

Identifying TV Political and Issue Ad Sponsors in the Digital Age

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Since the 1930s, both Congress and the Federal Communications Commission (FCC) have imposed specific requirements on the transmission of political and issue advertising by broadcasters. These rules, which now apply to broadcast radio and television stations, cable and satellite television distributors, and satellite radio services, mandate that the sponsors of political and issue ads be clearly identified within each announcement and that media organizations maintain files of political advertisers' requests for advertising time and make those files available for public inspection.

Pursuant to Section 507 of the Communications Act (47 U.S.C. § 508), any party who pays to insert, or accepts payment to insert, covert promotions has an obligation to report this arrangement to the next party in the chain and ultimately to the broadcast licensee so it can air an announcement. The provision expressly covers broadcast licensees' employees as well; they must "disclose the fact of such acceptance or payment or agreement to" their employers.

Two presumptions underlie the sponsorship identification laws and rules pertaining to political candidates and issue advocates. The first is that the electronic media regulated by the FCC are the distributors of advertisements and programs on viewers' television sets. The second is that employees of the regulated media entity, via human interaction with political campaigns and issue advocacy organizations or their advertising agencies, have ultimate control over the chain of advertising distribution.

However, both of these presumptions may no longer be valid. An increasing share of television viewing, and advertising, occurs on video services delivered over the internet by entities that are not subject to FCC regulation. At the same time, technological changes have enabled buyers and sellers of television advertising to complete their transactions without human interaction, using software to perform such tasks as planning advertising placements and delivering and airing the advertisements. This method of buying and selling advertising, known as "programmatic," may replace the roles of employees who, under law, are required to disclose sponsorship by political or issue advertisers.

Increasingly, advertisers are making use of addressable advertising, which enables different ads to be seen by different people who are watching the same program. So long as addressable advertising is sold via cable and satellite operators' connections to viewers' set-top boxes, this form of political and issue advertising is covered by current laws. However, when an entity other than an FCC licensee or cable operator delivers targeted political and issue advertising to TVs connected to the internet ("connected TVs"), sponsors need not disclose their identities to viewers.

Foreign interference during the 2016 election cycle—and widely reported to be an ongoing threat—has renewed congressional attention to campaign and election security and raised new questions about the nature and extent of the federal government's role in this policy area. In an April 2020 report the Senate Select Committee on Intelligence recommended that Congress examine legislative approaches to ensuring Americans know the sources of online political advertisements. While the House of Representatives passed some of the suggested approaches in March 2019 as part of the For the People Act of 2019, H.R. 1, the Senate has not considered similar legislation.

With respect to public policy, many political and issue commercials delivered over television are more akin to online advertisements, which are not subject to FCC oversight, than to broadcast, cable, and satellite advertisements. To ensure that sponsors of political and issue advertisements who target television viewers disclose their identities, Congress would need to enact legislation applying disclosure laws to media and advertising technology entities that are not currently regulated by the FCC.

Several bills introduced in the 116th Congress address the sponsorship of political and issue advertisements in the digital age. Some of them would amend the Federal Election Campaign Act. Whether or not the sponsorship requirements for political and issue advertisements online might also explicitly cover connected TVs and advertising-supported online video services depends on whether those media are covered in the bills' definitions of "digital communications" or "online platform."

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Overview

For more than 200 years, beginning with the first major postal law enacted in 1792, Congress has considered the availability of news to be crucial to an informed public, and enacted laws to encourage the dissemination of news sources.¹ Sometimes, however, interests promoting political candidates or ideas prefer to mask their identities in order to enhance the apparent credibility of their messages. To maximize transparency, both Congress and the Federal Communications Commission (FCC) have required the traditional electronic media—broadcast radio and television stations, cable and satellite television distributors, and satellite radio services—to distinguish content supplied and paid for by third parties from content created by media organizations themselves.² In particular, electronic media outlets must identify and maintain records listing sponsors of advertisements for political candidates and advertisements concerning controversial issues of national importance. **Table A-1** provides a historical timeline of these laws and regulations.³

Traditional broadcast television, with prescheduled programs available for viewing on television sets, remains the most popular medium for political advertisements. Over the last 10 years, however, fewer people have been watching scheduled television programs. Instead, consumers have shifted their attention to programming streamed over the internet and available for listening or viewing at a time of the user's choice. Advertisers on behalf of candidates and issue advertising sponsors are increasingly purchasing spots on these newer media.

Although these nontraditional sources of video programming are available on television sets connected to the internet, they are generally not subject to communications laws and FCC regulations. This report examines how changes in television viewing and advertising sales practices are making current advertising disclosure rules, which are grounded on the federal government's authority to regulate the airwaves and cable operators, increasingly less effective.⁴ It does not cover campaign finance policy and legal issues that also could be relevant for advertising that refers to federal candidates or elections.⁵

¹ U.S. Postal Service, "Postage Rates for Periodicals: a Narrative History," <https://about.usps.com/who-we-are/postal-history/periodicals-postage-history.htm#1>.

² In addition, the Federal Election Commission and Federal Election Campaign Act (52 U.S.C. §§30101-30145) govern disclosure by political candidates and organizations. For additional information, see CRS In Focus IF10758, *Online Political Advertising: Disclaimers and Policy Issues*, by R. Sam Garrett.

³ **Table A-1** includes sponsorship identification laws for advertisers generally, of which political and issue advertisers are a subset. It also includes laws related to identification of sponsored content in print media, since they formed the basis for sponsorship laws covering electronic media.

⁴ For information about disclosure requirements enforced by the Federal Election Commission, see CRS In Focus IF11398, *Campaign Finance Law: Disclosure and Disclaimer Requirements for Political Campaign Advertising*, by L. Paige Whitaker, and CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett.

⁵ For additional discussion, see, for example, CRS In Focus IF10758, *Online Political Advertising: Disclaimers and Policy Issues*, by R. Sam Garrett; CRS In Focus IF11398, *Campaign Finance Law: Disclosure and Disclaimer Requirements for Political Campaign Advertising*, by L. Paige Whitaker; CRS In Focus IF11034, *Campaign Finance: Key Policy and Constitutional Issues*, by R. Sam Garrett and L. Paige Whitaker; CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett; and CRS Report R45320, *Campaign Finance Law: An Analysis of Key Issues, Recent Developments, and Constitutional Considerations for Legislation*, by L. Paige Whitaker.

Political and Issue Advertising on Regulated Electronic Media

The FCC has regulatory authority over media organizations that need its permission to use spectrum, that is, airwaves. These include broadcast radio and television licensees, satellite digital audio radio services (SDARS), and direct broadcast satellite (DBS) television operators.⁶ In addition, the FCC has jurisdiction over cable operators.⁷ The FCC requires such media organizations to include on-air disclosures of sponsorship when they transmit content sponsored by commercial, political, or issue-oriented entities. “Sponsored,” in this context, means “matter broadcast by any [traditional electronic media outlets] for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the [traditional electronic media outlets].”⁸

Sponsorship Laws Generally

Commercial sponsors are business entities, including political campaigns, which market products and services or promote candidates or issues. The Communications Act of 1934, as amended, and FCC rules require broadcast radio and television stations to disclose commercial sponsors on air, and cable operators to disclose commercial sponsors under limited circumstances.⁹ As discussed in “Political Candidates” and “Issue Advertising,” the Communications Act also permits the FCC to create more stringent sponsorship identification rules for political and issue advertisements or programs.

According to the FCC, two policy goals of the sponsorship identification laws and regulations are (1) preventing sources of programming from deceiving viewers and listeners, and (2) protecting competition among advertisers by preventing sponsors from gaining unfair advantage by paying stations to present promotional messages as news or editorial content without appropriate disclosures.¹⁰

⁶ SiriusXM is an example of a satellite digital audio radio service. DISH Network and AT&T Corp.’s DirecTV are examples of DBS operators.

⁷ As described in CRS Report R46147, *The Cable Franchising Authority of State and Local Governments and the Communications Act*, by Chris D. Linebaugh and Eric N. Holmes, before Congress gave the FCC direct authority to regulate cable television operators in 1984, the U.S. Supreme Court held in 1968 that the Communications Act gave the FCC indirect authority to regulate what was “reasonably ancillary” to its responsibilities for regulating broadcast television under Title III. For more information about the FCC’s authority to regulate cable operators, see CRS Report R46077, *Potential Effect of FCC Rules on State and Local Video Franchising Authorities*, by Dana A. Scherer.

⁸ See Section 317(a) of the Communications Act of 1934, as amended, 47 U.S.C. §317(a). While this statutory definition of “sponsor” applies only to broadcast radio and television stations, FCC rules with similar definitions of “sponsor” apply to cable television operators, as well as SDARS and DBS operators. In addition, while this portion of the statute refers to “any radio station” in its description of media, subsequent interpretations by the FCC and Congress, in response to post-1934 technological developments, broadened the scope to include television stations, cable operators, and satellite television and radio operators.

⁹ 47 U.S.C. §317.

¹⁰ Federal Communications Commission, “Sinclair Broadcast Group, Order, FCC 20-59,” May 20, 2020, p. 9 at <https://www.fcc.gov/document/sinclair-pays-48-million-and-settles-all-pending-investigations>.

Laws and Rules for Broadcast Radio and Television Stations

While origins of the federal statute date back to the 1927 Radio Act, in 1960 Congress broadened the FCC's authority to determine when broadcasters must disclose commercial sponsorship.¹¹ P.L. 86-752 gave the FCC discretion to develop or suspend rules in cases when it determines that the public interest, convenience, or necessity does not require the broadcasting of sponsorship announcements.¹² In April 2020, the FCC used this discretion to waive the sponsorship identification requirement for commercial entities donating commercial advertising time that they can no longer use for the broadcast of public service announcements related to Coronavirus Disease 2019 (COVID-19).¹³

At the same time, Congress extended the legal obligation to disclose covert promotions beyond the broadcast licensees to parties involved in production, while requiring each licensee to

exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.¹⁴

To assist stations in exercising “reasonable diligence,” Congress added a new Section 507 to the Communications Act (47 U.S.C. §508), imposing the disclosure requirement on anyone involved in placing promotions in broadcast programs. Violators are subject to criminal penalties—a maximum \$10,000 fine and/or a maximum one-year prison term.

Section 507 encompassed the entire chain of program production and distribution; any party who pays to insert, or accepts payment to insert, covert promotions has an obligation to report this arrangement to the next party in the chain and ultimately to the broadcast licensee so it can air an announcement.¹⁵ The provision expressly covers employees as well; they must “disclose the fact of such acceptance or payment or agreement to” their employers.

Rules for Cable

FCC regulations related to content on cable systems distinguish between programming subject to the “exclusive control” of the cable operator, which the agency calls “origination cablecasting,” and programming that the cable operator does not control.¹⁶ According to the treatise *Telecommunications and Cable Regulation*,

While at first glance it appears that these rules are relevant only where the cable operator itself originates local programming, the definition of “origination cablecasting” in the FCC’s rules is ambiguous.

