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**By Email and First-Class Mail**

November 30, 2016

Jeff S. Jordan  
Assistant General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**Re: MUR 7153 (Univision)**

Dear Mr. Jordan:

In his complaint, Mr. Tony Dane alleges that Univision Communications, Inc. (“Univision”) violated federal law by “collaborat[ing]” with Hillary for America “to attack Donald Trump.”<sup>1</sup> It would be easier to respond to this charge if Mr. Dane had described any facts that supported his claim, but he does not. A review of the attachments to the complaint reveals only one mention of Univision. In an email allegedly from a Hillary for America staffer describing a pre-announcement off-the record press event, a Univision reporter’s attendance is categorized as “unknown.” It is not a violation of federal campaign finance law for a reporter to attend an event hosted by a political candidate or to have an “off the record” conversation with a candidate or campaign staff. Nor is the broader attack in the article accompanying the complaint—that the Clinton campaign sought to influence the press coverage of her campaign—particularly noteworthy, much less a violation of law. In short, there is nothing that even vaguely resembles a substantive allegation of a violation of federal campaign finance law in the complaint with respect to Univision. Consequently, this matter should be summarily dismissed.

## Analysis

Even if a Univision reporter had attended an event hosted by a Clinton supporter and later reported on the Clinton campaign, that fact would not demonstrate any violation of law. The press has long been recognized as having broad protection under federal campaign finance law. By statute and regulation, federal campaign finance law excludes news stories from the definition of a contribution or an expenditure. *See* 52 U.S.C. §§ 30101(9)(B)(i) (an “expenditure” does not include “any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication....”); 11 C.F.R. § 100.73 (a “contribution” does not include “[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical

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<sup>1</sup> MUR 7153, Complaint, at 3.

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publication.”). Judicial and agency opinions recognizing the application of the “press exemption” are too legion to name.<sup>2</sup> This press exemption is fully applicable to Univision and its reporters.

In determining the applicability of the press exemption, the FEC has often employed a tripartite test. As an initial matter, the FEC asks whether the publishing business is a “press entity.” *See* FEC AO 2011-11 (Colbert). If that answer is affirmative, the FEC then considers: “(1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and (2) whether the press entity is acting as a press entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its ‘legitimate press function’).”<sup>3</sup> FEC AO 2007-20 (XM Radio); *see also Reader’s Digest Ass’n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981). Univision satisfies each of these three conditions.

First, Univision is unquestionably a “press entity.” In determining whether a publisher qualifies as a “press entity,” the FEC “focuse[s] on whether the entity in question produces on a regular basis a program that disseminates news stories, commentary, and/or editorials.” FEC AO 2010-08 (Citizens United). This includes entities whose “core business” is “function[ing] as on-air newspapers . . . using the facilities of broadcasting stations throughout the nation.” FEC AO 1996-16 (Bloomberg). Univision, which is the leading American Spanish-language broadcast television network, produces daily news broadcasts as well as online news articles and editorials.<sup>4</sup> As a print and broadcast news network, Univision falls well within the core definition of a “press entity” for purposes of the press exemption. FEC AO 2007-20 (recognizing that “satellite broadcasters” and “cable television operators . . . are eligible for the exemption”); *see also* FEC AO 2005-19 (Inside Track).

Second, Univision is not owned or controlled by any political party, political committee, or candidate. To the contrary, Univision is privately owned by a media consortium.<sup>5</sup> Moreover,

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<sup>2</sup> An illustrative, but by no means complete, list of opinions recognizing and applying the “press exemption” includes the following: *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986); *FEC v. Phillips Publ’g*, 517 F. Supp. 1308, 1312–13 (D.D.C. 1981); FEC AO 2011-11 (Colbert); FEC AO 2010-08 (Citizens United); FEC AO 2007-20 (XM Radio); FEC AO 2005-19 (Inside Track); FEC AO 2006-16 (Fired Up!); FEC AO 2004-07 (MTV); FEC AO 1996-41 (Belo); FEC 1998-17 (Daniels Cablevision).

<sup>3</sup> We recognize that a number of Commissioners have found that this last prong analyzing whether the press entity was acting as such is an unnecessary addition to the statutory test. MUR 4689 (Dornan), Additional Statement of Reasons of Commissioner David M. Mason (Feb. 14, 2000); *see also* MUR 6779 (Gilbert), Concurring Statement of Commissioner Lee E. Goodman. Because Univision easily meets all three prongs of the test, we analyze each in this response.

<sup>4</sup> *See, e.g.*, Univision, *Noticias*, <http://www.univision.com/noticias> (last visited Nov. 17, 2016).

<sup>5</sup> These owners include Saban Capital Group; TPG Capital, L.P.; Providence Equity Partners; Madison Dearborn Partners; and Thomas H. Lee Partners.

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no consortium member with an ownership interest in Univision is owned or controlled by a political party, committee, or candidate. *Cf.* FEC AO 1996-41 (Belo) (recognizing that the exception applies only where the press entity is not owned or controlled by a political party, committee, or candidate).

Third, it is inarguable that sending reporters to events hosted by political candidates, and reporting on the activities, positions, and beliefs of those same candidates, is a “legitimate press function.” Indeed, such reporting is a basic part of campaign journalists’ jobs. In determining whether a press entity is engaging in a legitimate press function, the FEC asks “(1) whether the press entity’s materials are available to the general public, and (2) whether the materials are comparable in form to those ordinarily issued by the press entity.” FEC AO 2011-11 (Colbert). Here, both answers are affirmative. As to the first factor, although Mr. Dane fails to specify any particular articles or on-air broadcasts published by Univision, any such publications would be widely available to the public either online or via broadcast, cable or satellite transmissions. As to the second factor, Univision commonly reports on activities of politicians and, in conducting factual investigations to support these stories, must necessarily speak to politicians and attend political events. A Univision reporter’s attendance at a press cocktail event (if it occurred) and any subsequent Univision press reports on the presidential election are “comparable” to the reporting and broadcast activities carried out by Univision on a daily basis. *See* FEC AO 2010-08 (Citizens United) (finding a film “comparable in form” to past films produced by the same entity or its affiliates).

### **Conclusion**

Mr. Dane has failed to describe any facts that support his claim with respect to Univision. In any event, however, Univision’s reporting and broadcast activities are within the “press exemption” to the definition of a “contribution” or “expenditure” as defined in FECA. We respectfully request that the Commission find that there is no reason to believe a violation of FECA has occurred and close the file in this matter.

Thank you in advance for your consideration.

Respectfully submitted,



Robert K. Kelner