FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 27 2014

Clifford P. Kincaid, President
America's Survival, Inc.
[redacted]

RE: MUR 6481
RTTV America, Inc.
Ron Paul 2012 Presidential
Campaign Committee, Inc.

Dear Mr. Kincaid:

On May 20, 2014, the Federal Election Commission reviewed the allegations in your complaint dated July 12, 2011, and found that on the basis of the information provided in your complaint, and information provided by RTTV America, Inc., ("RTTV") and the Ron Paul 2012 Presidential Campaign Committee, Inc. (the "Committee"), that there is no reason to believe that RTTV and the Committee violated 2 U.S.C. § 441b(a), and dismissed the allegation that RTTV and the Committee violated 2 U.S.C. § 441e and 11 C.F.R. § 110.20. Accordingly, on May 20, 2014, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Report on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explains the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

William A. Powers
Assistant General Counsel

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: RTTV America, Inc. **MUR 6481**

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission ("the Commission") by America's Survival Inc. *See* 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

Complainant America's Survival Inc. alleges that RTTV America, Inc. ("RTTV") is a foreign corporation that produces and broadcasts cable television content. The Complaint alleges that RTTV violated the Federal Election Campaign Act of 1971, as amended, (the "Act") when it produced an episode of *Adam vs. The Man* (the "Show") that promoted and solicited campaign funds for then-presidential candidate Ron Paul. The Complaint concludes that RTTV therefore made a prohibited contribution or expenditure on behalf of the Ron Paul 2012 Presidential Campaign Committee, Inc. and Lori Pyeatt in her official capacity as its treasurer (the "Committee").

RTTV denies the allegations. RTTV asserts that it is a domestic corporation and provides sworn affidavits and other records substantiating that claim. RTTV acknowledges that it co-produced the Show, but contends that its co-producer was solely responsible for the content of the program. Regardless, RTTV asserts that its co-production of the Show is neither a "contribution" nor an "expenditure" because RTTV is a press entity and the allegations relate to activity within its legitimate press function.

The available information here indicates that RTTV co-produced the Show by providing studio space, technical assistance, and equipment, and that RTTV acted within its legitimate press function in so doing. As such, the Commission concludes that RTTV's assistance in

connection with the Show, whether financial or in-kind, would not constitute a contribution under the press exemption. The Commission therefore finds no reason to believe that RTTV made a prohibited in-kind corporate contribution in violation of 2 U.S.C. § 441b(a). Moreover, despite the apparent contractual relationship between RTTV and a broadcasting entity associated with a foreign government, records before the Commission — including sworn affidavits and official government incorporation records — reflect that RTTV itself is a domestic corporation and wholly owned by a United States citizen. The Commission therefore exercises its prosecutorial discretion and dismisses the allegation that RTTV violated 2 U.S.C. § 441e and 11 C.F.R. § 110.20.

III. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Adam Kokesh is the host of the Show. Kokesh launched the Show in 2010 as a talk radio program based in Albuquerque, NM. RTTV Resp. at 3 (Aug. 11, 2011). In February 2011, Kokesh incorporated Adam vs. The Man, LLC as a New Mexico limited liability company. RTTV Resp. at 2. Soon after its incorporation, Adam vs. The Man, LLC entered into an "independent contractor relationship with RTTV" to co-produce the Show on television. RTTV Resp. at 2; Alex Yazlovsky Aff. ¶ 8 (Aug. 11, 2011) ("Yazlovsky Aff.").

The Complaint alleges that RTTV, which it describes as a registered foreign corporation "funded by the government of Russia," provided air time for Kokesh, an "employee" of RTTV, to promote and raise funds for the presidential campaign of Ron Paul during a June 6, 2011 episode of the Show. Compl. at 1. The Complaint contends that Kokesh's remarks during that episode extended beyond news reporting to endorsing and fundraising for a federal candidate.

See id. at 1-2. The Complaint provided a portion of the episode's transcript during which Kokesh allegedly solicited contributions for Ron Paul:

> I'd like to end tonight on a note of some good news. We have some good news from the front lines of the Ron Paul "LOVEalution" with our money bomb on June 5. I was happy to donate to that. Yesterday we raised over 1 million dollars for the Ron Paul campaign. And I'm starting to figure out what electable means, because electable or non-electable is really a code word for "if this person wins, I'm not gonna be able to get as much money from the government." But if you want electable, please support the reelection campaign of President Barack Obama. If you want a President whose [*sic*] going to honor his oath to the Constitution and your freedom, I urge you to support none other than Congressman Ron Paul.

