



AMERICANS FOR PROSPERITY

RECEIVED
FEDERAL ELECTION
COMMISSION

2012 OCT -1 AM 11:52

2111 Wilson Blvd., Suite 350 | Arlington, VA 22201 | p: (866) 730-0150 f: (703) 241-3201

OFFICE OF FEDERAL
COUNSEL

VIA E-MAIL (jjordan@fec.gov) AND FEDEX

September 28, 2012

Mr. Jeff Jordan
Complaints Examination and Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

PREMUR# 548

RE: Sua sponte submission

Dear Mr. Jordan:

Americans for Prosperity (AFP) submits this *sua sponte* submission pursuant to the Federal Election Commission's (the "Commission") Policy Regarding Self-Reporting of Campaign Finance Violations, 72 Fed. Reg. 16,695 (April 5, 2007).

AFP recently sponsored a radio advertisement satisfying the statutory definition of an "electioneering communication." The ad began airing on September 27, 2012 on Harrisburg, Philadelphia, and Reading, Pennsylvania radio stations, and was scheduled to run through October 1, 2012 at a total cost of \$9,990.¹ Due to an inadvertent oversight, the ad contained an incomplete disclaimer.

AFP corrected the disclaimer as soon as it realized the error on September 28, 2012. Due to: 1) the limited time the ad ran with the incorrect disclaimer; 2) the limited extent to which the disclaimer technically did not satisfy the complete statutory and regulatory requirements; 3) AFP's prompt remedial action; 4) AFP's willingness to step forward immediately with this *sua sponte* submission; 5) the completeness of the submission; and 6) the small amount at issue, AFP respectfully requests the Commission to dismiss this matter in its prosecutorial discretion, consistent with the Commission's treatment of similar matters. *Heckler v. Chaney*, 470 U.S. 821 (1985).

¹ Because the September 27 ad did not aggregate in an amount in excess of \$10,000 since the last electioneering communication that AFP sponsored and reported, the ad will be reported on AFP's next FEC Form 9. See 2 U.S.C. § 434(f); 11 C.F.R. § 104.20(a)(ii); Americans for Prosperity, FEC Form 9, Sept. 25, 2012, at <http://images.nictusa.com/pdf/339/12030890339/12030890339.pdf>.

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Factual Background

On September 27, 2012, AFP began disseminating a radio advertisement on three radio stations in Harrisburg, Philadelphia, and Reading, Pennsylvania at a cost of \$9,990.² The invoice for the ad is attached hereto as Exhibit 1. The "flight schedule" is attached hereto as Exhibit 2.

The ad promotes an issue advocacy effort and rally organized by AFP to raise public awareness of the costs of the Patient Protection and Affordable Care Act, and to urge the public to put grassroots pressure on government officials to repeal the law. Because the ad includes one limited reference to President Obama, the ad technically meets the statutory definition of an electioneering communication. 2 U.S.C. § 434(f)(3). The original ad script, attached hereto as Exhibit 3, ended with a disclaimer that included AFP's website address, AFP's telephone number, and the fact that the ad was "Paid for by Americans for Prosperity."

On the morning of September 28, 2012, AFP realized the original disclaimer technically did not satisfy all of the requirements for disclaimers for electioneering communications. Specifically, the original disclaimer did not state that: 1) the ad was not authorized by any candidate or candidate's committee; and 2) that AFP was "responsible for the content of this advertising." 11 C.F.R. §§ 110.11(b)(3) and (c)(4)(i).

As soon as AFP realized its inadvertent oversight, it contacted Target Enterprises, its media purchaser, and asked that a corrected disclaimer be distributed to the radio stations. Target responded soon thereafter with confirmation that this had been done. The e-mail chain is attached hereto as Exhibit 4. The corrected disclaimer now reads: "Americans for Prosperity paid for and is responsible for the content of this advertising. Not authorized by any candidate or candidate's committee. On the web at Americans for Prosperity dot org."

Discussion

AFP's radio ad ran with a technically incomplete disclaimer for, at most, a day and a half (out of a total of five days, or 30 percent of the total ad buy). The disclaimer satisfied the most essential parts of the Commission's electioneering communications disclaimer requirements. To wit, AFP was identified as the ad's sponsor, and the ad included both AFP's telephone number and Web address (the regulations only require one or the other). See 11 C.F.R. § 110.11(b)(3). The omission of the other language required by the regulations was an inadvertent oversight and posed virtually no risk of public confusion as to who was responsible for the ad, or whether the ad was authorized by any candidate or candidate's committee.