Any programming carried on a cable channel other than retransmitted broadcast signals or access channel programming, including pay channels such as Showtime or Home Box

¹¹ Richard Kielbowicz and Linda Lawson, “Unmasking Hidden Commercials in Broadcasting: Origins of the Sponsorship Identification Regulations, 1927 - 1963,” *Federal Communications Law Journal*, vol. 56 (March 2004), pp. 327, 354. [Hereinafter “Kielbowicz and Lawson.”]

¹² 47 U.S.C. §317(d).

¹³ Federal Communications Commission, “Sponsorship Identification Requirements, Order, DA 20-376,” April 3, 2020 at <https://www.fcc.gov/document/fcc-waives-sponsorship-id-requirements-covid-19-psas>.

¹⁴ 47 U.S.C. §317(c).

¹⁵ Kielbowicz and Lawson, p. 361.

¹⁶ Henry Geller and Donna Lampert, “Cable, Content Regulation, and the First Amendment,” *Federal Communications Law Journal*, vol. 32, no. 3 (Spring 1983), pp. 603, 605. [Hereinafter “Geller and Lampert.”] 47 C.F.R. §76.5(p).

Office, or cable news networks such as CNN, could conceivably be deemed subject to the “exclusive control” of the cable operator and therefore within the definition of “originated programming” to which the rules apply.¹⁷

The FCC’s sponsorship identification rules pertaining to cable operators “engaged in origination cablecasting” are similar to the FCC’s sponsorship identification rules for broadcasters. Cable operators must identify the sponsors of programming for which a cable operator has received consideration at the time of the cablecast, and must exercise reasonable diligence to obtain information to make the required announcement of sponsorship.¹⁸

The requirement to disclose sponsorship does not apply to cable operators under the four circumstances under which federal law prohibits them from exercising editorial control: (1) use by public, educational, or local government entities;¹⁹ (2) use by persons who lease access to a cable channel;²⁰ (3) use by commercial broadcast television stations that opt for mandatory carriage;²¹ and (4) use by noncommercial educational broadcast television stations.²²

Political Candidates

The Communications Act and FCC rules contain detailed provisions governing requests for time by political candidates. The FCC’s political programming obligations fall within four basic categories: (1) requiring sponsorship identification; (2) maintaining a political file; (3) charging candidates no more than the lowest price (“lowest unit rate”) for political advertising; and (4) providing equal opportunities to opposing candidates.²³

On-Air Sponsorship Identification in Political Candidate Advertisements

Both FCC rules and the Communications Act have on-air disclosure requirements pertaining to advertisements for political candidates. The FCC rules, dating to the 1940s, make broadcast stations and cable operators responsible for airing the disclosures. The statute, which Congress enacted in 2002, makes political candidates responsible for including these disclosures in

¹⁷ Womble Bond Dixon LLP, “Ch. 8.07 Fairness Doctrine and Political Broadcasting,” in *Telecommunications Regulation: Cable, Broadcasting, Satellite, and the Internet*, vol. 1 (New York: Matthew Bender & Company, 2020).

¹⁸ 47 C.F.R. §76.1615.

¹⁹ 47 U.S.C. §531(e). A cable operator may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity. For additional information about these types of programs, see CRS Report R46077, *Potential Effect of FCC Rules on State and Local Video Franchising Authorities*, by Dana A. Scherer.

²⁰ 47 U.S.C. §532(c)(2).

²¹ 47 U.S.C. §534(b)(3). For additional information about this option for commercial broadcast television stations, see CRS Report R46023, *Copyright Act and Communications Act Changes in 2019 Related to Television*, by Dana A. Scherer.

²² 47 U.S.C. §535(g)(1).

²³ The FCC’s rules regarding equal access for candidates apply to broadcast radio and television stations (47 C.F.R. §73.1941), cable operators (47 C.F.R. §76.205), DBS providers (47 C.F.R. §75.2701(b)), and SDARS (47 C.F.R. §75.2702(a)). Likewise, the FCC’s rules requiring media organizations to charge political candidates the lowest unit rate for political commercials during specified periods apply to broadcast radio and television stations (47 C.F.R. §73.1942), cable operators (47 C.F.R. §76.206), DBS operators (47 C.F.R. §75.2701(c)), and SDARS (47 C.F.R. §75.2702(a)).

advertisements in order to be eligible to demand the lowest price available from broadcast stations, cable operators, and satellite operators.²⁴

FCC Regulations Governing Broadcast Stations and Cable Operators

The FCC first adopted rules specifically requiring AM broadcast radio stations to include the identification of sponsors of political advertisements in 1944, as part of its general implementation of Section 317 of the Communications Act.²⁵ As described in **Table A-1**, the agency extended those requirements to broadcast television stations in 1945.²⁶ It extended the rules to cable operators “engaged in origination cablecasting” in 1972.²⁷

Statute Governing Broadcast Stations and Cable Operators

Section 315(a) of the Communications Act, which dates back to 1934, directs broadcast stations to provide opposing candidates with equal access to their facilities. In 1972, Congress added Section 315(b), requiring broadcast stations to charge political candidates the lowest unit rate of the station for the same class and amount of time for the same period for advertising during the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate.²⁸ In 1974, Congress further amended Section 315 to require that cable operators, then known as “community antenna television systems,” provide advertising time to candidates at the lowest unit rate.²⁹

In 2002, the Bipartisan Campaign Reform Act (P.L. 107-155) further amended Section 315 by limiting candidates’ eligibility to receive the lowest unit rate for political advertisements. Specifically, a candidate for federal office must certify to the station or cable operator that the ad will not directly refer to an opponent unless it includes a photo of the candidate sponsoring the ad (on television) and a statement of the candidate’s approval displayed on television and spoken by the candidate on radio. Both items must appear in the ad for no less than four seconds.³⁰

²⁴ In addition, federal campaign finance law sets forth disclosure and disclaimer requirements for certain types of political campaign advertisements. In the context of campaign finance, the term *disclosure* refers to periodic reporting to the Federal Election Commission (FEC) of funds received and spent, and the term *disclaimer* refers to an attribution statement that appears on a campaign-related communication. See CRS In Focus IF11398, *Campaign Finance Law: Disclosure and Disclaimer Requirements for Political Campaign Advertising*, by L. Paige Whitaker.

²⁵ Federal Communications Commission, “Rules Governing Standard and High Frequency Broadcast Stations: Announcement of Sponsored Programs,” 9 *Federal Register* 14734, December 19, 1944.

²⁶ 1945 Supplement to the Code of Federal Regulations of the United States of America (1946). [Codified at that time as §3.289 (for FM stations) and §3.689 (for broadcast television stations).] The FCC did not explain its rationale for expanding the applicability of these rules. In 1946, Congress enacted the Administrative Procedure Act (P.L. 49-404) to increase the transparency and predictability of agency rulemaking. CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey.

²⁷ Federal Communications Commission, “Cable Television Report and Order, FCC 72-108,” 36 FCC Reports, 2nd Series 143, 195, 239, February 3, 1972 (1972 Cable Order).

²⁸ P.L. 92-225, 47 U.S.C. §315(b).

²⁹ P.L. 93-443, §402(c) (“Federal Election Campaign Amendments of 1974”).

³⁰ 47 U.S.C. §315(b)(2).

FCC Rules and Statutes Governing Satellite Television Operators

In 1992, Congress enacted the Cable Television Consumer Protection and Competition Act of 1992 (P.L. 102-385). That law created a new Section 335 of the Communications Act, which directed the FCC to impose public interest requirements on DBS operators.

The FCC adopted rules accordingly in 1998.³¹ In 2016, the FCC stated that because of Section 335, the 2002 amendments to Section 315 setting conditions under which candidates can demand the lowest unit rate for advertisements from broadcasters and cable operators apply to SDARS and DBS operators as well.³²

Political File Requirements

The FCC first required broadcast radio stations to maintain public records of political candidates' requests for advertising time in 1938.³³ That initial rule is essentially identical to the agency's current political file regulation. The FCC requires stations to make the file available for public inspection and include both candidate requests for time and stations' handling of those requests, including amounts paid for the broadcast time.³⁴ The FCC extended the political file requirements to FM radio and broadcast television stations in 1945.³⁵

In 1974, the FCC adopted a public inspection file requirement for cable, including a requirement to retain political file material.³⁶ The agency imposed political advertising requirements on SDARS licensees in 1997, concluding that the rationale behind imposing these requirements on broadcasters applies also to satellite radio. It adopted political advertising file requirements for DBS operators, including public inspection requirements, in 1998.³⁷

Issue Advertising

Groups advocating ideas have sometimes preferred to conceal their identities in order to enhance the apparent credibility of their messages. For example, in 1943 hearings before the Senate Committee on Interstate Commerce, labor union leaders contended that sponsors of news programming airing on radio stations routinely influenced news analysts' commentaries.³⁸ In

³¹ Federal Communications Commission, "Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations, FCC 98-307, Report and Order," 13 *FCC Record* 23254, 23274, November 25, 1998. ("FCC 1998 DBS Public Interest Order.") See also Federal Communications Commission, "Direct Broadcast Satellite Public Interest Obligations, *Sua Sponte* Reconsideration, Second Order on Reconsideration of First Order," 19 *FCC Record* 5647, March 25, 2004.

³² Federal Communications Commission, "Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees," 31 *FCC Record* 526, 528-529, 2016, January 29, 2016. (2016 FCC Public File Order)

³³ Federal Communications Commission, "Rules Governing Standard Broadcast Stations, Broadcasts by Candidates for Public Office," 3 *Federal Register* 1691, July 12, 1938.

³⁴ Federal Communications Commission, "Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees," 31 *FCC Record* 526, 528-529, 2016, January 29, 2016. (2016 FCC Public File Order, pp. 528-529)

³⁵ 1945 Supplement to the Code of Federal Regulations of the United States of America (1946). [Codified at that time as §3.290(d) for FM radio stations and §3.290(d) for television stations.]

³⁶ Federal Communications Commission, "Amendment of Part 76, of the Commission's Rules and Regulations, Report and Order FCC 74-831," 48 *FCC Reports, 2nd Series* 72, August 8, 1974.

³⁷ FCC 1998 DBS Public Interest Order.

³⁸ Testimony of R.J. Thomas, president, United Auto Workers, in U.S. Congress, Senate Committee on Interstate

addition, the FCC had received complaints about political organizations supplying programs to radio stations—at no charge—that misrepresented themselves as “citizens committees” in on-air sponsorship identifications.³⁹ Since then, the FCC has sought to require disclosures related to sponsorship of issue advertising, but has been inconsistent in specifying what types of issues fall within its regulations.