Compl. at 2. The Complaint asserts that Kokesh's solicitation for Paul constitutes "a political contribution consisting of valuable air time, provided by a foreign corporation, and airing in the U.S." *Id.* at 2.[1]

RTTV is incorporated and registered to conduct business in the District of Columbia. *See* RTTV Resp. at 2, Attach. A (D.C. Department of Consumer and Regulatory Affairs listing for RTTV). It is a privately held company wholly owned by Alex Yazlovsky. Dun & Bradstreet, http://www.dnb.com (D&B Business Information Report, RTTV America, Inc. (received Sept. 23, 2011)). Alex Yazlovsky is a United States citizen. *See* RTTV Supp. Resp. (Mar. 30, 2012). RTTV asserts that it "creates and provides television content for an internationally-focused, English language television network that airs in markets across the United States." RTTV Resp. at 2; Yazlovsky Aff. ¶ 5. Along with the Show, RTTV also produces daily news and editorial

[1] Although the Complaint relies only on the June 6, 2011 episode in which Kokesh endorsed Ron Paul's candidacy, Kokesh expressed his support for Ron Paul and made solicitations in connection with Paul's candidacy in other episodes of the Show as well. *See, e.g.*, http://www.youtube.com/watch?v=faZpekcj3M0 (Apr. 26, 2011); http://www.youtube.com/watch?v=RF1PMPbc0WA&feature=endscreen&NR=1 (May 4, 2011); http://rt.com/programs/adam-vs-man/income-tax-ron-paul/ (Apr. 5, 2011); http://www.youtube.com/watch?v=r8toAwZAS00 (July 21, 2011); http://rt.com/programs/adam-vs-man/default-markdice-pac-anonymous/ (July 21, 2011). Nonetheless, most of the episodes of the Show that were broadcast during its five-month run on Russia Today focus on topics other than Ron Paul's presidential campaign.

programs, such as *The Big Picture with Thom Hartmann* and *The Alonya Show*. RTTV Resp. at 2.

The Show aired weeknights on Russia Today from April to August 2011.[2] It featured 30 minutes of news and editorial commentary by Kokesh and included guest interviews of federal and state candidates, officeholders, authors, and others. *See* RTTV Resp. at 3. According to RTTV, its role as co-producer of the Show differed in significant respects from those of Adam vs. The Man, LLC. RTTV Resp. at 2. RTTV provided studio space for the live taping of episodes of the Show and other equipment and technical services to Adam vs. The Man, LLC. *See* RTTV Supp. Resp.; RTTV Resp. at 2. But RTTV "did not control any decisions related to the content of the *Adam vs. The Man Show* May 4, 2011 and June 6, 2011 episodes, or any other episode." Rather, "Adam vs. The Man, LLC had full editorial control" over the Show. RTTV Supp. Resp.; *see* RTTV Resp. at 2; Yazlovsky Aff. ¶ 9.[3]

B. Legal Analysis

1. There is No Reason to Believe that RTTV Made Corporate Contributions

The Act prohibits corporations from making contributions from their general treasury funds in connection with a federal election. *See* 2 U.S.C. § 441b(a). The Act also prohibits any

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[2] The Show aired on "the [Russia Today] channel," which purchased the rights to broadcast the Show. RTTV Resp. at 3-4. Founded in part by RIA Novosti, a Russian Federation state-run and reportedly state-financed media outlet, Russia Today consists of three global news channels broadcasting in English, Spanish, and Arabic. *See* http://en.rian.ru/docs/about/ novosti.html; http://en.rian.ru/agency_news/20120206/171179459%html (last visited May 7, 2014); http://rt.com/about-us/ (last visited May 7, 2014). Russia Today broadcasts from its Washington, D.C. studio. *See* http://rt.com/about-us/; Compl. at 2. RTTV represents through counsel that there was a 30-minute delay between Russia Today's receipt of the live production version of each episode of the Show and that episode's broadcast on Russia Today, and that Russia Today "never edited the content of an episode of the Show prior to its airing." E-mail from Gary C. Adler, Esq., to FEC (Apr. 26, 2012, 09:51 EST).

