



July 31, 2020

Via email: CELA@fec.gov

Federal Election Commission
Jeff S. Jordan
Assistant General Counsel
Office of Complaints Examination
and Legal Administration
999 E Street, NW
Washington, DC 20463

RE: MUR 7688 (Motion to Dismiss)

Dear Mr. Jordan:

This is in response to the complaint received by the Federal Election Commission (the "FEC") (MUR 7688) indicating that respondents may have violated the Federal Election Campaign Act of 1971, as amended, (the "Act"). For the reasons explained in this Motion to Dismiss, the complaint in this MUR must be dismissed, and no further action should be taken by the FEC against Aníbal Acevedo-Vila ("Acevedo-Vila") and his committee "Anibal Comisionado 2020" in this matter.

I. **FACTUAL BACKGROUND**

A. Radio Program

On February 2017, I signed a "Professional Service Agreement" with Media Power Group ("MPG") to host a radio program called ("Sobre la Mesa") ("On the Table") from Monday through Friday. Initially, the program was aired from 8:00 a.m. to 9:00 a.m. on Radio Isla, an AM station operated by MPG. However, due to its acceptance, the program was extended one additional hour from 9:00 a.m. to 10:00 a.m. On the show, I discussed political and social figures, public issues and news through on-air monologues and the participation and interview of regular guests with different backgrounds, affiliations, and political views. One of my regular guests was Mr. Kenneth McClintock, former President of the Puerto Rico Senate and member of complainant's political party, the New Progressive Party ("NPP"). Other regular collaborator of "Sobre la Mesa" was Gerardo Carlo, former President of the Federal Bankruptcy Court for the District of Puerto Rico.

As compensation for my professional services, I was originally paid a fixed monetary amount of \$4,500 on a monthly basis as an independent contractor. On July 16, 2019, this amount was reduced to \$3,500. Although I was informed by MPG that its programs budgets were normally assigned based on daypart and audience acceptance, and that usually the radio station provided the personnel and resources to produce the programs, my agreement with MPG required that I provided the qualified personnel to perform all production functions. My compensation as radio host was fairly and

reasonably based on my experience and background as former member of the Puerto Rico House of Representatives, former Resident Commissioner of Puerto Rico at the U.S. House of Representatives, former Governor of the Commonwealth of Puerto Rico and Law Professor at the Law School of the University of Puerto Rico, as well as the level of public acceptance and rating "Sobre la Mesa" had while I hosted it.

At some point during the time lapse in which I hosted "Sobre la Mesa", members of other political parties different from mine, were part of MPG's roster of radio hosts. For example, Alexandra Lúgaro, who ran as an independent candidate for Governor in the 2016 elections, and will run as candidate for the same office for the "Movimiento Victoria Ciudadana Party" in the upcoming November elections, held a program as radio host for almost two years. Likewise, Carlos Pesquera, former candidate for Governor and member of the NPP hosted a program at the station.

On December 2019, almost three (3) years after I began hosting "Sobre la Mesa", I communicated to MPG's President, Mr. Eduardo Rivero, that I was considering running again for Resident Commissioner of Puerto Rico in the U.S. Congress. Both MPG and I fully understood that we had to comply with the Rule and Regulation of the Federal Communications Commission ("FCC") and the Federal Elections Commission ("FEC"). After conducting a legal investigation, MPG informed me, and I agreed, that my participation as radio host of "Sobre la Mesa" had to ceased once I became a "legally qualified candidate" as defined by Section 73.1940 of the FCC Rules, 47 CFR Section 73.1940 (establishing that a "legally qualified candidate" for public office is any person who, among other things, "is qualified under the applicable local, State or Federal Law to hold the office for which he or she is a candidate"). Under Puerto Rico law, I would become a "legally certified candidate" once the Puerto Rico State Election Commission (PRSEC) certified me as a candidate after complying with various statutory requirements established by the Puerto Rico Election Code. See 16 Puerto Rico Laws Anno. Section 4003 (8). However, on January 2020 we agreed that I would cease as host of "Sobre la Mesa" by February 28, 2020 or when the PRSEC issued my certification as a candidate, whichever came first.