On-Air Sponsorship Identification in Issue Advertisements

With the goal of increasing transparency, the FCC in 1944 adopted rules requiring stations to identify sponsors of

any political broadcast matter or any broadcast matter involving the discussion of a controversial issue for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter.⁴⁰

The FCC’s 1944 sponsorship identification rulemaking stemmed partly from general developments in the industry. In the broadcast radio industry, wartime advertisers, in an effort to save money, shifted from sponsoring and producing entire programs (e.g., “Lux Radio Theater”) to sprinkling shorter advertisements in and around programs, thereby making the responsibility for the content of the programs less apparent to listeners.⁴¹ The FCC did not define the term “controversial issue” in 1944, but in its 1975 amendments to the rules it used the phrase “controversial issue of public importance.”⁴²

The 1975 sponsorship identification order cross referenced⁴³ a 1974 FCC decision in which the agency declined to provide detailed criteria for defining “controversial” or “public importance,” deferring to the “reasonable, good faith judgments of our licensees in this area.”⁴⁴ Nevertheless, in the 1974 order, FCC stated that

The principal test of public importance, however, is not the extent of media or governmental attention, but rather a subjective evaluation of the impact that the issue is likely to have on the community at large.⁴⁵

Commerce, *To Amend the Communications Act of 1934, and for Other Purposes*, hearings, S. 814, 78th Cong., 1st sess., November 18, 1943 (Washington: GPO, 1943), pp. 270-74. Testimony of Irving Richter, publicity director, Congress of Industrial Organizations, Senate Committee on Interstate Commerce, *To Amend the Communications Act of 1934, and for Other Purposes*, hearings, S. 814, 78th Cong., 1st sess., December 2, 1943 (Washington: GPO, 1943), p. 584.

³⁹ “FCC Would Label Program Sources,” *Broadcasting*, October 9, 1944, p. 24.

⁴⁰ Federal Communications Commission, “Rules Governing Standard and High Frequency Broadcast Stations: Announcement of Sponsored Programs,” 9 *Federal Register* 14734, December 19, 1944.

⁴¹ Geller and Lampert, p. 341. See also Temple University Libraries, “Lux Theater Scripts,” at https://library.temple.edu/finding_aids/lux-radio-theatre-scripts, and Jeff Suess, “Our History: P&G Put the ‘Soap’ in ‘Soap Opera,’” *Cincinnati Inquirer*, October 4, 2017, at <https://www.cincinnati.com/story/news/2017/10/04/our-history-p-g-put-soap-opera/732149001/>.

⁴² Federal Communications Commission, “Amendment of the Commission’s ‘Sponsorship Identification’ Rules,” 52 *FCC Reports*, 2nd Series, p. 701, April 25, 1975. (1975 Sponsorship Identification Order).

⁴³ *Ibid.*, p. 710.

⁴⁴ Federal Communications Commission, “Handling of Public Issues under the Fairness Doctrine and Public Interest Standards of the Communications Act,” 48 *FCC Reports*, 2nd Series, 1, 11, July 12, 1974. (1974 Fairness Doctrine Order).

⁴⁵ *Ibid.*, pp. 11-12.

Thus, rather than limiting identification requirements to ads about issues of “national importance,” the FCC emphasized that they particularly applied to issues of “local importance.” Likewise, the FCC stated that with respect to whether an issue is “controversial,

[I]t is highly relevant to measure the degree of attention paid to an issue by government officials, community leaders, and the media. The licensee should be able to tell, with a reasonable degree of objectivity, whether an issue is the subject of vigorous debate with substantial elements of the community in opposition to one another.⁴⁶

The FCC requires broadcast radio and television stations to identify the sponsors at the start and end of a sponsored program or commercial, whichever is applicable. If the broadcast matter, such as a commercial, lasts less than five minutes, then broadcast stations need only air one such identification announcement. Thus, even if a sponsor does not directly pay a broadcaster, but instead provides programming or announcements involving an issue of a controversial nature or of public importance, the broadcaster must still identify the sponsor. This rule, now codified at 47 C.F.R. §73.1212(d), remains in effect for broadcast stations. The FCC extended these rules to cable operators engaged in origination cablecasting in 1972.⁴⁷

Public File Requirements

Over the years, the FCC has adjusted the requirements for FCC licensees to maintain records concerning sponsorship of issue advertising and to make such records available to the public.

In 1975, the first FCC rules on this subject mandated that broadcast licensees and cable operators maintain public files regarding sponsors of programming related to “controversial issues of public importance.”⁴⁸ The agency stated that

The list retention requirement is fundamental to the objective of preserving the audience’s right to know by whom it is being persuaded.... With respect to a controversial issue, if it is not part of the political campaign, the public often lacks knowledge of the true identities of the protagonists. The list retention requirement is designed to make information available about the sponsor’s identity at the source of the broadcast, should someone desire it, while at the same time minimizing the amount of time that need be used for identification.⁴⁹

In 2002, in the Bipartisan Campaign Reform Act, Congress limited the public file requirement pertaining to issue advertising, applying it only to records of requests to purchase broadcast time that “communicates a message relating to any political matter of national importance.”⁵⁰ The law required broadcast licensees and cable operators to maintain such records for two years.

In 2003, the U.S. Supreme Court upheld this provision in *McConnell vs. Federal Election Commission*, stating

These recordkeeping requirements seem likely to help the FCC determine whether broadcasters are carrying out their obligations under the FCC’s regulations to afford reasonable opportunity for the discussion of conflicting views on issues of public

⁴⁶ Ibid., p. 12.

⁴⁷ 1972 Cable Order, pp. 195, 239.

⁴⁸ 1975 Sponsorship Identification Order.

⁴⁹ Ibid., p. 711.

⁵⁰ 47 U.S.C. §315(e). In addition, as described “Political File Requirements,” these entities must maintain publicly available records of requests to purchase time by or on behalf of a legally qualified candidate for public office.

importance, and whether broadcasters are too heavily favoring entertainment, discriminating against broadcasts devoted to public affairs⁵¹

FCC Interpretation of Issue Advertising Filing Requirements

The wording of the rules related to filing of requests for issue advertising differs slightly from those of Section 315. Section 315 requires media organizations to maintain files related to issues of “national importance,” whereas the FCC’s rules require broadcasters and cable operators to maintain files related to issues of “public importance.” In its “clarification” of the filing requirements released in October 2019, the FCC focused on the language in Section 315.

The FCC’s rules for broadcasters and cable operators state that

Where the [cable origination] material broadcast is political matter or matter involving the discussion of a controversial issue of *public* [emphasis added] importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section [§ 76.1615], require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection Such lists shall be kept and made available for a period of two years.⁵²

The FCC’s rules for SDARS and DBS operators are more general, stating that

Each ... licensee shall maintain a complete and orderly political file [and that]

(1) The political file shall contain, at a minimum:

(i) A record of all requests for SDARS origination time, the disposition of those requests, and the charges made, if any, if the request is granted. The “disposition” includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased; and

(ii) A record of the free time provided if free time is provided for use by or on behalf of candidates.

2) ... [L]icensees shall place all records required by this section in the political file as soon as possible and shall retain the records for a period of two years⁵³

In October 2019, and in April 2020, the FCC issued clarifications of its rules related to political file requirements for issue advertising.⁵⁴ With the clarifications, the FCC intended to

apply a standard of reasonableness and good faith decision-making with respect to efforts of broadcasters in: (a) determining whether, in context, a particular issue ad triggers disclosure obligations under section 315(e)(1)(B) of the Communications Act of

⁵¹ *McConnell v. FEC*, 540 U.S. 93, 240-41 (2003) (internal quotations omitted), overruled in part on other grounds, *Citizens United v. FEC*, 558 U.S. 310 (2010).

⁵² 47 C.F.R. §§73.1212(d) (for broadcast radio and television licensees), 76.1701(d) (for cable operators).

⁵³ 47 C.F.R. §§25.702(b) (for SDARS licensees), 25.701(d) (for DBS licensees).

⁵⁴ Federal Communications Commission, “Complaints Involving the Political Files of WCNC-TV, Inc., et al., FCC 19-100, Memorandum Opinion and Order,” 34 *FCC Record* 10048, October 16, 2019 (“2019 FCC Political File Order”). Federal Communications Commission, “Complaints Involving the Political Files of WCNC-TV, Inc., et al., FCC 20-49, Order on Reconsideration,” 35 *FCC Record* 3846 April 21, 2020 (“2020 FCC Political File Recon Order”).

1934, as amended (Act);⁵⁵ (b) identifying and disclosing in their online political files all political matters of national importance that are referenced in each issue ad;⁵⁶ and (c) determining when it is appropriate to use acronyms or other abbreviations in their online political files when disclosing information about issue ads.⁵⁷

The FCC stated that licensees must disclose in their political files⁵⁸

1. *all* political matters of national importance, including the names of *all* legally qualified candidates for federal office (and the offices to which they are seeking election), *all* elections to federal office, and *all* national legislative issues of public importance, to which the communication refers.
2. *all* of the chief executive officers or members of the executive committee or board of directors of any person seeking to purchase political advertising time. In cases where the station has a reasonable basis for believing that the information provided appears to be incomplete, for example, where the name of only one official has been supplied, the station will be deemed to have satisfied this obligation by making a single inquiry to either the organization sponsoring the ad or the third-party buyer of advertising time acting on the organization's behalf as to whether there are any other officers or members of the executive committee or of the board of directors of such entity.

The FCC also stated that it would consider context in determining whether an advertisement constitutes a “political matter of national importance” that triggers record-keeping obligations. The FCC interprets the term “legally qualified candidate” to mean legally qualified candidates for federal office, and the term “national legislative issue of public importance” to include issues that are the subject of federal legislation that has been introduced and is pending in Congress at the time a request for air time is made. In addition, the FCC stated that the term “political matter of national importance” encompasses political issues that are the subject of controversy or discussion at the national level, regardless of whether such issues relate to a legally qualified candidate, an election to federal office, or a national legislative issue of public importance. According to the FCC, “[B]y using the term ‘national’ to qualify the type of legislative issues involved, we believe Congress contemplated only federal legislation, not State or local legislation.”⁵⁹

Table 1 summarizes the applicable rules and laws regarding political and issue sponsorship identification requirements. In some instances, the FCC also requires media organizations to disclose the identity of sponsors in their online public files, which the FCC maintains on its website, while in other instances no such disclosure is required. Detailed explanations of each type of disclosure appear below the table.

⁵⁵ 47 U.S.C. § 315(e)(1)(B).

⁵⁶ See 47 U.S.C. § 315(e)(2)(E).

⁵⁷ 2020 FCC Political File Recon Order, p. 3846.

⁵⁸ 2019 FCC Political File Order, pp. 10050-10051.

⁵⁹ *Ibid.*, p. 10064.

**Table I. Political and Issue Sponsorship Identification Requirements
by Type of Media**

In FCC Regulations and Communications Act

Type of Identification Requirement	Broadcast Radio and Television Stations	Cable Operators	SDARS Operators	DBS Operators
Political Candidates				
Must media disclose sponsorship of commercial or program segment?	Yes. For any political candidate. 47 C.F.R. §73.1212 (a)(2)(ii). For federal candidates who directly reference challengers and seek lowest unit rate. ["Stand by your ad" disclaimer.] 47 U.S.C. §315(b)(2).	Yes, but applies only to "origination cablecast" programming. For any political candidate. 47 C.F.R. §76.1615(a). For federal candidates who directly reference challengers and seek lowest unit rate. ["Stand by your ad" disclaimer.] 47 U.S.C. §315(b)(2)	No.	No.
Must media disclose sponsorship in FCC file for public inspection?	Yes. Must disclose requests for advertising time and how handled. 47 C.F.R. §73.1943. Must list CEOs, board members, executive committee members of any entity that has paid for matter that is political or involves discussion of controversial issues of public importance. 47 C.F.R. §73.1212(e), 47 C.F.R. §73.3526(e) 47 U.S.C. §315(e).	Yes. Must disclose requests for advertising time and how handled. Must list CEOs, board members, or executive committee members of any entity that has paid for matter that is political or involves discussion of controversial issues of public importance. 47 C.F.R. §§ 76.1700(a), 76.1701(d). 47 U.S.C. §315(e).	Yes. Must disclose requests for advertising time and how handled. 47 C.F.R. §25.702(b)	Yes. Must disclose requests for advertising time and how handled. 47 C.F.R. §25.701(d) 47 U.S.C. §335(a) [cross-referencing 47 U.S.C. §315(e)]
Issues				
Must media disclose sponsorship of commercial or program segment?	Yes. 47 C.F.R. §73.1212 (d).	Yes. 47 C.F.R. §76.1615(c).	No.	No.