[3] Likewise, during an April 2011 interview that aired before the Show was broadcast, Kokesh asserted that he would have full editorial control over the content of the Show. REALITY REPORT, *Adam Kokesh Joins Russia Today* (Apr. 4, 2011) ("I'm really excited that I've got the confidence of the network here for this show. They're going to be giving me full editorial control and you know if that's compromised, you're gonna know. That's a promise."), http://archive.org/details/RealityReport-AdamKokeshJoinsRussiaToday985.

candidate, political committee, or other person from knowingly accepting a corporate contribution. *See id.* The Act and Commission regulations define the terms "contribution" and "expenditure" to include any gift of money or "anything of value" for the purpose of influencing a federal election. *Id.* § 431(8)(A), (9)(A); 11 C.F.R. §§ 100.52(a), 100.111(a). The term "anything of value" includes in-kind contributions. 11 C.F.R. § 100.52(d)(1). The Act and Commission regulations require political committees to report all contributions received, whether monetary or in-kind, during a given reporting period. *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3.

Under the "press exemption," however, the Act and Commission regulations exclude "any cost[s] incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer)" from the definition of a contribution, "unless the facility is owned or controlled by any political party, political committee, or candidate." 11 C.F.R. §§ 100.73, 100.132; *see* 2 U.S.C. § 431(9)(B)(i). The Commission has developed a two-part test for applying the exemption. First, the entity engaging in the activity must be a press or media entity, in that its focus is the production, on a regular basis, of a program that disseminates news stories, commentary, or editorials. *See, e.g.*, Advisory Op. 2007-20 (XM Radio) ("AO 2007-20"); Advisory Op. 2005-19 (The Inside Track) ("AO 2005-19"); Advisory Op. 2005-16 (Fired Up!) ("AO 2005-16").[4] Second, the Commission considers (i) whether the press entity is owned or controlled by a political party, political committee, or candidate and, if not, (ii) whether the press entity is acting as a press entity in

[4] With regard to the first inquiry, it is irrelevant whether a news story, commentary, or editorial lacks objectivity, expressly advocates the election or defeat of a clearly identified candidate for federal office, or solicits contributions on behalf of the candidate, so long as the solicitation does not become a regular feature of the story, commentary, or editorial. *See* Advisory Op. 2008-14 (Melothé Inc.) at 5-7 ("AO 2008-14") (citing AO 2005-16 (citing First Gen. Counsel's Rpt., MUR 5440 (CBS Broadcasting, Inc.))); AO 2005-19 (citing same).

conducting the activity at issue (*i.e.*, whether it is acting in its "legitimate press function"). *See Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); *FEC v. Phillips Publ'g*, 517 F. Supp. 1308, 1312-13 (D.D.C. 1981).

The Commission concludes that the activities of RTTV at issue here are covered by the press exemption. First, since 2005, RTTV has produced television content for daily news programs and talk shows, such as the Show, *The Big Picture with Thom Hartmann*, and *The Alonya Show*, which focus on news, commentary, and editorials. *See* RTTV Resp. at 2, 5. RTTV states that "[s]ome of the programming is objective dissemination of daily news, while other programs include subjective commentary or editorials." *See id.* Consequently, the available information reflects that RTTV is a press entity. *See* AO 2007-20; AO 2005-19.

Second, the record reflects that RTTV is not owned or controlled by a political party, political committee, or candidate, *see* RTTV Resp. at 5, and in its capacity as co-producer of the Show it was acting within its legitimate press functions. *See FEC v. Mass. Citizens for Life*, 479 U.S. 238, 251 (1986) ("*MCFL*"); *see also* Advisory Op. 2011-11 (Colbert) ("AO 2011-11").[5] Episodes of the Show aired on weeknights, were publicly available on cable and satellite television, and were available at no charge on the Show's website. The format of those episodes of the Show during which Kokesh promoted Paul's candidacy are consistent with other episodes that covered a wide range of traditionally newsworthy topics, including the economy, taxes, drug

