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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 19-04-A
AGENDA ITEM
For the meeting of February 7, 2019
SUBMITTED LATE

February 1, 2019

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by NFS*
Acting General Counsel

Neven F. Stipanovic *NFS*
Acting Associate General Counsel

Robert M. Knop *RMK by NFS*
Assistant General Counsel

Tony Buckley *ATB*
Attorney

Subject: Petition for Rulemaking to Amend 11 C.F.R. §110.11(c)(3)(iii)(A):
Notice of Availability

On December 4, 2018, the Commission received a Petition for Rulemaking (“Petition”) from Extreme Reach. The Petition asks the Commission to revise and amend the existing rule in 11 C.F.R. §110.11(c)(3)(iii)(A) concerning the size of letters in disclaimers in TV ads, specifically to reduce the required minimum size from four percent of vertical picture height to two percent of vertical picture height for transmissions in high definition resolution.

The Office of the General Counsel has examined the Petition and determined that it meets the requirements of 11 C.F.R. § 200.2(b). Therefore, we have drafted the attached Notice of Availability (“Notice”) seeking comment on whether the Commission should initiate a rulemaking on the proposal in the Petition. The Notice would be published in the *Federal Register* pursuant to 11 C.F.R. § 200.3(a)(1).

In keeping with the Commission’s regulations, the Notice does not address the merits of the Petition. Instead, it states that consideration of the merits will be deferred until the close of the comment period.

RECOMMENDATION

The Office of the General Counsel recommends that the Commission place the attached Notice on the agenda for the February 7, 2019 Open Meeting.

Attachment

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[NOTICE 2019-XX]

Rulemaking Petition: Size of Letters in Disclaimers

AGENCY: Federal Election Commission.

ACTION: Rulemaking Petition: Notification of Availability.

SUMMARY: On December 4, 2018, the Federal Election Commission received a Petition for Rulemaking asking the Commission to amend the existing regulation pertaining to the size of letters in disclaimers on television ads. The Commission seeks comments on the petition.

DATES: Comments must be submitted on or before [insert date 60 days after the date of publication in the Federal Register].

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at <http://sers.fec.gov/fosers/>, reference REG 2018-05. Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Robert M. Knop, Assistant General Counsel, 1050 First Street NE, Washington, DC 20463.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social

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1 security number, or driver's license number, or any information that is restricted from disclosure,
2 such as trade secrets or commercial or financial information that is privileged or confidential.

3 **FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General
4 Counsel, or Mr. Tony Buckley, Attorney, Office of the General Counsel, 1050 First Street NE,
5 Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

6 **SUPPLEMENTARY INFORMATION:** With some exceptions, the Federal Election
7 Campaign Act, 52 U.S.C. 30101-45, and Commission regulations require disclaimers for public
8 communications that are made by a political committee, that expressly advocate the election or
9 defeat of a clearly identified federal candidate, or that solicit contributions. See 52 U.S.C.
10 30120(a); 11 CFR 110.11(a).¹ The information those disclaimers must include vary depending
11 on whether the communications were authorized or paid for by a candidate, an authorized
12 committee, or an agent of either. See 52 U.S.C. 30120(d); 11 CFR 110.11(b) and (c). All
13 disclaimers must be presented in a clear and conspicuous manner to give the readers, observers,
14 or listeners, adequate notice of who paid for or authorized the communication. 52 U.S.C.
15 30120(c) and (d); 11 CFR 110.11(c).

16 Disclaimers on communications transmitted via television or through any broadcast,
17 cable or satellite transmission are subject to certain additional requirements. Among those
18 requirements, such communications made by political committees (whether or not authorized or
19 paid for by a candidate) must carry a written disclaimer in letters equal to or greater than four
20 percent of the communication's vertical picture height. See 52 U.S.C. 30120(d); 11 CFR
21 110.11(c)(3)(iii)(A), (4)(iii)(A).

¹ The term "public communication" includes any broadcast, cable, or satellite communication. 11 CFR 100.26.

1 On December 4, 2018, the Commission received a Petition for Rulemaking from Extreme
2 Reach (“Petition”) asking the Commission to amend 11 CFR 110.11(c)(3)(iii)(A). The Petition
3 contends that the current standard for TV ads is outdated due to the fact that it was promulgated
4 during a period when television was broadcast in standard definition, rather than the current high
5 definition.

6 The Petition cites a publication of the International Telecommunication Union, Petition at
7 13-31, to support its assertion that high definition is the current standard for television
8 broadcasts. The Petition also includes the disclaimer portions of advertising guidelines from the
9 ABC, CBS, and NBC television networks. Petition at 44-47. According to the Petition, these
10 guidelines support the contention that the current industry guidelines for a normal disclaimer size
11 is 22 pixels (approximately two percent of the vertical picture height) using high definition
12 resolution. Petition at 2. The Petition also includes screen shots purporting to show how a
13 disclaimer appears in high definition under the four percent standard, and how a disclaimer
14 appears in high definition using the proposed two percent standard. In light of this, the Petition
15 asks the Commission to open a rulemaking to revise “[the Commission’s regulation] to add a
16 separate requirement for [high definition] where letters must be equal to or greater than two (2)
17 percent of the vertical picture height and specify that the four (4) percent of the vertical picture
18 height requirement only applies to [standard definition].”

19 The Commission seeks comments on the Petition. The public may inspect the Petition on
20 the Commission’s website at <http://sers.fec.gov/fosers/>, or in the Commission’s Public Records
21 Office, 1050 First Street NE, 12th Floor, Washington, DC 20463, Monday through Friday, from
22 9 a.m. to 5 p.m.