Type of Identification Requirement	Broadcast Radio and Television Stations	Cable Operators	SDARS Operators	DBS Operators
Must media disclose sponsorship in FCC file for public inspection?	Yes. Requests for advertising time and how handled requests. 47 U.S.C. §315(e). Same requirements as for candidates per 47 C.F.R. §§73.1212(e), 73.3526(e). 47 U.S.C. §315.	Yes. Requests for advertising time and how handled requests. 47 U.S.C. §315(e). Same requirements as for candidates per 47 C.F.R. §§76.1700(a), 76.1701(d). 47 U.S.C. §315.	Yes. Requests for advertising time and how handled requests. 47 C.F.R. §25.702(b).	Yes. Requests for advertising time and how handled requests. 47 C.F.R. §25.701(d); 47 U.S.C. §335(a); 47 U.S.C. §315.

Source: <https://publicfiles.fcc.gov/about-station-profiles/>.

Notes: This table does not include requirements enforced by the Federal Election Commission.

- In the case of want ads, which are not subject to on-air disclosure rules, stations must maintain a list of advertisers, including contact information, for two years, and provide the list “to members of the public who have a legitimate interest in obtaining the information contained in the list.” 47 C.F.R. §73.1212(g).
- “For purposes of this section, the term ‘broadcasting station’ includes a community antenna television [cable] system.” 47 U.S.C. §315(c).

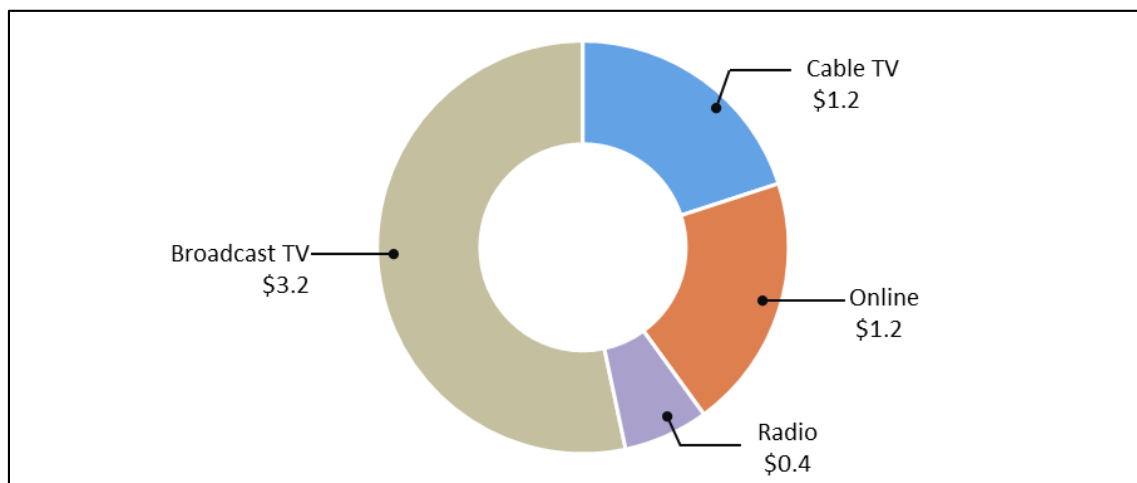
Disclosure in Targeted Television Advertising

Television is the most popular medium for political advertising. Kantar Media, a consulting firm, estimates that campaigns and organization will spend about \$7 billion on political advertising during the 2019-2020 federal election cycle. In 2019, when the firm projected somewhat lower spending, it estimated that more than 70% would go to advertising viewed on television sets, including \$3.2 billion to broadcast television advertising and \$1.2 to cable television advertising, as illustrated in **Figure 1**.⁶⁰

⁶⁰ Kantar Media, “Kantar Forecasts \$6 Billion in Political Ad Spending for 2019-2020 Election Cycle,” press release, June 27, 2019, at <https://www.kantarmedia.com/us/newsroom/press-releases/kantar-forecasts6-billion-in-political-ad-spending-for-2019-2020-election-cycle> (Kantar). In July 2020, Kantar updated its projection of federal campaign spending in 2020, estimating a combined \$7 billion for television and online spending, but it did not break out its estimates for spending on each medium. Gabriel T. Rubin, “How Many Political Ads Does \$7 Billion Buy? We’re About to Find Out,” *Wall Street Journal*, July 10, 2020.

Figure 1. Forecasted 2020 Federal Political Campaign Advertising Spending by Medium

Figures in \$ Billions



Source: Kantar Media, *Political Advertising Trends: What to Expect in 2020*, New York, NY, June 27, 2019, available at <https://www.kantarmedia.com/us/newsroom/press-releases/kantar-forecasts6-billion-in-political-ad-spending-for-2019-2020-election-cycle>.

Notes: Estimates as of June 2019. In the context of Kantar Media's survey, "online" includes "spending on paid digital [advertisements] or ads delivered by a platform that are sponsored by a candidate or campaign."

Two presumptions underlie the sponsorship identification laws and rules pertaining to political candidates and issue advocates. The first is that the electronic media regulated by the FCC are the distributors of advertisements and programs on viewers' television sets. The second is that employees of the regulated media entity, via human interaction with political campaigns and issue advocacy organizations or their advertising agencies, have ultimate control over the chain of advertising distribution.

Technological changes, however, have enabled sellers of television advertising to use computer software in lieu of human interaction to deliver commercials to distinct voter segments, potentially making Section 507 more difficult to enforce. In addition, several companies, or divisions of companies, that sell advertisements that appear on voters' television sets, and thus appear to be television advertisements, are not subject to sponsorship disclosure laws and regulations.

Targeted Television Advertising

Over the last decade, both traditional and nontraditional sellers of "television" advertising have promoted the availability of "targeted television advertising" to political and issue campaigns. In this report, the phrase "targeting television advertising" refers to the ability to serve one ad to a specific television household as opposed to broadcasting the same ad to all households that are watching a particular program or are located in a particular geographic area. Targeted television advertising can reach consumers through a variety of formats, each with different implications for regulation of political and issue advertising. Two characteristics distinguish targeted television advertising from traditional television advertising: (1) the advertising is served to viewers based on data collected from the viewers, and (2) the process of buying and selling the advertising is automated, or "programmatic," and takes place over the internet, and/or private communications networks.

In some instances, the sellers of targeting advertising are the same entities covered by current political advertising laws, while in other instances they are not. In addition, the complex supply chain involved in the buying, selling, and distribution of targeted television advertising over the internet could make enforcement of laws more difficult than in the traditional process, which involves more human interaction.

Addressable Advertising

Addressable advertising enables advertisers to show different ads to different people who are watching the same program via cable and satellite operators' connections to viewers' set-top boxes.⁶¹ The Video Advertising Bureau estimates that as of 2019, about 54% of households with television sets, or 64 million households, are reachable via addressable advertising.⁶² According to press reports, political and issue campaigns are increasingly turning toward addressable television advertising.⁶³ In 2018, for example, political activist Tom Steyer used addressable advertising when promoting his position on an issue.⁶⁴ Also in 2018, i360, a data firm owned by activist Charles Koch reached an agreement with D2 Media, a joint venture of DBS providers DISH and DIRECTV, to offer addressable advertising services to campaigns seeking to reach conservative voters.⁶⁵

By combining voting records, data on such topics as home ownership and job history that can be purchased from commercial brokers, and the set-top box addresses of cable and satellite subscribers, a campaign can show a custom-made ad only to households that fall within targeted groups. A marketing brochure for Comcast, the largest U.S. cable operator, states that

Addressable advertising also enables candidates to deliver variations of their messages to different audiences.... For example, candidates can deliver one message to audiences with members of their political party, and another message to an audience of swing voters.⁶⁶

Because cable and satellite operators are the sellers of addressable advertising and are regulated by the FCC, this form of political and issue advertising is covered by current laws. The process of buying and selling the advertisements, however, is governed by software and computers. As described in **Figure 4**, this process could complicate the enforcement of the laws.

⁶¹ Gartner, Inc., "Information Technology Glossary: Addressable TV Advertising," at <https://www.gartner.com/en/information-technology/glossary/addressable-tv-advertising>. See also Dish Media, "Addressable TV: Why Advertisers Need it Now," June 2019, at http://adage.com/d/resources/resources/whitepaper/addressable-tv-why-advertisers-need-it-now?utm_source=AA1&utm_medium=AA&utm_campaign=AAweb.

⁶² Steve Ellwanger, "VAB Projects \$2.1 Billion in 2019 Addressable TV Spend: 'It's Mature,' Says CEO Cunningham," *Beet.TV*, March 26, 2019, at <https://www.beet.tv/2019/03/sean-cunningham-3.html>.

⁶³ Shereta Williams, "Why Political Advertisers Double Down on Local TV and What Brand Media Pros Can Learn from Them," *MediaPost*, January 8, 2020, <https://www.mediapost.com/publications/article/345329/why-political-advertisers-double-down-on-local-tv.html>.

⁶⁴ Hiawatha Bray, "With New Technology, TV Election Ads Get Personal," *Boston Globe*, November 6, 2018, <https://www.bostonglobe.com/business/2018/11/05/with-new-tech-election-ads-get-personal/NuPUy32veySgi4PC3ZN0pI/story.html>.

⁶⁵ Mike Reynolds, "DirecTV, DISH, Proffer New Means to Address GOP Voters," *Multichannel News*, March 29, 2018, <https://www.multichannel.com/news/directv-dish-proffer-new-means-address-gop-voters-375401>. The DBS providers formed D2 Media Sales in 2014 to focus on political and issue advertisers. Meg James, "DirecTV, Dish Network to Vie for Political Cash with Customized Ads," *Los Angeles Times*, August 19, 2014.

⁶⁶ Comcast, *Politics 2020: Making an Impact with Cross-Screen TV Advertising*, p. 10, 2020, at <http://www.effectv.com/industries/political>.

Connected TVs and AVODs: New Unregulated Entrants

While traditional broadcast and cable television remain the most popular media for political advertising, connected TVs are increasing in popularity. A “connected TV” is a

television set that is connected to the internet via streaming devices, Blu-ray players and gaming consoles or has built-in internet capabilities (i.e., a Smart Television) and is able to access a variety of long-form and short-form web-based content.⁶⁷

Because connected TVs, are by definition, connected to the internet, they offer advertisers, including political and issue advertisers, a means of using online advertising to reach viewers on their television sets. Thus, many political and issue commercials that may appear similar to the broadcast, cable, and satellite advertisements governed by FCC rules are in fact a subset of online political and issue advertisements, which are not subject to FCC oversight. In addition, similar to addressable advertising, connected TV advertising is generally bought and sold programmatically.