[5] In *MCFL*, the Supreme Court held that a "Special Edition" newsletter did not qualify for the press exemption because the newsletter — which exhorted voters to vote "pro-life," had been prepared by a staff that had prepared no regular newsletter, and was distributed to a much larger audience than that of the regular newsletter — differed in certain "considerations of form" from the press entity's regular newsletter. 479 U.S. at 250-51. In AO 2011-11, the Commission considered whether Viacom, in providing news coverage of a newly formed political committee and its activities on *The Colbert Report*, was acting within its legitimate press function by assessing (1) whether the press entity's materials were available to the general public and (2) whether the materials were comparable in form to those ordinarily issued by the press entity. AO 2011-11; *see also* AO 2005-16 (citing *MCFL*, 479 U.S. at 251); Advisory Op. 2000-13 (iNEXTV) (concluding that a website was "viewable by the general public and akin to a periodical or news program distributed to the general public").

policy, the Wiki Leaks affair, unions, military matters, history, law enforcement, foreign policy, and politics generally. And although Kokesh expressly advocated Paul's election and solicited contributions on the Show, the speaker's viewpoint is irrelevant to the application of the press exemption. *See* AO 2007-20; AO 2005-19; AO 2005-16.[6]

Because RTTV is a press entity entitled to the press exemption in connection with its co-production of the Show, Kokesh's endorsements of Paul during episodes of the Show do not constitute a contribution from RTTV. The Commission therefore finds no reason to believe that RTTV violated 2 U.S.C. § 441b(a).

2. The Commission Dismisses the Allegation that RTTV Violated the Act's Foreign National Prohibition

The Act and Commission regulations prohibit a foreign national from directly or indirectly making a contribution or donation of money in connection with a federal, state, or local election. 2 U.S.C. § 441e(a)(1)(A); 11 C.F.R. § 110.20(b). A foreign national also may not directly or indirectly make an expenditure, an independent expenditure, or a disbursement in connection with a federal, state, or local election. 2 U.S.C. § 441e(a)(1)(C); 11 C.F.R. § 110.20(f). Moreover, foreign nationals "shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, . . . with regard to such person's Federal or non-Federal election-related activities, such as

[6] The Commission has previously determined that press entities do not necessarily forfeit the press exemption by soliciting contributions for candidates. A solicitation for contributions may appear in a commentary that is a regular feature of a press entity's content, provided that the solicitations do not become a regular feature of its content. *See* Advisory Op. 1980-109 (Ruff Times) ("AO 1980-109"); AO 2008-14 (analyzing AO 1980-109). Kokesh here expressly advocated the election of Ron Paul, referred to Paul fundraisers, and solicited contributions during various episodes of the Show. Nevertheless, each of Kokesh's references to Paul was a part of his regular commentary, and because most of the episodes of the Show do not involve Paul at all, his occasional solicitations did not become a regular feature of the program under the Commission's precedent. *See* AO 1980-109.

decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office." 11 C.F.R. § 110.20(i).[7]

For purposes of the Act, a "foreign national" is a person who is not a citizen, national, or lawfully admitted permanent resident of the United States. 2 U.S.C. § 441e(b)(2). The term also encompasses "foreign principals," including the government of a foreign country or a foreign political party, and can also include "a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country." *Id.* § 441e(b)(1) (citing 22 U.S.C. § 611(b)).

Official government records reflect that RTTV is a domestic corporation incorporated and registered to conduct business in the District of Columbia. *See* RTTV Resp., Attach. A (D.C. Department of Consumer and Regulatory Affairs listing for RTTV). The Show aired on "the [Russia Today] channel," which purchased the rights to broadcast the Show, *id.* at 3-4, but RTTV itself is "an independent U.S. corporation and is not a subsidiary of, or affiliated with, any foreign-owned corporation." RTTV Resp. at 4; Yazlovsky Aff. ¶ 4. Moreover, the sole owner of RTTV, Yazlovsky, is a United States citizen. *See* RTTV Supp. Resp.