On February 28, 2020, I concluded my participation as radio host of "Sobre la Mesa". I was certified as a "legally certified candidate" by the PRSEC on March 2020. At no time, before or after I notified MPG on December 2019 of my intention to run for Resident Commissioner at the U.S. House of Representatives, did I use the radio space of "Sobre la Mesa" to make campaign in favor or against any political candidate or party, or my candidacy to the post of Resident Commissioner. Nor did I use the show to raise funds for my candidacy. Moreover, no ads raising funds for or promoting my candidacy were ever run during the show.

On February 14, 2020, I registered my campaign committee as a candidate for federal office "Anibal "Comisionado 2020" (FEC Committee Id. # Coo738856) before the FEC. 2020. Since that day, I have been complying with all the disclosure requirements mandated by federal law.

As of today, "Sobre la Mesa" continues to be aired and is hosted by other talents retained by MPG after my departure on February 28, 2020.

B. Book Publication

Since I left public office on January 2009, I have written and published 5 books: (1) Así fue . . . ¿Y Ahora qué? Reflexiones sobre el Cuatrenio 2004-2008 y sus Repercusiones, Editorial Cordillera (2009); (2) Hacia la Refundación de la Economía de Puerto Rico de Puerto Rico y del Estado Libre Asociado de Puerto Rico, Publicaciones por Puerto Rico (2014); (3) El Blog de Anibal: Crónica de un Desastre Anunciado, S.N. (2011); (4) Separación de Poderes en Puerto Rico: entre la Teoría y la Práctica, Ediciones Situm (2018); and, (4) Crisis en la Agenda, Agenda para la Crisis, Biblio Services (2019).

In my last book (Crisis en la Agenda, Agenda para la Crisis), I present my reflections and recommendations on the prospective agenda for Puerto Rico after the events that took place on the summer of 2019 that forced the resignation former governor Ricardo Rosselló. The book is divided into three parts: (I) The strength of dignity: internal and external democratic reforms; (II) Economic and social transformation of the middle class; (III) Dignity in public service and government management. The book proposes several constitutional amendments and legislative reforms to address the political and economic crisis that Puerto Rico is experiencing.

Publicaciones por Puerto Rico, Inc. ("PPR"), a Puerto Rico corporation wholly owned by me, paid the book printing, which I began promoting and marketing on November 2019 through a variety of events, in coordination with a local distributor (Libros el Navegante), that included book signings around Puerto Rico. In particular, on November 21, 2019, PPR rented a space at Fundación Luis Muñoz Marín, a private foundation, where I presented the book for the first time. On December 5th, 10th, 12th and 20th, I held book signing events at Librería el Candil, Ponce; Librería AC, San Juan; Museo Casa Grande, Mayagüez; and Casa Norberto, San Juan, respectively. Currently, the book is available for purchase in Amazon.com and my webpage acevedovila.net.

II. **DISCUSSION**

A. Radio Program

1.

Counts I and III of the Complaint assert that by airing the radio show "Sobre la Mesa" while Acevedo-Vila acted as its host, MPG and Radio Isla made, and Acevedo-Vila accepted, illegal corporate contributions under the Federal Election Campaign Act of 1971, as amended (the "Act"). As discussed below, these allegations are completely groundless as a matter of law and as matter of fact.

Under the Act, corporations are generally prohibited from using general treasury funds to make contributions to federal candidates, federal accounts of political party committees, and other political committees. 52 U.S.C. § 30118(a). Subject to certain exclusions, a contribution is “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value” made to “any candidate, campaign committee, or political party or organization, in connection with” a federal election. 52 U.S.C. § 30118(b)(2). Commission regulations clarify that “anything of value” includes “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for the goods or services,” unless the transaction is specifically permitted by regulation. 11 C.F.R. § 100.52(d)(1).