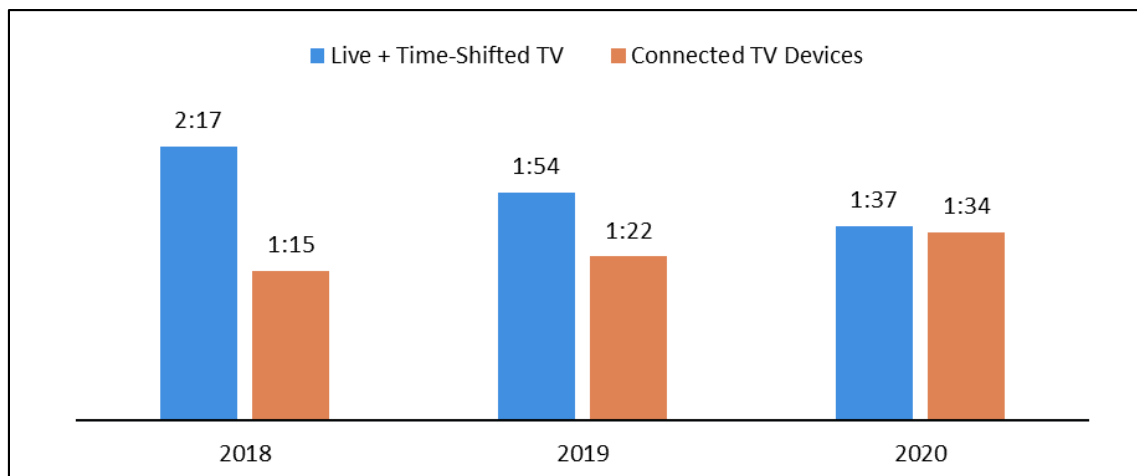
Advertisements can appear on connected TVs on the home screens (designed by the television set or streaming device manufacturer) or within advertising-supported online video-on-demand services (AVODs).⁶⁸ Many device manufacturers offer both types of advertising placements.

Industry and Consumer Trends

Data from Nielsen indicate how quickly viewing habits are changing: the amount of time young adults spent watching traditional television fell by 40 minutes per day between 2017 and 2019, while average daily viewing of connected television increased by 15 minutes per day (**Figure 2**).

Figure 2. Daily Hours and Minutes of Usage

Adults 18-34



Source: 2020 and 2019 Nielsen Total Audience Reports.

Notes: As of first quarter of each year. In this survey, Nielsen defines “Live + Time-Shifted TV” as “Live usage plus any playback viewing within the measurement period,” including playback of encoded content from video on demand 2020 Nielsen Total Audience Report, p. 34.

⁶⁷ IAB, “Digital Video Advertising Glossary: Connected TV (CTV),” <https://www.iab.com/insights/digital-video-advertising-glossary/#index-52>.

⁶⁸ In addition some subscription video on demand services, known as SVODs, offer subscribers reduced fees in exchange for viewing advertisements.

It is likely that spending on political and issue advertising will mirror this shift in viewing patterns

According to the consulting firm Kantar Media Group,

Another focus in the 2020 election cycle is the [AVOD]/connected TV space. The issues of scale that hindered the use of th[ese] platform[s] in previous cycles is now in the past... Accordingly, political advertisers will be able to air more spots on these platforms and thus extend the reach of their messaging and better connect with younger audiences.⁶⁹

Investment research firm MoffettNathanson Research projects that between 2020 and 2024, television advertising revenues will decline from \$61 billion to \$56 billion, with most of the losses coming from cable networks.⁷⁰ The firm forecasts that this ad spending leaving traditional television will shift to AVODs, with AVOD ad revenue growing from \$3 billion in 2019 to \$14 billion in 2024. Thus AVODs, which are unregulated with respect to sponsorship identification of political and issue advertising, represent an increasingly significant medium for political and issue advertising.

Many AVODs, such as CBS Viacom's Pluto TV and Comcast's Peacock, are owned by corporations that also own broadcast stations, broadcast networks, or cable networks. Some of these companies have integrated the advertising sales departments of their traditional television services and their AVODs. The integration means that the parent companies are simultaneously selling advertising inventory for media properties subject to regulation by the FCC with those that are not. In addition, the parent companies are merging two different sales processes: direct sales negotiated among advertising experts and automated sales conducted via algorithms and software, known as "programmatic advertising."⁷¹

A Different Advertising Sales Process

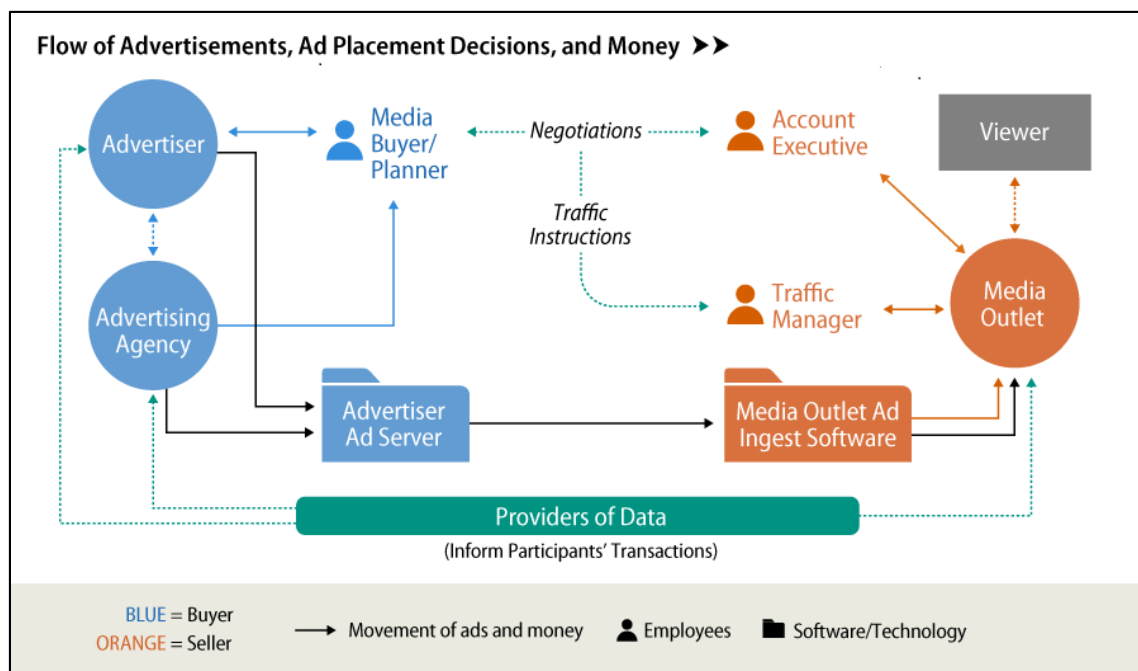
Traditionally, as **Figure 3** illustrates, political campaigns and issue advertisers, either through in-house marketers or outside media buyers at agencies, purchase television ads by entering into contracts with representatives of broadcast television stations, cable and satellite services, and broadcast and cable networks. Political campaigns and issue advertisers seek to advertise during programs popular with demographic groups likely to vote or take actions. Such decisions are based on data from the research firm Nielsen, which uses a sample of households with television sets to estimate the number of people of various characteristics watching particular programs.

Media planners at advertising agencies identify television programs most popular among a targeted demographic group based on historical viewing data, or, in the case of new shows, projections from media salespeople, and then book commercials on those shows. Campaigns and issue advertisers, agencies, and media organizations purchase data from Nielsen in order to make those estimates. An account executive, an individual employed by the broadcast station or cable or satellite operator, solicits potential advertisers and arranges the sale of advertising time.

⁶⁹ Kantar Media, *Political Advertising Trends: What to Expect in 2020*, New York, NY, p. 9, June 27, 2019, at <https://www.kantarmedia.com/us/newsroom/press-releases/kantar-forecasts6-billion-in-political-ad-spending-for-2019-2020-election-cycle>.

⁷⁰ Colin Dixon, "Market Conditions Remain Ripe for Migration of TV Ad Revenue to Digital," *nScreen Media*, July 20, 2020, at <https://nscreenmedia.com/tv-ad-revenue-migration-to-digital/>.

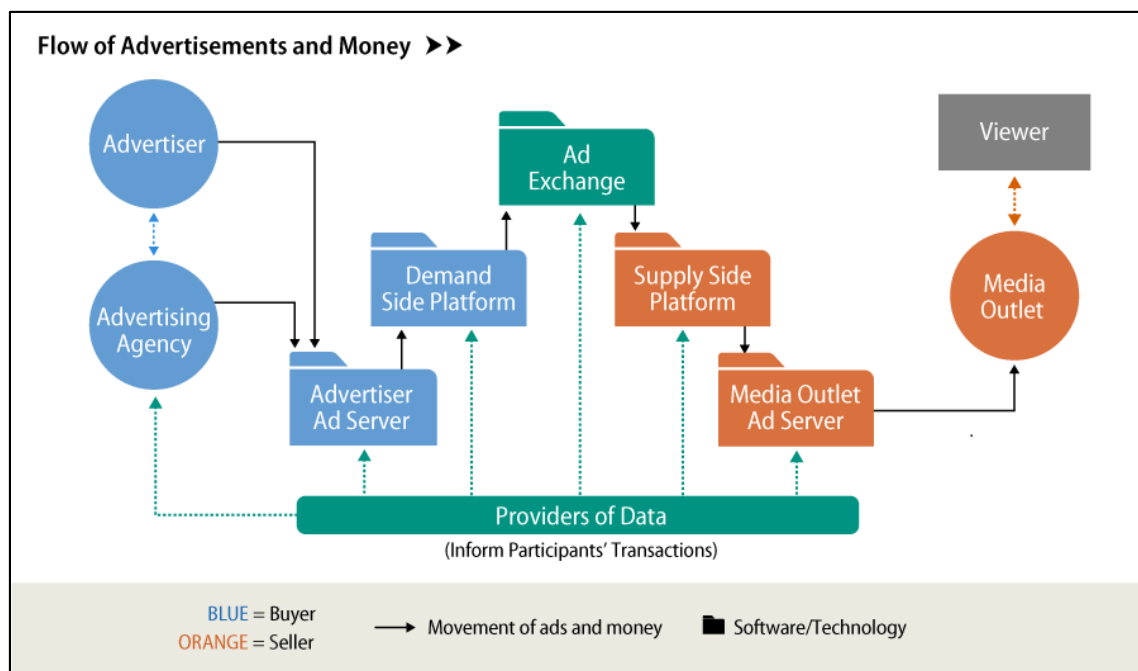
⁷¹ "Why is Programmatic TV Advertising So Confusing?" Media Radar (blog), April 10, 2019, at <https://mediaradar.com/blog/why-is-programmatic-tv-advertising-so-confusing/>.