Although neither RTTV nor Yazlovsky appear to be foreign nationals under the Act, the Responses do not specifically address the nature of RTTV's contractual relationship with Russia Today to broadcast the Show. Nevertheless, the circumstances here — including the available information suggesting that Kokesh and Adam vs. the Man, LLC alone were responsible for all editorial decisions relating to the content of the Show generally and Kokesh's promotion of a federal candidate in particular —do not warrant expending further Commission resources to

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[7] The Act and Commission regulations further provide that no person shall knowingly solicit, accept, or receive from a foreign national any contribution or donation prohibited by the Act. *See* 2 U.S.C. § 441e(a)(2); 11 C.F.R. § 110.20(g).

conduct additional administrative fact-finding proceedings in this matter. The Commission therefore dismisses in the exercise of its prosecutorial discretion the allegation that RTTV violated the foreign national prohibitions of the Act and Commission regulations. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Ron Paul 2012 Presidential Campaign Committee, Inc. and Lori Pyeatt in her official capacity as treasurer

MUR 6481

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission ("the Commission") by America's Survival Inc. *See* 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

Complainant America's Survival Inc. alleges that RTTV America, Inc. ("RTTV") is a foreign corporation that produces and broadcasts cable television content. The Complaint alleges that RTTV violated the Federal Election Campaign Act of 1971, as amended, (the "Act") when it produced an episode of *Adam vs. The Man* (the "Show") that promoted and solicited campaign funds for then-presidential candidate Ron Paul. The Complaint concludes that RTTV therefore made a prohibited contribution or an expenditure on behalf of the Ron Paul 2012 Presidential Campaign Committee, Inc. and Lori Pyeatt in her official capacity as its treasurer (the "Committee").

The Committee denies the allegations. The Committee contends that RTTV's production of the Show is neither a "contribution" nor an "expenditure" because RTTV is a press entity, and the allegations relate to activity within its legitimate press function.

The available information here indicates that RTTV co-produced the Show by providing studio space, technical assistance, and equipment, and that RTTV acted within its legitimate press function in so doing. As such, the Commission concludes that RTTV's assistance in connection with the Show, whether financial or in-kind, would not constitute a contribution

under the press exemption. The Commission therefore finds no reason to believe that the Committee accepted a prohibited in-kind corporate contribution in violation of 2 U.S.C. § 441b(a). Moreover, despite the apparent contractual relationship between RTTV and a broadcasting entity associated with a foreign government, records before the Commission — including sworn affidavits and official government incorporation records — reflect that RTTV itself is a domestic corporation and wholly owned by a United States citizen. The Commission therefore exercises its prosecutorial discretion and dismisses the allegation that the Committee violated 2 U.S.C. § 441e and 11 C.F.R. § 110.20.

III. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Adam Kokesh is the host of the Show. Kokesh launched the Show in 2010 as a talk radio program based in Albuquerque, NM. Committee Resp. at 1 (Sept. 2, 2011). In February 2011, Kokesh incorporated Adam vs. The Man, LLC as a New Mexico limited liability company. RTTV Resp. at 2. Soon after its incorporation, Adam vs. The Man, LLC entered into an "independent contractor relationship with RTTV" to co-produce the Show on television. RTTV Resp. at 2; Alex Yazlovsky Aff. ¶ 8 (Aug. 11, 2011) ("Yazlovsky Aff.").

The Complaint alleges that RTTV, which it describes as a registered foreign corporation "funded by the government of Russia," provided air time for Kokesh, an "employee" of RTTV, to promote and raise funds for the presidential campaign of Ron Paul during a June 6, 2011 episode of the Show. Compl. at 1. The Complaint contends that Kokesh's remarks during that episode extended beyond news reporting to endorsing and fundraising for a federal candidate. *See id.* at 1-2. The Complaint provided a portion of the episode's transcript during which Kokesh allegedly solicited contributions for Ron Paul:

> I'd like to end tonight on a note of some good news. We have some good news from the front lines of the Ron Paul "LOVEalution" with our money bomb on June 5. I was happy to donate to that. Yesterday we raised over 1 million dollars for the Ron Paul campaign. And I'm starting to figure out what electable means, because electable or non-electable is really a code word for "if this person wins, I'm not gonna be able to get as much money from the government." But if you want electable, please support the reelection campaign of President Barack Obama. If you want a President whose [*sic*] going to honor his oath to the Constitution and your freedom, I urge you to support none other than Congressman Ron Paul.

