided in the FCC's October 16, 2019 Memorandum Opinion and Order (Political File Order) only apply to issue ads; and (2) the Commission will apply a standard of reasonableness and good faith decision-making when determining whether a broadcaster (i) identified and disclosed all political matters of national importance referenced in an issue ad and (ii) appropriately used an acronym or abbreviation in its political file.

As we previously wrote, in the Political File Order, the FCC provided interpretations of how certain online political file requirements apply to broadcast stations. The Political File Order clarified, among other things, that:

- For each political ad, stations must disclose in their political file all references to federal candidates (and the offices to which they are seeking election), federal elections and political matters/issues of national importance (including any issue that is the subject of pending federal legislation) referred to in the advertisement, not just the primary candidate or the primary issue;

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- The broadcaster is responsible for the accuracy and completeness of the documentation placed in the political file, not the party sponsoring the ad; and
- Promptly uploading complete material to the political file on a timely basis is critical.

In a companion decision released the same day, the FCC admonished a broadcaster for failing to adequately identify in its political file the sponsor of a political ad because the broadcaster used the acronym "DSCC-IE" instead of the entity's full name - the Democratic Senatorial Campaign Committee.

Then, in December, the Media Bureau released an Order admonishing two additional broadcasters for failing to include in the disclosures in their online political files information about the political matters of national importance discussed in certain third party issue ads.

In seeking to clarify the scope of the Political File Order, however, the FCC may have created even more uncertainty. While the FCC noted that the complaints at issue in that order only involved third-party issue ads, it stopped short of saying what disclosure standards apply to candidate ads. Rather, the Commission stated that "in the absence of any complaint providing a basis to consider applying the rulings more broadly," it made no determination about whether the same disclosures are required for candidate-sponsored ads. For now, however, with respect to candidate ads, there is no explicit requirement that broadcasters disclose all references to federal candidates and all references to any political matters/issues of national importance.

Slightly more helpful was the Commission's clarification that it will apply a reasonableness standard to: (1) determinations about whether a particular issue ad triggers disclosures; (2) stations' identification of all political matters of national importance that are referenced in each issue ad; and (3) the use of acronyms and abbreviations to identify an issue advertiser or provide other information relating to an issue ad. With regard to the last area, the FCC stated that broadcasters must determine whether the general public would readily comprehend the meaning of an acronym or abbreviation before using that acronym or abbreviation in their online political file. However, the Commission has only provided limited guidance about what it would believe the general public would readily comprehend, stating, on one hand, that broadcasters cannot use "DSCC-IE" as an abbreviation for the Democratic Senatorial Campaign Committee but, on the other, that broadcasters can use acronyms when they reflect an advertiser's legal name (e.g., AARP) or in certain instances where the organizations are widely known by their acronyms (e.g., NRA for National Rifle Association or NFL for National Football League). Given the ambiguity, however, we encourage broadcasters to err on the side of including an advertiser's full legal name.

If you have questions about the Political File Order, the FCC's clarification, or other political broadcasting matters, please contact the Wiley attorney who regularly handles your FCC matters or one of the attorneys listed on this client alert.