Figure 3. Direct Television Advertising Sales Process

Sources: CRS analysis of data from S&P Global and IAB, “Advanced TV Matrix: a Market Snapshot,” June 2019, <https://www.iab.com/insights/advanced-tv-matrix-a-market-snapshot/>. USA DUBS, “TV Ad Distribution FAQs,” <https://www.usadubs.com/tv-ad-distribution-faq.html>. Vincent Flood, “So How Does a Video Ad Server Work?,” *Video Ad News* March 13, 2014, <https://videoadnews.com/2014/03/13/nick-reid-managing-director-uk-tubemogul-leading-enterprise-software-digital-branding/>. National Association of Broadcasters, Liz Chuday, *NAB’s Guide to Careers in Television, Second Edition*, National Association of Broadcasters, Baltimore, MD, 2008, p. 12 (explanation of “account executive”). TV Technology, “What is ... Ingest?,” January 13, 2004, at <https://www.tvtechnology.com/news/what-is-ingest>.

Notes: “Traffic” refers to the scheduling of advertisements. “Ingest” refers to the process of bringing new program elements, such as advertisements, into a studio or facility where they are stored on a server to be ready for broadcast. An ad server is a web server dedicated to the delivery of advertisements.

Selling and purchasing television advertising programmatically is a very different process. Technological advancements have automated advertising transactions, such that computer software, rather than humans, may perform such tasks as targeting audiences, forecasting viewership, transacting, delivering the advertisements, and measuring viewership. **Figure 4** illustrates the most commonly automated advertising technologies and participants involved within the programmatic advertising sales process. Note that unlike **Figure 3**, the advertising transactions depicted in **Figure 4** generally do not require human intervention.

Figure 4. Programmatic Television Advertising Sales Process

Sources: CRS based on infographic from Jason Poras, “Understanding the Basics of Programmatic Advertising,” (blog), PMG Worldwide, LLC, April 24, 2018, and Jack Marshall, “WTF is Programmatic Advertising?,” *Digiday*, January 30, 2014. Internet Advertising Bureau, “Glossary of Terminology,” at <https://www.iab.com/insights/glossary-of-terminology/#index-16>.

Notes: An ad exchange is a digital marketplace that enables advertisers and publishers to buy and sell advertising space, often through real-time auctions. A demand side platform (DSP) is a piece of software that provides centralized and aggregated media buying from multiple sources, including ad exchanges and supply side platforms, enabling advertisers to purchase advertising in an automated fashion. A supply side platform (SSP) is a piece of software used to sell advertising in an automated fashion; media outlets use SSPs to help them sell inventory.

The programmatic television sales process makes it difficult for the ultimate sellers of advertising to disclose the sponsors of political and issue ads in a timely manner. This is true even if, as in the case of cable and satellite operators and broadcast stations, they are required to do so. For example, as communications attorney David Oxenford has noted,

Some of the programmatic systems let advertisers use computerized systems to essentially buy any advertising time that is available in a station’s inventory. Advertisers can in effect have access to a station’s traffic system and schedule their own advertising schedules, and can pick and choose among the rates available to advertisers in a station’s traffic systems.... As disclosures of political ad buys often require more information than that is received from the typical ad buyer (especially for third-party political ad buyers from whom information about their principal officer and directors is required, as is the identification of the political issue being addressed), the systems must be able to provide that information.⁷²

⁷² David Oxenford, “Political Broadcasting and Programmatic Buying: Issues to Consider,” *Broadcast Law Blog*, December 2017, <https://www.broadcastlawblog.com/2017/12/articles/political-broadcasting-and-programmatic-buying-issues-to-consider/>.

Because AVODs and Connected TV device manufacturers are not subject to political and issue advertising disclosure laws, sponsors of ads can more easily hide their identities on these platforms than on regulated media.⁷³

In contrast to the direct buying process, in which buyers and sellers rely on Nielsen data as currency, in the programmatic process buyers and sellers use data from various parties involved in transmitting programming to define audiences. For example, cable and satellite operators can offer data collected from set top boxes; television manufacturers can offer data collected from television sets; and streaming device manufacturers can offer data collected from users of their devices.⁷⁴

Other programmatic sellers of targeted advertising, such as Premion, which operates a data management platform and is jointly owned by the broadcast television group owners TEGNA Inc., and Gray Television, Inc., partner with device manufacturers to collect viewer data.⁷⁵ In July 2020, 10 Members of Congress wrote the Chairman of the Federal Trade Commission, requesting that the agency investigate whether companies involved in selling consumer data collected from connected TVs, among other devices, have violated federal laws prohibiting unfair and deceptive business practices.⁷⁶

Implications for Congress

Foreign interference during the 2016 election cycle—and widely reported to be an ongoing threat—has renewed congressional attention to campaign and election security and raised new questions about the nature and extent of the federal government’s role in this policy area.⁷⁷ The House of Representatives addressed political advertising in the For the People Act of 2019, H.R.

⁷³ Tony Romm, “Political Ads Are Flooding Hulu and Roku, Revealing Loopholes in Federal Election Laws,” *Washington Post*, February 20, 2020, at <https://www.washingtonpost.com/technology/2020/02/20/hulu-roku-political-ads-streaming/>.

⁷⁴ In order to sell data from consumers with personal identifiable information, however, the organizations must obtain consumers’ consent. In 2017, a manufacturer of television sets, VIZIO, Inc., agreed to pay \$2.2 million to settle charges by the Federal Trade Commission and the Office of the New Jersey Attorney General that it installed software on its TVs to collect viewing data on 11 million consumer TVs without consumers’ knowledge or consent. Federal Trade Commission, “VIZIO to Pay \$2.2 Million to FTC, State of New Jersey to Settle Charges It Collected Viewing Histories on 11 Million Smart Televisions without Users’ Consent,” press release, February 6, 2017, at <https://www.ftc.gov/news-events/press-releases/2017/02/vizio-pay-22-million-ftc-state-new-jersey-settle-charges-it>. For more information about current data protection and privacy laws, see CRS In Focus IF11207, *Data Protection and Privacy Law: An Introduction*, by Stephen P. Mulligan and Chris D. Linebaugh.

⁷⁵ TEGNA, Inc., “TEGNA’s Premion Launches Premion Audience Selects Data Management Platform for Advertisers,” press release, April 9, 2018, at <https://www.businesswire.com/news/home/20180409006028/en/TEGNA%E2%80%99s-Premion-Launches-Premion-Audience-Selects-Data>. Gray Television purchased a minority stake in Premion in February 2020. TEGNA, Inc., “TEGNA and Gray Television Strike Strategic OTT Partnership,” press release, February 9, 2020, at <https://www.businesswire.com/news/home/20200226005675/en/TEGNA-Gray-Television-Strike-Strategic-OTT-Partnership>.

⁷⁶ Letter from Senator Ron Wyden, Senator Bill Cassidy, and Senator Maria Cantwell, et al., to The Honorable Joseph J. Simons, Chairman, Federal Trade Commission, July 31, 2020, at <https://www.wyden.senate.gov/news/press-releases/wyden-cassidy-and-bicameral-coalition-request-ftc-investigate-advertisers-tracking-americans-at-places-of-worship-and-protests>.

⁷⁷ CRS Report R46146, *Campaign and Election Security Policy: Overview and Recent Developments for Congress*, coordinated by R. Sam Garrett. This report also describes additional legislation introduced by Congress in the 116th session related to campaign and election security.

1, which it passed in March 2019. Also, in a report released in April 2020, the Senate Select Committee on Intelligence recommended that

Congress examine legislative approaches to ensuring Americans know the sources of online political advertisements. The Federal Election Campaign Act of 1971 requires political advertisements on television, radio and satellite to disclose the sponsor of the advertisement. The same requirements should apply online. This will also help to ensure that the [Russia-based Internet Research Agency] or any similarly situated actors cannot use paid advertisements for purposes of foreign interference.⁷⁸

In the context of the report, “online” refers to websites, search engines, and social media platforms that reach consumers over the internet, such as Google, Facebook, and Twitter. However, as discussed in “Connected TVs and AVODs: New Unregulated Entrants,” advertisements delivered to the TVs via the internet, and shown on TVs connected to the internet, either on program guides and menus or within AVODs, are also a form of online advertising. The following are additional potential issues for Congress’s consideration.

Media Outlets Covered

As the “television” advertising sold by regulated media outlets converges with advertising sold by unregulated media outlets, advertisers, including political and issue advertisers who may be seeking to conceal their identities, have additional opportunities to do so.⁷⁹ In some instances the unregulated media outlets are divisions of corporate owners that cross-sell political advertising with divisions that are covered by the laws. In other instances the outlets are stand-alone entities. To ensure that that sponsors of political and issue advertisements who target television viewers disclose their identities, Congress would need to enact legislation applying disclosure laws to media and advertising technology entities that are not currently regulated by the FCC.⁸⁰

Programmatic Advertising Supply Chain

In addition, as **Figure 4** illustrates, the complexity of programmatic TV advertising sales and the potential lack of transparency with respect to sponsorship could make the identification of sponsors difficult even for media outlets covered by such laws. According to Jeff Chester, the Executive Director of the Center for Digital Democracy, and Kathryn Montgomery, Professor Emerita of the School of Communication at American University,

⁷⁸ U.S. Congress, Senate Select Committee on Intelligence, *Russian Active Measures Campaigns and Interference in the 2016 Election, Vol. 2: Russia’s Use of Social Media, with Additional Views*, committee print, 116th Cong., 1st sess., October 8, 2018, 116-XX (Washington: GPO, 2019) p. 80.

⁷⁹ For example, in August 2020, the Office of the Director of National Intelligence issued a statement warning, “Ahead of the 2020 U.S. elections, foreign states will continue to use covert and overt influence measures in their attempts to sway U.S. voters’ preferences and perspectives, shift U.S. policies, increase discord in the United States, and undermine the American people’s confidence in our democratic process.” Office of the Director of National Intelligence, “Statement by NCSC Director William Evanina: Election Threat Update for the American Public,” press release, August 7, 2020, at <https://www.dni.gov/index.php/newsroom/press-releases/item/2139-statement-by-ncsc-director-william-evanina-election-threat-update-for-the-american-public>.

⁸⁰ While Congress has not enacted legislation focused specifically on online campaign activity, elements of existing Federal Election Commission rules address internet communications. CRS Report R46146, *Campaign and Election Security Policy: Overview and Recent Developments for Congress*, coordinated by R. Sam Garrett.

Because all of these systems are part of the opaque and increasingly automated operations of digital commercial marketing, the techniques, strategies, and messages of the upcoming campaigns will be even less transparent than before.⁸¹

As programmatic advertising becomes more common, compliance with the current provisions of Section 507 of the Communications Act (47 U.S.C. §508) may become more difficult for media organizations. In 1960, the House Committee on Interstate and Foreign Commerce noted a similar phenomenon with respect to broadcast licensees' responsibilities for disclosing sponsored broadcast matter, in recommending amendments to Section 317 of the Communications Act.