Compl. at 2. The Complaint asserts that Kokesh's solicitation for Paul constitutes "a political contribution consisting of valuable air time, provided by a foreign corporation, and airing in the U.S." *Id.* at 2.[1]

RTTV is incorporated and registered to conduct business in the District of Columbia. *See* RTTV Resp. at 2, Attach. A (D.C. Department of Consumer and Regulatory Affairs listing for RTTV). It is a privately held company wholly owned by Alex Yazlovsky. Dun & Bradstreet, http://www.dnb.com (D&B Business Information Report, RTTV America, Inc. (received Sept. 23, 2011)). Alex Yazlovsky is a United States citizen. *See* RTTV Supp. Resp. (Mar. 30, 2012). RTTV asserts that it "creates and provides television content for an internationally-focused, English language television network that airs in markets across the United States." RTTV Resp. at 2; Yazlovsky Aff. ¶ 5. Along with the Show, RTTV also produces daily news and editorial programs, such as *The Big Picture with Thom Hartmann* and *The Alonya Show*. RTTV Resp. at 2.

[1] Although the Complaint relies only on the June 6, 2011 episode in which Kokesh endorsed Ron Paul's candidacy, Kokesh expressed his support for Ron Paul and made solicitations in connection with Paul's candidacy in other episodes of the Show as well. *See, e.g.*, http://www.youtube.com/watch?v=faZpekej3M0 (Apr. 26, 2011); http://www.youtube.com/watch?v=RF1PMPbc0WA&feature=endscreen&NR=1 (May 4, 2011); http://rt.com/programs/adam-vs-man/income-tax-ron-paul/ (Apr. 5, 2011); http://www.youtube.com/watch?v=r8toAwZAS00 (July 21, 2011); http://rt.com/programs/adam-vs-man/default-markdice-pac-anonymous/ (July 21, 2011). Nonetheless, most of the episodes of the Show that were broadcast during its five-month run on Russia Today focus on topics other than Ron Paul's presidential campaign.

The Show aired weeknights on Russia Today from April to August 2011.[2] It featured 30 minutes of news and editorial commentary by Kokesh and included guest interviews of federal and state candidates, officeholders, authors, and others. *See* RTTV Resp. at 3. According to RTTV, its role as co-producer of the Show differed in significant respects from those of Adam vs. The Man, LLC. RTTV Resp. at 2. RTTV provided studio space for the live taping of episodes of the Show and other equipment and technical services to Adam vs. The Man, LLC. *See* RTTV Supp. Resp.; RTTV Resp. at 2. But RTTV "did not control any decisions related to the content of the *Adam vs. The Man Show* May 4, 2011 and June 6, 2011 episodes, or any other episode." Rather, "Adam vs. The Man, LLC had full editorial control" over the Show. RTTV Supp. Resp.; *see* RTTV Resp. at 2; Yazlovsky Aff. ¶ 9.[3]

B. Legal Analysis

1. There is No Reason to Believe that the Committee Accepted Corporate Contributions

The Act prohibits corporations from making contributions from their general treasury funds in connection with a federal election. *See* 2 U.S.C. § 441b(a). The Act also prohibits any candidate, political committee, or other person from knowingly accepting a corporate contribution. *See id.* The Act and Commission regulations define the terms "contribution" and

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[2] The Show aired on "the [Russia Today] channel," which purchased the rights to broadcast the Show. RTTV Resp. at 3-4. Founded in part by RIA Novosti, a Russian Federation state-run and reportedly state-financed media outlet, Russia Today consists of three global news channels broadcasting in English, Spanish, and Arabic. *See* http://en.rian.ru/docs/about/novosti.html; http://en.rian.ru/agency_news/20120206/171179459.html (last visited May 7, 2014); http://rt.com/about-us/ (last visited May 7, 2014). Russia Today broadcasts from its Washington, D.C. studio. *See* http://rt.com/about-us/; Compl. at 2. RTTV represents through counsel that there was a 30-minute delay between Russia Today's receipt of the live production version of each episode of the Show and that episode's broadcast on Russia Today, and that Russia Today "never edited the content of an episode of the Show prior to its airing." E-mail from Gary C. Adler, Esq., to FEC (Apr. 26, 2012, 09:51 EST).

[3] Likewise, during an April 2011 interview that aired before the Show was broadcast, Kokesh asserted that he would have full editorial control over the content of the Show. REALITY REPORT, *Adam Kokesh Joins Russia Today* (Apr. 4, 2011) ("I'm really excited that I've got the confidence of the network here for this show. They're going to be giving me full editorial control and you know if that's compromised, you're gonna know. That's a promise."), http://archive.org/details/RealityReport-AdamKokeshJoinsRussiaToday985.

