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August 11, 2011

VIA HAND DELIVERY

P. Christopher Hughey, Esq.
Acting General Counsel
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 6481

Dear Mr. Hughey:

This firm represents RTTV America, Inc. ("RTTV"). This letter is submitted in response to a Complaint filed by Clifford P. Kinkaid, President of America's Survival, Inc., and subsequently labeled MUR 6481. For the reasons outlined below, it is readily apparent that there is no reason to believe that RTTV violated the Federal Election Campaign Act ("FECA") or Federal Election Commission ("Commission") regulations. RTTV is not a foreign national. Further, it is beyond dispute that contribution restrictions were not violated because the content at issue is exempt from regulation under the press exemption. Accordingly, the Commission should dismiss the Complaint and close the file in this matter.

I. Summary of the Complaint

The Complaint alleges, without any factual basis, that RTTV is a foreign corporation "funded by the government of Russia." According to the Complaint, RTTV, as a foreign national corporation, made a prohibited in-kind contribution to either Ron Paul or President Barack Obama (it is not clear from the Complaint who the alleged recipient is) when it provided air time for one of RTTV's "employees," Adam Kokesh ("Kokesh"), to promote and raise funds for presidential candidate Ron Paul. The Complaint cites to a June 6, 2011 broadcast of the television show *Adam vs. The Man*, in which Mr. Kokesh made the following statement at the close of the show:

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 "r3VOLution" with our money bomb on June 5th. I was happy to donate to that. Yesterday we raised over one 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

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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 who is going to honor his oath to the constitution and your freedom, I urge you to support none other than Congressman Ron Paul.¹

According to the Complaint, the purpose of Mr. Kokesh's on-air endorsement of Ron Paul was to "divide and weaken the Republican party" in the 2012 elections in order to ensure a victory for President Barack Obama.

II. Factual Background

RTTV is a District of Columbia corporation with its principal place of business located at 1325 G Street, N.W., Washington, DC, 20005.² RTTV is an independent U.S. corporation and is not a subsidiary of, or affiliated with, any foreign-owned corporation.

Founded in 2005, RTTV creates and provides television content for an internationally-focused, English language television network that airs in markets across the United States, including New York, the District of Columbia, and Chicago metropolitan areas, the Carolinas, and several metropolitan areas throughout California. Since its programs are aired at English speakers in the United States, it is believed that the vast majority of the audience for its content are U.S. citizens. RTTV's productions include daily news programs and editorial and commentary talk shows including "*The Big Picture with Thom Hartmann*," "*The Alonya Show*," and "*Adam vs. The Man*."³ RTTV produces content, it does not broadcast it.

RTTV does not employ Mr. Kokesh. Rather, he works for an entirely different entity, Adam vs. The Man, LLC a New Mexico limited liability company. That company entered into an independent contractor relationship with RTTV to co-produce the show. Adam vs. The Man, LLC is responsible for the content of *Adam vs. The Man*, a thirty-minute editorial commentary show featuring Mr. Kokesh, journalist Luke Rudkowski, and religious scholar Jake Dilbert.

¹ This was Episode 39 of the *Adam vs. the Man* show. It is available on the *Adam vs. the Man* website at: <http://www.adamvstheman.com/category/blog/episodes/page/7>.

² The facts set forth in this letter are supported by the attached Affidavit of Alex Yazlevsky, the President of RTTV.

³ *The Big Picture with Thom Hartmann* is billed as "a daily TV program owned and produced by Thom Hartmann produced in the studios of RTTV in Washington, DC and syndicated nationally by both RT and Free Speech TV" and that its show features "news, opinion and debate...." See Thom Hartmann's website; www.thomhartmann.com. *The Alonya Show* is billed as "what you wish you could see on mainstream television. Alyona Minkovski offers a fresh perspective on US and world politics by covering bold and daring stories no one else dares to touch. It's an hour you'll never forget." See Russia Today website; Program Guide at <http://rt.com/programs/> (last accessed July 29, 2011).

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Mr. Kokesh is a United States citizen who was born in California and grew up in New Mexico. He served in active duty in the United States military from 1999 to 2007, including a tour of duty in Iraq. Mr. Kokesh was a candidate for the Republican primary nomination in New Mexico's 3rd Congressional District in the 2010 election, but he failed to secure the nomination. Shortly thereafter, Mr. Kokesh began hosting a talk radio program called "Adam vs. The Man" on a radio station in New Mexico. In April 2011, the format of the show was changed from radio to television. The show airs on the RT Channel Monday through Friday in the 7 pm time slot, and full episodes are also available on the *Adam vs. The Man* website one day following their broadcast.

