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February 20, 2014

Re: Unsupported Advertisement by Americans for Prosperity

Dear Station Manager:

Our firm is counsel to Congressman Gary Peters and his Senate campaign committee, Peters for Michigan. We write regarding an advertisement with questionable claims sponsored by Americans for Prosperity ("AFP") that may be airing on your station. This ad, entitled "Julie's Story: It's Time to Listen," claims that Julie Boonstra had her "insurance ... cancelled because of Obamacare" and that now her "out of pocket costs are so high it's unaffordable."[1] For the sake of both FCC licensing requirements and the public interest, your station should immediately require AFP to provide the factual documentation for its claims if you are going to continue airing this advertisement.

The Washington Post explored AFP's assertions in an article entitled "A hard-hitting anti-Obamacare ad makes a claim that doesn't add up."[2] Specifically, there does not appear to be any evidence that the Affordable Care Act has made Ms. Boonstra's plan, or health insurance plans generally, "unaffordable." Ms. Boonstra has previously told the Detroit News that her monthly premiums were cut in half.[3] Additionally, under the Affordable Care Act, health insurance plans have an out-of-pocket maximum, capping the total amount that an individual would ever have to pay for medical services in a year. The conclusion of the Washington Post is that Ms. Boonstra's savings in premiums alone will likely match her maximum annual out-of-pocket expenses.

Ultimately, as the Washington Post concludes, "a fuller accounting is necessary if AFP is going to air ads like this." You have a duty to demand that AFP provide the factual support for its

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[1] The advertisement is available here: http://www.youtube.com/watch?v=Kpjyr1x7mC0.

[2] Glenn Kessler, "A hard-hitting anti-Obamacare ad makes a claim that doesn't add up," Washington Post (Feb. 20, 2014) *available at* http://www.washingtonpost.com/blogs/fact-checker/wp/2014/02/20/a-hard-hitting-anti-obamacare-ad-makes-a-claim-that-doesnt-add-up/?wprss=rss_fact-checker&clsrd.

[3] Marisa Schultz, "Laid-off worker, leukemia patient among Michigan congressional speech guests," Detroit News (Jan. 28, 2014), *available at* http://www.detroitnews.com/article/20140128/POLITICS03/301280098.

claims. Unlike federal candidates, independent political organizations like AFP do not have a "right to command the use of broadcast facilities." *See CBS v. DNC*, 412 U.S. 94, 113 (1973). Because you do not need to air this advertisement, your station bears responsibility for its content when you do grant access. *See Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3d Cir. 1950), cert. denied, 314 U.S. 909 (1950).

Moreover, you have an obligation "to protect the public from false, misleading or deceptive advertising." Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising, 74 F.C.C.2d 623 (1961). Failure to prevent the airing of "false and misleading advertising" may be "probative of an underlying abdication of licensee responsibility" that can be cause for the loss of a station's license. *See Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).

We can be reached at (202) 628-6600 if you have any questions regarding this letter. Please contact us regarding any evidence that AFP is able to provide regarding its advertisement on your station as soon as possible. Thank you for your attention to this matter.

Very truly yours,

Marc E. Elias
Graham M. Wilson

Counsel to Peters for Michigan