Our quiz show hearings demonstrated beyond dispute that imposition of legal responsibility upon the individual licensee for the quality and balance of program content and its freedom from deception has not worked and is not likely to work in the future... Section 317 should be amended to require announcement of payments made not only to licensees but also to any other individuals or companies for advertising "plugs" on behalf of third parties on sponsored programs... Criminal penalties should be imposed on any person or company who violates this section as amended.⁸²

Similarly, increasing the responsibility of intermediaries involved in programmatic advertising to comply with sponsorship identification laws could further enable Americans to know the sources of political advertisements shown on set-top-boxes, connected TVs, and AVODs.

Monitoring by the Members of the Public

As the Government Accountability Office (GAO) reported in 2013, both the FCC and Federal Election Commission rely on public complaints to alert the agencies of potential violations of sponsorship identification laws.⁸³ With addressable TV advertising, different audience segments watching the same television programs may see completely different commercials. In this new environment, fewer members of the public would be in a position to monitor and spot potential violations of sponsorship identification laws based on what they see on television. In such an environment, political files on the FCC's website may become the primary source for the public to monitor compliance.

Related Bills Introduced in 116th Congress

Several bills introduced in the 116th Congress address the sponsorship of political and issue advertisements in the digital age. The bills discussed below contain sections to enhance the transparency of sponsors of such ads, some of which would amend the Federal Election Campaign Act. Legislation that proposes changes unrelated to sponsorship identification is not described in this report.

⁸¹ Jeff Chester and Kathryn Montgomery, "The Digital Commercialisation of U.S. Politics—2020 and Beyond," *Internet Policy Review*, vol. 8, no. 4 (December 31, 2019), p. 8, at <https://policyreview.info/articles/analysis/digital-commercialisation-us-politics-2020-and-beyond>.

⁸² U.S. Congress, House Committee on Interstate and Foreign Commerce, Subcommittee on Legislative Oversight, *Investigation of Regulatory Commission and Agencies, Interim Report*, committee print, prepared by the Government Printing Office, 104th Cong., 2nd sess., February 9, 1960, 1258 (Washington: GPO, 1960), pp. 16, 39.

⁸³ U.S. Government Accountability Office, *Broadcast and Cable Television: Requirements for Identifying Sponsored Content Should Be Clarified*, 13-237, January 31, 2013, pp. 20, 25, at <https://www.gao.gov/products/GAO-13-237>.

Expanded FCC Involvement in Disclosure Requirements

The Fair Elections Now Act of 2019 (S. 2257), introduced by Senator Richard Durbin, would direct the FCC to initiate a rulemaking proceeding to establish a standardized form to be used by each broadcast station to record and report the purchase of advertising time by or on behalf of a candidate for nomination for election, or for election, to federal office. Because the bill would use Section 315 of the Communications Act to define a “broadcast station,” it would cover cable and satellite operators as well (see “Statute Governing Broadcast Stations and Cable Operators”).

The Fair and Clear Campaign Transparency Act (H.R. 5016), introduced by Representative Ben Ray Lujan, would direct the FCC to promulgate regulations requiring material in the online public inspection file of a covered entity to be made available in a format that is machine-readable. The term “covered entity” includes a television broadcast station, AM or FM radio broadcast station, cable operator, direct broadcast satellite service provider, or satellite digital audio radio service provider. The bill finds that “[m]achine readability is a critical component of open government and provides interested parties with the necessary access to evaluate data in a more comprehensive way.”

Disclaimer Requirements for Online Media

Connected TV and AVOD advertisements are a form of online media advertising. Therefore, bills which would amend the Federal Election Campaign Act to create new disclaimer requirements for political and issue advertisements online might also cover connected TV and AVOD advertisements explicitly, depending on whether those media are covered in the bills’ definitions of “digital communications” or “online platform.” Otherwise the bills could potentially exclude increasingly popular but unregulated channels for political and issue advertisements. S. 1356 (and its companion H.R. 2592), H.R. 4054, and H.R. 4617 (along with its companion S. 2699) each define an “online platform” as

any public-facing website, web application, or digital application (including a social network, ad network, or search engine) which—

(A) sells qualified political advertisements; and

(B) has 50,000,000 or more unique monthly United States visitors or users for a majority of months during the preceding 12 months.

In January 2019, Representative Kathleen Rice introduced H.R. 679, the Political Accountability and Transparency Act. Among other provisions, the bill would revise requirements for political communications. Specifically, the bill would apply disclaimer requirements for electioneering communications to “qualified internet or digital communications” and would require persons paying for political communications to make their best efforts to determine the true source of the funds used.⁸⁴ The bill defines a “qualified internet or digital communication” as

⁸⁴ Currently, the term “electioneering communication” means any broadcast, cable, or satellite communication which (1) refers to a clearly identified candidate for federal office; (2) is made within (a) 60 days before a general, special, or runoff election for the office sought by the candidate; or (b) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and (3) in the case of a communication that refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate. [52 U.S.C. §30104 (f)(3)(A).]

a communication which is placed or promoted for a fee on any public-facing website, Web application, or digital application (including a social network, ad network, or search engine).⁸⁵

In May 2019, Senator Amy Klobuchar introduced S. 1356, the Honest Ads Act. The bill would require online political advertisements to have the same transparency and disclosure requirements as advertisements sold by broadcast radio and television stations, cable operators, and satellite operators. In addition, the bill would require websites with at least 50 million monthly viewers to maintain a public file of all electioneering communications purchased by a person or group who spends more than \$500 total on ads published on the websites' platforms. Representative Derek Kilmer introduced the companion legislation, H.R. 2592.

In July 2019, Representative David E. Price introduced H.R. 4054, the Stand by Every Ad Act. The bill would require the sponsors of certain political advertisements to include information on the financing sources within the commercials. The bill would amend the definition of a "public communication" in the Federal Election Campaign Act covered by disclosure requirements to include "paid internet, or paid digital communication."⁸⁶ The bill defines "qualified internet or digital communication" as "any communication which is placed or promoted for a fee on an online platform."

In October 2019, Representative Zoe Lofgren introduced H.R. 4617, the Stopping Harmful Interference in Elections for a Lasting Democracy (SHIELD) Act. Among other provisions, the bill would apply existing requirements related to disclosures for political advertisements and electioneering communications to internet and digital advertisements, including disclosure requirements and contributions. Additionally, large online platforms would be required to maintain a public database of certain political advertisements. Senator Amy Klobuchar introduced the companion legislation, S. 2669.

Also in October 2019, Representative Rodney Davis introduced H.R. 4736, the Honest Elections Act. Among other provisions, the bill would amend the Federal Election Campaign Act of 1971 to clarify the application of disclaimer rules for political advertisements that are disseminated online. The bill defines a "media outlet" as any one of the following:

- (1) Any newspaper, magazine, or periodical.
- (2) Any broadcast, satellite or cable television or radio station.
- (3) Any Internet-based website, application, or platform.

The term "covered Internet communication" means

any communication which is required to include information under this section and which is any of the following:

- (A) Any electronic mailing of more than 500 substantially similar communications which is disseminated by a political committee.

⁸⁵ Ad networks are companies that act as brokers between a group of advertisers and a group of publishers. See <https://www.smartinsights.com/internet-advertising/ad-networks/complex-digital-advertising-ecosystem-explained/>. In the context of online advertising, a "publisher" is an "an individual or organization that prepares, issues, and disseminates content for public distribution or sale via one or more media." IAB, "Glossary of Terms," <https://www.iab.com/insights/glossary-of-terminology/#index-16>.

⁸⁶ Currently, the term "public communication" means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. See 52 U.S.C. §30101 (22).

(B) Any communication disseminated on a publicly available website of a political committee.

(C) Any communication placed for a fee on another person's website or Internet-based application or platform.

Limitations on Targeted Political and Issue Advertising

As discussed in “Targeted Television Advertising,” two characteristics distinguish targeted television advertising from traditional television advertising: (1) the advertising is served to viewers based on data collected from the viewers, and (2) the process of buying and selling the advertising is automated, or “programmatic,” and takes place over the internet, and/or private communications networks. Two bills would limit the ability of sponsors of political and issue commercials to engage in targeted advertising. Such bills could potentially affect cable and satellite operators, which offer addressable advertising on their set top boxes, as well as sellers of advertising on connected TVs and AVODs, depending on eventual interpretations of the definitions. Moreover, one of the bills would cover companies that serve the intermediary functions in the programmatic buying and selling process illustrated in **Figure 4**.

In May 2020, Representatives David Cicilline introduced H.R. 7012, the Protecting Democracy from Disinformation Act. H.R. 7012 would prohibit online platforms and certain intermediaries from targeting the dissemination of political advertisements to a specific group of individuals on the basis of online behavioral data or on the basis of demographic characteristics shared by members of the group. It would also require online platforms and certain intermediaries to maintain public records of certain political advertisements. The term “covered intermediary” means a digital advertising platform or advertising system (including an ad server, ad network, ad exchange, and any other advertising technology intermediary) which participates in the delivery of 100 million advertisements that can be viewed in the United States for a majority of months during the preceding 12 months. The term “covered online platform” means

any public facing website, web application, or digital application (including a social network or search engine) which sells qualified political advertisements and has 50,000,000 or more unique monthly United States visitors or users for a majority of months during the preceding 12 months, except that such term does not include a website or application that displays qualified political advertisements solely pursuant to an arrangement entered into with a covered intermediary between the website or application and the sponsor of the qualified political advertisement.

Also in May 2020, Representative Anna Eshoo introduced H.R. 7014, the Banning Microtargeted Political Ads Act. The bill would prohibit online platforms from disseminating political advertisements that are targeted to an individual or to a group of individuals on any basis other than the recognized place in which the individual or group resides. The bill would also apply disclosure requirements for electioneering communications to internet or digital communications, and amend the definition of a “public communication” in the Federal Election Campaign Act covered by disclosure requirements to include “paid internet, or paid digital communication. In this bill, the term “covered online platform” means

any website, web application, mobile application, smart device application, digital application (including a social network, or search engine), or advertising network (including a network disseminating advertisements on another website, web application, mobile application, smart device application, or digital application) that receives payment to disseminate political advertisements, except that such term does not include a website, application, or network (in combination with any subsidiaries and affiliates of such a website, application, or network) that, during the 12-month period ending on the date of

the dissemination of the political advertisement involved, collected or processed personal information pertaining to fewer than 50,000,000 individuals.