AFP realized its technical error immediately after the first day the ad began running, took immediate remedial action, and immediately provided this *sua sponte* submission. AFP has provided herein all of the relevant information that the Commission needs about the facts and circumstances regarding the incomplete disclaimer used in this advertisement.

² Because the ad script would be read by the radio announcers, there were no additional production costs.

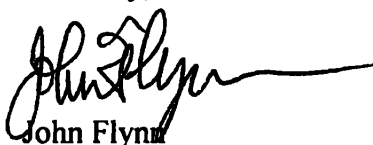
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Due to: 1) the relatively small, \$9,990 amount at issue; 2) the \$2,997 allocable portion of the ad buy that ran with the incomplete disclaimer; 3) the 75% *sua sponte* penalty discount that the Commission customarily provides in such circumstances; 4) the additional 25% pre-probable cause conciliation discount; 5) in addition to all of the factors discussed above, AFP respectfully requests that the Commission, in its prosecutorial discretion, dismiss AFP's technical and inadvertent oversight in including an incomplete disclaimer for its radio ad. AFP regrets the error and pledges to take every effort to prevent it from recurring.

AFP trusts it has addressed this matter in full and with complete candor. However, if the Commission is not completely satisfied with AFP's submission, AFP cordially invites additional follow-up from the Commission to resolve this matter expeditiously.

Please do not hesitate to contact us at (703) 224-3200 or by e-mail at the addresses provided below.

Sincerely,



John Flynn
Vice President and General Counsel
jflynn@afphq.org



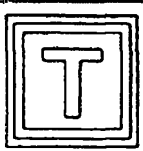
Chris Berg
Legal Counsel
cberg@afphq.org

encl.

cc: Mr. Anthony Herman, General Counsel
Mr. Daniel A. Petalas, Associate General Counsel for Enforcement

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Exhibit 1



Target
 Enterprises

INVOICE

To: Americans for Prosperity
 2111 Wilson Blvd, Ste. 350
 Arlington, VA 22201

Date: September 26, 2012

ITEM	MARKET	FLIGHT DATES	INVOICE
<input checked="" type="radio"/> RADIO <input type="radio"/> TV/CABLE <input type="radio"/> PRINT <input type="radio"/> INTERNET <input type="radio"/> OTHER	Harrisburg Philadelphia Reading	9/27-10/1/12	11281

Description:	Amount
BILLING: For Radio Advertising	
Radio WHP AM WWIQ FM WEEU AM	\$9,990.00
Notes: Please pay upon receipt of invoice. Thank you.	

Target Enterprises, LLC
 15260 Ventura Blvd., Suite 1240
 Sherman Oaks, CA 91403
 P: 818.905.0005
 F: 818 905.1444

Total Due **\$9,990.00**

WWW.TARGETLA.COM

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Exhibit 2

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TARGET
 ENTERPRISES

Harrisburg, Reading, Philadelphia
 Flight Dates 9/27-10/1/12

City	Station	Radio Programming	Spots	Market Cost
Harrisburg	WHP-AM	9A-12N Glenn Beck	8	\$1,240
		12n-3p Rush	8	\$1,240
		3p-6p Bob Durgin	8	\$1,240
Philadelphia	WWIQ-FM	Sat-Sun 10a-6p	3	\$150
		9A-12N Glenn Beck	3	\$600
		12n-3p Rush	8	\$1,600
Reading	WEEU-AM	3p-6 Sean Hannity	8	\$1,200
		Sat-Sun 10a-6p	4	\$300
		12n-3p Rush	9	\$1,800
		Sat-Sun 10a-6p	5	\$620
				\$9,090

Exhibit 3

President Obama's health care law will cost Americans at least 1.7 trillion dollars. Instead of a patient-centered approach that empowers patients to choose a health care plan that's right for them, we got an expensive, bloated law that puts Washington bureaucrats between you and your doctor.

This is just another example of an agenda that is failing American families. -- A failing agenda that must come to an end.

Join Americans for Prosperity, and Fox News Contributor Michelle Malkin in Harrisburg next Tuesday, October 2nd for our HANDS OFF MY HEALTHCARE RALLY. AFP has buses leaving from all over the state --so be sure to join us! YOU are the last stand against the President's invasive and disastrous healthcare law from coming to Pennsylvania, make your voice heard.