"expenditure" to include any gift of money or "anything of value" for the purpose of influencing a federal election. *Id.* § 431(8)(A), (9)(A); 11 C.F.R. §§ 100.52(a), 100.111(a). The term "anything of value" includes in-kind contributions. 11 C.F.R. § 100.52(d)(1). The Act and Commission regulations require political committees to report all contributions received, whether monetary or in-kind, during a given reporting period. *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3.

Under the "press exemption," however, the Act and Commission regulations exclude "any cost[s] incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer)" from the definition of a contribution, "unless the facility is owned or controlled by any political party, political committee, or candidate." 11 C.F.R. §§ 100.73, 100.132; *see* 2 U.S.C. § 431(9)(B)(i). The Commission has developed a two-part test for applying the exemption. First, the entity engaging in the activity must be a press or media entity, in that its focus is the production, on a regular basis, of a program that disseminates news stories, commentary, or editorials. *See, e.g.*, Advisory Op. 2007-20 (XM Radio) ("AO 2007-20"); Advisory Op. 2005-19 (The Inside Track) ("AO 2005-19"); Advisory Op. 2005-16 (Fired Up!) ("AO 2005-16").[4] Second, the Commission considers (i) whether the press entity is owned or controlled by a political party, political committee, or candidate and, if not, (ii) whether the press entity is acting as a press entity in conducting the activity at issue (*i.e.*, whether it is acting in its "legitimate press function"). *See*

[4] With regard to the first inquiry, it is irrelevant whether a news story, commentary, or editorial lacks objectivity, expressly advocates the election or defeat of a clearly identified candidate for federal office, or solicits contributions on behalf of the candidate, so long as the solicitation does not become a regular feature of the story, commentary, or editorial. *See* Advisory Op. 2008-14 (Melothé Inc.) at 5-7 ("AO 2008-14") (citing AO 2005-16 (citing First Gen. Counsel's Rpt., MUR 5440 (CBS Broadcasting, Inc.))); AO 2005-19 (citing same).

Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); *FEC v. Phillips Publ'g*, 517 F. Supp. 1308, 1312-13 (D.D.C. 1981).

The Commission concludes that the activities of RTTV at issue here are covered by the press exemption. First, since 2005, RTTV has produced television content for daily news programs and talk shows, such as the Show, *The Big Picture with Thom Hartmann*, and *The Alonya Show*, which focus on news, commentary, and editorials. *See* RTTV Resp. at 2, 5. RTTV states that "[s]ome of the programming is objective dissemination of daily news, while other programs include subjective commentary or editorials." *See id.* Consequently, the available information reflects that RTTV is a press entity. *See* AO 2007-20; AO 2005-19.

Second, the record reflects that RTTV is not owned or controlled by a political party, political committee, or candidate, *see* RTTV Resp. at 5, and in its capacity as co-producer of the Show it was acting within its legitimate press functions. *See FEC v. Mass. Citizens for Life*, 479 U.S. 238, 251 (1986) ("*MCFL*"); *see also* Advisory Op. 2011-11 (Colbert) ("AO 2011-11").[5] Episodes of the Show aired on weeknights, were publicly available on cable and satellite television, and were available at no charge on the Show's website. The format of those episodes of the Show during which Kokesh promoted Paul's candidacy are consistent with other episodes that covered a wide range of traditionally newsworthy topics, including the economy, taxes, drug policy, the Wiki Leaks affair, unions, military matters, history, law enforcement, foreign policy,

[5] In *MCFL*, the Supreme Court held that a "Special Edition" newsletter did not qualify for the press exemption because the newsletter — which exhorted voters to vote "pro-life," had been prepared by a staff that had prepared no regular newsletter, and was distributed to a much larger audience than that of the regular newsletter — differed in certain "considerations of form" from the press entity's regular newsletter. 479 U.S. at 250-51. In AO 2011-11, the Commission considered whether Viacom, in providing news coverage of a newly formed political committee and its activities on *The Colbert Report*, was acting within its legitimate press function by assessing (1) whether the press entity's materials were available to the general public and (2) whether the materials were comparable in form to those ordinarily issued by the press entity. AO 2011-11; *see also* AO 2005-16 (citing *MCFL*, 479 U.S. at 251); Advisory Op. 2000-13 (iNEXTV) (concluding that a website was "viewable by the general public and akin to a periodical or news program distributed to the general public").