Appendix. History of Sponsorship Laws and Federal Regulations

Table A-1. Key Dates Regarding Sponsored Content Laws and Regulations

1879	Congress limited eligibility for low second-class postal rates to periodicals “published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers: <i>Provided, however, That nothing herein shall be so construed as to admit to the second class rate regular publications designed primarily for advertising purpose....</i> ” 20 Stat. 359.
1912	The Newspaper Publicity Act requires publishers benefiting from the second-class postal rate to label “all editorial or other reading matter published in any such newspaper, magazine, or periodical for the publication of which money or other valuable consideration is paid, accepted, or promised” as an “advertisement.” Violators may be fined. 37 Stat. 539, 554. Current version of law now codified as 39 U.S.C. §3626(a)(4).
1913	U.S. Supreme Court upholds the Newspaper Publicity Act. ^a
1914	The Federal Trade Commission Act of 1914 creates the Federal Trade Commission (FTC). At that time, the act gave FTC jurisdiction over antitrust laws, but did not grant specific jurisdiction over advertising and marketing practices. ^b
1927	<p>The Radio Act of 1927 creates the Federal Radio Commission to regulate broadcast radio stations. It conditions private broadcasters’ use of the public airwaves on abiding by laws and regulations.</p> <p>Section 18 provides that licensees may choose not to allow any candidate to use their stations, but that if they provide access to candidates, they must offer equal access to all legally qualified candidates. Licensees may not censor the candidates’ messages.</p> <p>Section 19 states, “All matter broadcast by any radio station for which service, money, or any other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, firm, company, or corporation, shall, at the time the same is so broadcast, be announced as paid for or furnished by, as the case may be, by such person, firm, company, or corporation.” 44 Stat. 1162.</p>
1934	<p>Congress enacts the Communications Act of 1934, repealing the Radio Act of 1927 and creating the Federal Communications Commission to regulate broadcast stations.</p> <p>Section 315 retains the provisions of Section 18 of the 1927 Act.</p> <p>Section 317 states, “All matter broadcast by any radio station for which service, money, or any other valuable consideration is directly, or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person.” 48 Stat. 1064, 1089.</p>
1938	<p>With enactment of Wheeler-Lea Act (also known as the “Advertising Act”), Congress amends Section 5 of FTC Act by adding a prohibition against “unfair or deceptive acts or practices in commerce.” 52 Stat. 111. (15 U.S.C. §52).</p> <p>With respect to political advertising disclosure, the FCC requires broadcast radio stations to “keep and permit public inspection of a complete record of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if request is granted.”^c (Political inspection file rules.)</p>

- 1943 Senate Committee on Interstate Commerce holds hearings regarding sponsorship of news programs and commentaries on radio stations and networks. The FCC Chairman contends that companies are paying for programs labeled as “news commentaries” that promote their point of view without disclosing their sponsorship.^d
- 1944 FCC adopts first set of detailed administrative rules related to Section 317.^e Rules apply mainly to broadcasts about politics or public affairs on AM radio stations. Stations receiving anything of value for such programming, including production assistance, must identify the nature of the support at the end and beginning of the program. (Programs lasting less than five minutes only require one announcement.) Programs supplied by a corporation, committee, association, or other group must identify the source. Stations must maintain files of sponsors available for public inspection. 47 C.F.R. §§73.1212(d)-(g).
- 1945 FCC extends sponsorship identification and political file requirements rules to FM radio stations and broadcast television stations. 1945 Supplement to the Code of Federal Regulations of the United States of America (1946).
- 1959-1960 Congress, the Federal Trade Commission, the U.S. Department of Justice, and the FCC investigate allegations of “payola” in which radio station employees allegedly failed to publicly disclosing the receipt of payments from record label executives to play their labels’ records on broadcasts. The agencies also investigate the practice of “plugola,” in which record label executives allegedly paid station employees to promote or “plug” certain songs on the radio. In addition, Congress investigates the practices of production companies receiving money from retailers to include the retailers’ employees as contestants on network television quiz shows, without publicly disclosing the payments. Congress holds hearings on proposed revisions to the sponsorship laws.
- 1960 In the Communications Act Amendments, 1960, Congress bars the FCC from requiring broadcast stations to disclose routine use of records, props, or other services supplied by third parties free or for a nominal charge. Congress permits the FCC to retain the option to mandate disclosure for goods or services (including recordings, transcriptions, talent, or scripts) supplied to stations for free or nominal charge, as an inducement to air a public affairs program (P.L. 86-752). Any party who pays to insert, or accepts payments to insert, covert promotions must report this arrangement to the next party in the chain of program production and ultimately to broadcasters so they can air announcements. FCC may waive sponsorship announcement requirements in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement. (47 U.S.C. §317). Violators are subject to a maximum \$10,000 fine and one-year jail term. (47 U.S.C. §508).
- 1962 The FCC admonishes stations to transmit sponsorship identification announcements when broadcasting political material provided by foreign governments. The FCC states that Section 505 of the Communications Act obligates stations to “exercise reasonable diligence” in discovering the principals responsible for the material, and that announcing the identity of the principals’ agents is insufficient.^f
- 1963 The FCC adopts additional sponsorship identification regulations, and provides 36 “illustrative interpretations” of when sponsorship identification rules may or may not be required, depending in part on the amount of consideration involved, and the extent of on-air promotional identification.^g 47 C.F.R. §73.1212(i)

1965	The FCC requires broadcast radio and television licensees to maintain political files within their communities of licenses and make them available for members of the public to inspect. ^h
1971	Congress enacts the Federal Election Campaign Act (FECA), mandating reporting requirements similar to those in place today, such as quarterly disclosure of a political committee's receipts and expenditures. P.L. 92-225 [52 U.S.C. §30101].
1972	The FCC extends sponsorship identification rules to "origination cablecasting" by cable operators. ⁱ Currently codified as 47 C.F.R. §76.1615. The FCC defines "origination cablecasting" as "programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator." 47 C.F.R. §76.5(p). While the rules reflect the broadcast provisions of Section 317 of the Communications Act, they do not reflect Section 507 of the Communications Act.
1974	Congress includes "community antenna television systems" in the definition of broadcast stations for the purposes of Section 315, thereby including cable operators as entities covered by this section. P.L. 93-443 §402(c). The FCC extends political inspection file rules to cable operators. ^j 47 C.F.R. §76.1700. Congress establishes the Federal Election Commission to administer and enforce the federal campaign finance law. The FEC has jurisdiction over the financing of campaigns for the U.S. House, Senate, Presidency and the Vice Presidency. ^k P.L. 93-443.
1975	The FCC amends sponsorship identification rules for broadcast radio and television licensees and cable operators. Cable operators must maintain files of sponsors available for public inspection. ^l The FCC defines the term "sponsored" as "paid for." Licensees and cable operators must exercise "reasonable diligence" to obtain true sponsorship information from employees or third parties. If, after exercising reasonable diligence, licensees and cable operators learn identity of the person or persons on behalf of whom an agent is acting, they must identify the ultimate sponsors, not the agent.
1992	P.L. 102-385 establishes public interest obligations for direct broadcast satellite (DBS) operators.
1997	The FCC requires satellite digital audio radio service (SDARS) licensees to comply with Section 315 of the Communications Act, which provides legally qualified candidates equal access to a licensee's facilities. ^m Licensees may choose not to allow any candidate to use their facilities. Licensees may not censor the candidates' messages.
1998	The FCC extends political file rules to DBS operators ⁿ [now codified as 47 C.F.R. §25.701(d)].
2002	The Bipartisan Campaign Reform Act (P.L. 107-155) amends of Section 315 of the Communications Act, providing that candidates have the right to receive the lowest unit rate charged for advertisements airing on broadcast radio stations, broadcast television stations, and cable systems on the condition that if they directly refer to their challengers, they include on-air disclosures meeting certain requirements. ("Stand by your ad.") Broadcast radio and television stations and cable operators must maintain publicly available files containing records of requests by legally qualified political candidates to purchase airtime. ^o
2012 and 2016	The FCC adopts new rules requiring broadcast radio and television licensees, cable operators, DBS operators, and SDARS operators to post the contents of political files and, when applicable, sponsorship identification files, online. Now codified as 47 C.F.R. §§73.1212, 73.1943, 73.3526 (commercial broadcasters), 47 C.F.R. §76.1700 (cable), 47 C.F.R. §25.701 (DBS), and 47 C.F.R. §25.702 (SDARS). ^p

Sources: U.S. Postal Service, "About, Postage Rates for Periodicals: A Narrative History," <https://about.usps.com/who-we-are/postal-history/periodicals-postage-history.htm#4>. Richard Kielbowicz and

Linda Lawson, "Unmasking Hidden Commercials in Broadcasting; Origins of the Sponsorship Identification Regulations, 1927 – 1963," *Federal Communications Law Journal*, vol. 56 (March 2004), p. 329.

- a. *Lewis Publishing Company v. Morgan Postmaster in New York City*, 229 U.S. 288, 315 (1913).
- b. David C. Hilliard, Janet A. Marvel, and Joseph N. Welch, II; "Ch. 14.01 The Federal Trade Commission," in *Trademark and Unfair Competition Deskbook*, vol. 1, New York: Matthew Bender & Company, Inc., 2019.
- c. Federal Communications Commission, "Broadcasts by Candidates for Public Office," 3 *Federal Register* 1691, July 12, 1938.
- d. Testimony of FCC Chairman James Lawrence Fly, in U.S. Congress, Senate Committee on Interstate Commerce, Hearings on S. 818, a Bill to Amend the Communications Act of 1934, and for Other Purposes, 97th Cong., 1st sess., November 4, 1943 (Washington: GPO, 1944), pp. 52-53.
- e. Federal Communications Commission, "Rules Governing Standard and High Frequency Broadcast Stations: Announcement of Sponsored Programs," 9 *Federal Register* 14734, December 19, 1944.
- f. Federal Communications Commission, "FCC Warns About Broadcast of Controversial Foreign Matter Without Indicating Foreign Sponsorship, Public Notice, FCC 62-281," 40 *FCC Reports* 136, August 1, 1962.
- g. Federal Communications Commission, "Applicability of Sponsorship Identification Rules, Public Notice, FCC 63-409," 40 *FCC Reports* 141, May 6, 1963.
- h. Federal Communications Commission, "Amendment to Commission's Rules Related to Inspection of Records, Report and Order, FCC 65-783" 45 *FCC Reports* 2206, 2214, April 5, 1965.
- i. Federal Communications Commission, "Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations, Cable Television Report and Order FCC 72-1089," 36 *FCC Reports, 2nd Series* 143, February 3, 1972.
- j. Federal Communications Commission, "Amendment of Part 76, of the Commission's Rules and Regulations, Report and Order FCC 74-831," 48 *FCC Reports, 2nd Series* 72, August 8, 1974.
- k. Federal Election Commission, "Mission and History," <https://www.fec.gov/about/mission-and-history/>.
- l. Federal Communications Commission, "Amendment of the Commission's 'Sponsorship Identification' Rules, Report and Order FCC 745-417," 52 *FCC Reports, 2nd Series* 701, April 25, 1975.
- m. Federal Communications Commission, "Establishment of Rules and Policies for the Digital Audio Satellite Service, Report and Order FCC 97-70," 12 *FCC Record* 5754, 5791-5792 March 3, 1997.
- n. Federal Communications Commission, "Implementation of Section 25 of the Cable Television Consumer Protection Act and Satellite Service, Report and Order FCC 98-307," 13 *FCC Record* 232544, 23258, 23274 November 28, 1998.
- o. Section 315(c)(1) of the Communication Act [47 USC §315(c)(1)] includes a "community antenna television system," which includes cable television, in its definition of the term "broadcasting station."
- p. Federal Communications Commission, "Standardized and Enhanced Disclosure Requirements for Television License Broadcast License Public Interest Obligations, Second Report and Order FCC 12-44," 27 *FCC Record* 4535, 4572 April 27, 2012. Federal Communications Commission, "Expiration of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licenses, Report and Order, FCC 16-4," 3 *FCC Record* 526, 537-538, 545-546 January 29, 2016.

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