The show bills itself as revealing "the reality of a government based not on protecting the freedoms of the American people, but exploiting them for the sake of the real power brokers and bankers who work behind the scenes. But it's not just about politics, it's about living like a free, dignified human being, living like government doesn't exist, and loving it." Mr. Kokesh, a self-described libertarian, provides his perspective on current events such as the debt crisis, the wars in Iraq and Afghanistan, the legalization of marijuana, and the 2012 elections. *Adam vs. The Man* frequently features guests including politicians, journalists, and scholars who also provide commentary on current events.

III. Legal Analysis

A. RTTV Is Not A Foreign National

Contrary to the unsupported assertion that forms the basis of the Complaint, RTTV is not a foreign corporation and therefore the FECA's ban on contributions from foreign nationals is not applicable to RTTV.

The FECA and Commission regulations prohibit a foreign national from directly or indirectly making a contribution, donation, expenditure, independent expenditure or any other disbursement in connection with a Federal, State, or local election. 2 U.S.C. §§441e(a)(1)(A) and (C); 11 CFR §§110.20(b) and (f). Under the FECA, "foreign national" includes "foreign principals," as defined in 22 U.S.C. §611(b), including corporations organized under the laws of, or having its principal place of business in, a foreign country. 2 U.S.C. §441e(b); 11 CFR §110.20(a)(3); 22 U.S.C. §611(b)(3). Under the Commission's regulations and clarified in a series of Advisory Opinions, the ban extends to donations or disbursements by a domestic subsidiary of a foreign national if the funds are derived from the foreign national parent corporation's funds or if the foreign national parent corporation has any decision-making authority concerning the making of donations or disbursements. 11 CFR §110.20(i).

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RTTV is neither a foreign corporation nor a domestic subsidiary of a foreign corporation. It is an independent U.S. corporation, registered in the District of Columbia, where it also has its principal place of business. The fact that RTTV sells television content to foreign-owned media outlets does not convert it from a lawfully registered U.S. corporation into a foreign-owned or controlled entity.

Additionally, Mr. Kokesh, a United States citizen, works for an independent contractor and not for RTTV. Mr. Kokesh and his employer Adam vs. The Man, LLC are responsible for the commentary Mr. Kokesh espouses on his show, and there are no foreign nationals involved with the decision-making in connection with his show. His show airs in the United States and reaches an English-speaking audience that consists predominantly of United States citizens.

In sum, the entirety of the Complaint is based upon an inaccurate assumption as to the corporate registration status of RTTV. Because RTTV is a domestic corporation, it is legally impossible for the company to violate the foreign national ban under 2 U.S.C. §§441e(a)(1)(A) and (C); 11 CFR §§110.20(b) and (f). Accordingly, there is no reason to believe RTTV violated the FECA and the Commission must dismiss the Complaint.

B. RTTV's Broadcasts Of *Adam vs. The Man* Are Exempt From Regulation Under The Press Exemption

Although the Complaint could and should be dismissed solely due to the inaccurate premise on which the allegations are based, and although the Complaint does not contain any allegation that RTTV violated the FECA's corporate contribution restrictions by producing the *Adam vs. The Man*, we nonetheless assert that Mr. Kokesh's speech is Constitutionally protected under the First Amendment and RTTV's production of such content is exempt from regulation. Assuming *arguendo* that the Complaint could be read to allege that Mr. Kokesh's statements were a "contribution" or "expenditure," the press exemption contained in the FECA and Commission regulations exempt this speech from regulation due to RTTV's status as a press entity acting within its legitimate press function.

The FECA 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. 2 U.S.C. §§431(8)(A) and (9)(A); 11 CFR §§100.52(a) and 100.111(a). In light of the paramount freedoms of press and association guaranteed under the First Amendment, the FECA includes a "press exemption" that exempts from the definition of "expenditure" "... any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U.S.C. §431(9)(B)(i). Commission regulations further provide that neither a "contribution" nor "expenditure" results from "any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), [or] Web

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site . . . unless the facility is owned or controlled by any political party, political committee, or candidate[.]” 11 CFR §§100.73 and 100.132. The press exemption hinges on the speaker and not the content, thus, it applies to electioneering communications as well as to communications that contain express advocacy. *See, e.g.*, MUR 5545 (CBS Broadcasting) and MUR 4863 (Sean Hannity).