and politics generally. And although Kokesh expressly advocated Paul's election and solicited contributions on the Show, the speaker's viewpoint is irrelevant to the application of the press exemption. *See* AO 2007-20; AO 2005-19; AO 2005-16.[6]

Because RTTV is a press entity entitled to the press exemption in connection with its co-production of the Show, Kokesh's endorsements of Paul during episodes of the Show do not constitute a contribution from RTTV. The Commission therefore finds no reason to believe that the Committee violated 2 U.S.C. § 441b(a).

2. The Commission Dismisses the Allegation that the Committee Violated the Act's Foreign National Prohibition

The Act and Commission regulations prohibit a foreign national from directly or indirectly making a contribution or donation of money in connection with a federal, state, or local election. 2 U.S.C. § 441e(a)(1)(A); 11 C.F.R. § 110.20(b). A foreign national also may not directly or indirectly make an expenditure, an independent expenditure, or a disbursement in connection with a federal, state, or local election. 2 U.S.C. § 441e(a)(1)(C); 11 C.F.R. § 110.20(f). Moreover, foreign nationals "shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, . . . with regard to such person's Federal or non-Federal election-related activities, such as

[6] The Commission has previously determined that press entities do not necessarily forfeit the press exemption by soliciting contributions for candidates. A solicitation for contributions may appear in a commentary that is a regular feature of a press entity's content, provided that the solicitations do not become a regular feature of its content. *See* Advisory Op. 1980-109 (Ruff Times) ("AO 1980-109"); AO 2008-14 (analyzing AO 1980-109). Kokesh here expressly advocated the election of Ron Paul, referred to Paul fundraisers, and solicited contributions during various episodes of the Show. Nevertheless, each of Kokesh's references to Paul was a part of his regular commentary, and because most of the episodes of the Show do not involve Paul at all, his occasional solicitations did not become a regular feature of the program under the Commission's precedent. *See* AO 1980-109.

decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office." 11 C.F.R. § 110.20(i).[7]

For purposes of the Act, a "foreign national" is a person who is not a citizen, national, or lawfully admitted permanent resident of the United States. 2 U.S.C. § 441e(b)(2). The term also encompasses "foreign principals," including the government of a foreign country or a foreign political party, and can also include "a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country." *Id.* § 441e(b)(1) (citing 22 U.S.C. § 611(b)).

Official government records reflect that RTTV is a domestic corporation incorporated and registered to conduct business in the District of Columbia. *See* RTTV Resp., Attach. A (D.C. Department of Consumer and Regulatory Affairs listing for RTTV). The Show aired on "the [Russia Today] channel," which purchased the rights to broadcast the Show, *id.* at 3-4, but RTTV itself is "an independent U.S. corporation and is not a subsidiary of, or affiliated with, any foreign-owned corporation." RTTV Resp. at 4; Yazlovsky Aff. ¶ 4. Moreover, the sole owner of RTTV, Yazlovsky, is a United States citizen. *See* RTTV Supp. Resp.

Although neither RTTV nor Yazlovsky appear to be foreign nationals under the Act, the Responses do not specifically address the nature of RTTV's contractual relationship with Russia Today to broadcast the Show. Nevertheless, the circumstances here — including the available information suggesting that Kokesh and Adam vs. the Man, LLC alone were responsible for all editorial decisions relating to the content of the Show generally and Kokesh's promotion of a federal candidate in particular —do not warrant expending further Commission resources to

[7] The Act and Commission regulations further provide that no person shall knowingly solicit, accept, or receive from a foreign national any contribution or donation prohibited by the Act. *See* 2 U.S.C. § 441e(a)(2); 11 C.F.R. § 110.20(g).

conduct additional administrative fact-finding proceedings in this matter. The Commission therefore dismisses in the exercise of its prosecutorial discretion the allegation that the Committee violated the foreign national prohibitions of the Act and Commission regulations. *See Heckler v. Chaney*, 470 U.S. 821 (1985).