For more information, or to register, visit [www dot A F P DASH PA dot com](http://www.dotAFPdashPA.com) that's A F P Dash PA dot com. Americans for Prosperity can be reached at 703-224-3200.

Paid for by Americans for Prosperity.

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Exhibit 4

Andrew Barrett

From: Sheila Mehr [redacted]
Sent: Friday, September 28, 2012 11:08 AM
To: Andrew Barrett
Subject: Re: SCRIPT UPDATE RE: PA radio buy

Got it. Will forward on to stations.

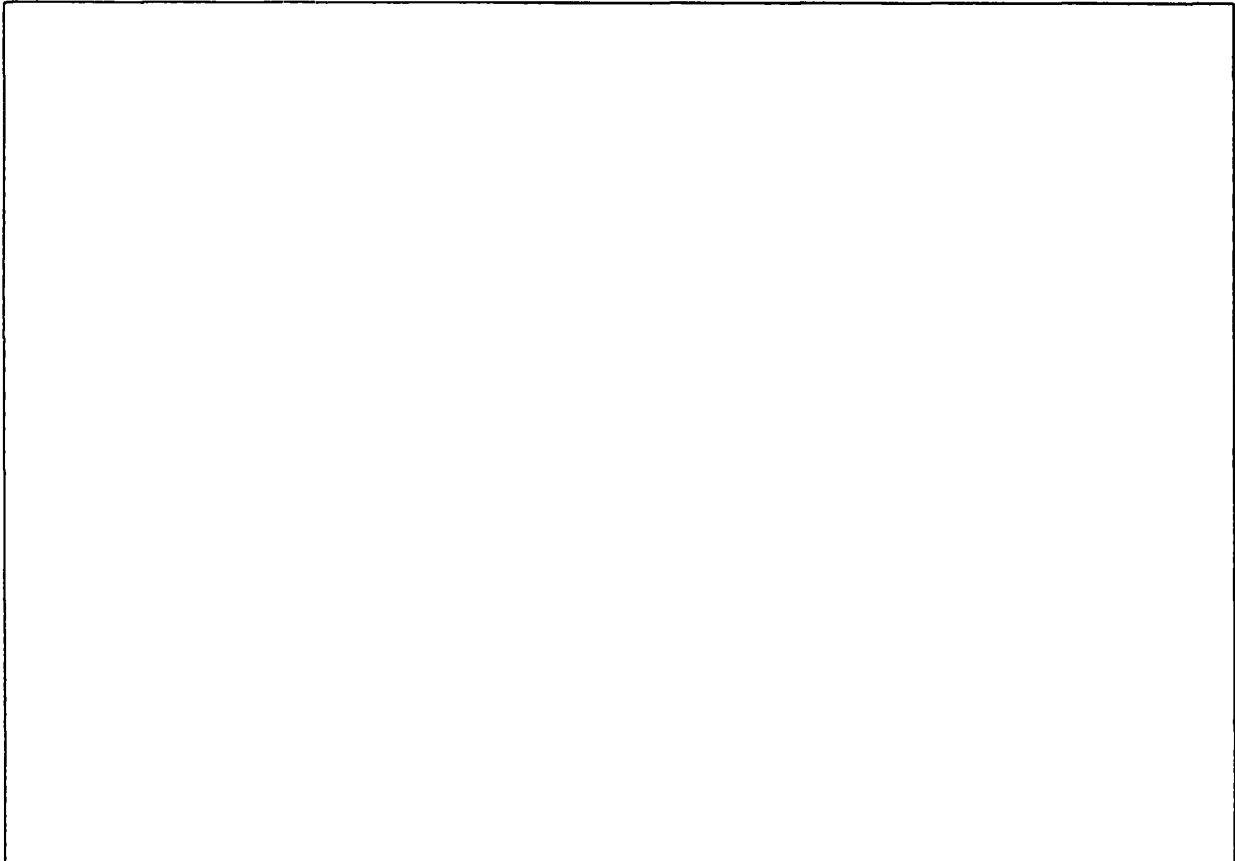
Sent from my iPhone

On Sep 28, 2012, at 8:05 AM, "Andrew Barrett" [redacted] wrote:

> We need to update the station with the new script for our PA buy. Our disclaimer was not correct, could you send me confirmation when you have it?

>

> From: Sheila Mehr [mailto:[redacted]]
> Sent: Wednesday, September 26, 2012 12:22 PM
> To: Andrew Barrett
> Subject: RE: PA radio buy



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