It is well settled, as determined in several court cases, MURs, and Advisory Opinions, the Commission is guided by three questions in considering whether the press exemption applies: (1) Is the entity engaging in the activity a “press entity” as described by the FECA and Commission regulations; (2) is the press entity owned or controlled by a political party, political committee, or candidate; and (3) is the press entity acting in its legitimate press function? *See, e.g.*, *Reader’s Digest Association, Inc. v. FEC*, 509 F.Supp. 1210, 1215 (S.D.N.Y. 1981); *FEC v. Phillips Publishing, Inc.*, 517 F.Supp. 1308, 1312-1313 (D.D.C. 1981); MURs 4863 (Sean Hannity), 5545 (CBS Broadcasting), and 5569 (The Jon and Ken Show); and Advisory Opinions 2011-11 (Colbert), 2010-08 (Citizens United), 2008-14 (Melothe, Inc.). In the instant case, all three factors weigh heavily in support of the conclusion that the press exemption applies.

As to the first question, the FECA and Commission regulations do not define the term “press entity.” Thus, the Commission generally focuses on whether the entity in question produces a program that disseminates news stories, commentary, and/or editorials on a regular basis. *See, e.g.*, Advisory Opinions 2011-11 (Colbert), 2010-08 (Citizens United), 2008-14 (Melothe, Inc.), 2007-20 (XM Radio), and 2005-19 (Inside Track). An entity otherwise eligible for the press exemption does not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial. *See* MURs 5545 (CBS Broadcasting), and 5569 (The Jon and Ken Show).

RTTV’s sole business is to create and provide television content for internationally-focused, English language television networks that air in markets across the United States. RTTV produces television shows on an ongoing, daily or weekly basis, that focus on news, commentary or editorials. Some of the programming is objective dissemination of daily news, while other programs include subjective commentary or editorials. Accordingly, it is without question that, similar to the entities in MURs 5545 and 5569, RTTV qualifies as a “press entity.”

With respect to the second question, RTTV is not owned or controlled by a political party, political committee, or candidate. To the contrary, RTTV is an independent, U.S.-owned and controlled corporation and is not owned or controlled by any political party, political committee or candidate, foreign or domestic.

Considering the third question, RTTV was clearly acting in its legitimate press function when it co-produced the *Adam vs. The Man* show that is at the center of the allegations in this matter. *Adam vs. The Man* consists primarily of the opinions and commentary of Mr. Kokesh and the numerous commentators and guests who appear on the show. *Adam vs. The Man* is

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available via cable and satellite television subscriptions as well as available for free to the general public on the *Adam vs. The Man* website. Mr. Kokerh has made it clear on numerous episodes of *Adam vs. The Man*, as well as throughout his candidacy and in other public appearances that he favors libertarian ideology in general and Ron Paul in particular. His comments during the June 6, 2011 episode are entirely consistent with the opinions and commentary that are central to his show. Accordingly, RTTV was acting in its legitimate press function when it co-produced the June 6, 2011 episode of the *Adam vs. The Man* show.

Having squarely met all three of the prongs of the press exemption test, it is clear that Mr. Kokesh's speech is constitutionally protected under the First Amendment and RTTV's airing of such content is exempt from regulation.⁴ Although the Complaint did not specifically allege that RTTV violated 2 U.S.C. §441b, the Commission would be acting within its discretionary authority to find no reason to believe RTTV violated 2 U.S.C. §441b based upon the facts presented in this matter.

IV. Conclusion

Neither RTTV nor Mr. Kokesh are foreign nationals and therefore they are not prohibited from making contributions or expenditures in U.S. elections under 2 U.S.C. §441e(a)(1)(A). Additionally, RTTV's co-production of *Adam vs. The Man* and its editorial comment upon politics fit squarely within the "press exemption" of 2 U.S.C. § 431(9)(B)(i), FEC regulations, and well-established precedent.

Accordingly, the Commission should find no reason to believe RTTV violated the FECA and dismiss the Complaint.

Very truly yours,


Gary C. Adler

GA/br

⁴ Even if RTTV was a foreign national (which we have established they are not), the commentary that forms the basis of the Complaint would be protected from regulation under the press exemption. Nothing in the legislative or regulatory history of the press exemption suggests that it only applies to domestic media entities. So long as a foreign media entity meets the three-factor test (press entity; not owned or controlled by party, political committee or candidate; acting in legitimate press function), the news, commentary and editorials attributable to the foreign media entity are exempt from the definition of "contribution" and "expenditure." If no contributions or expenditures are made by the entity, there is nothing for the foreign national ban to prohibit.