Payments of “compensation” to a candidate “shall be considered contributions” from the payor to the candidate unless:

- (A) The compensation results from bona fide employment that is genuinely independent of the candidacy;
- (B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and
- (C) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

See 11 C.F.R. 113.1(g)(6)(iii); also see, e.g., Advisory Opinion 2011-27 (New Mexico Voices for Children) (applying section 113.1(g)(6)(iii) to determine whether compensation paid to candidate would be contribution); Advisory Opinion 2006-13 (Spivack) (same); Advisory Opinion 2004-17 (Klein) (same); Advisory Opinion 2004-08 (American Sugar Cane League) (same).

Commission regulations exclude from the definition of contribution “[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 publication, including any Internet or electronic publication . . . unless the facility is owned or controlled by any political party, political committee, or candidate.” 11 C.F.R. § 100.73; see also 52 U.S.C. § 30101(9)(B)(i) (excluding these types of activities from the definition of “expenditure”); 11 C.F.R. § 100.132 (same). This is known as the “press exemption” or “media exemption.” As reflected in the legislative history of the Act, this exemption was intended to ensure that the Act would not “limit or burden in any way the first amendment freedom[] of the press” and would protect “the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns.” H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4 (1974).

To determine whether the media exemption applies, the Commission uses a two-step analysis, first asking whether the entity engaging in the activity is a media entity within the meaning of the Act and Commission regulations, and if so, then asking whether the media entity: a) is owned or controlled by a political party, political committee, or candidate; and b) is acting in its capacity as a media entity in conducting the activity at issue (i.e., is the activity within the entity's "legitimate press function"). See, e.g., Advisory Opinion 2016-01 (Ethiq) at 2-4 (applying two-step analysis established by the United States District Court in Reader's Digest Ass'n v. FEC, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981)).

2.

Although Acevedo-Vila became a "legally certified candidate" on March 2020, that, is, after he had concluded his participation as host of "Sobre la Mesa" on February 28th, 2020, and, thus, it is questionable whether compliance with the Act was required during the months of December 2019 and January and February 2020, the fact remains that Acevedo-Vila's monthly compensation as host of the radio show during that period were not contributions because they satisfied each of the three regulatory factors of section 113.1(g)(6)(iii).

First, the compensation resulted from Acevedo-Vila's "bona fide employment" as host of the radio program, which was "genuinely independent" of his candidacy. 11 C.F.R. 113.1(g)(6)(iii)(A). MPG retained Acevedo-Vila as host of "Sobre la Mesa" because of his past experience and background as former member of the Puerto Rico House of Representatives, former Resident Commissioner of Puerto Rico at the U.S. House of Representatives, former Governor of the Commonwealth of Puerto Rico and Law Professor at the Law School of the University of Puerto Rico.

Second, Acevedo-Vila's compensation was "exclusively in consideration of [his] services" as host of the show. 11 C.F.R. 113.1(g)(6)(iii)(B). Acevedo-Vila was not compensated for any activities undertaken as a candidate or on behalf of any other organization. Thus, his entire compensation was in consideration of the services he provided MPG as host of "Sobre la Mesa".

Third, Acevedo-Vila's compensation did not exceed the amount that was paid to any other similarly qualified person for the same work over the same period of time. 11 C.F.R. 113.1(g)(6)(iii)(C). Acevedo-Vila's services as host were retained by MPG on 2017, that is, **two years before he announced his intention to run for office** on December 2019, with a monthly compensation of \$4,500 that reflected his knowledge and experience. Moreover, on July 16, 2019, this amount was reduced to \$3,500.

Moreover, by compensating Acevedo-Vila for his services as radios host, MPG was not financing any activity that involved (i) the solicitation, making or acceptance of contributions to the candidate's campaign, or (ii) communications advocating the nomination, election or defeat of any candidate. See Advisory Opinion 1994-15, and opinions cited therein.

In sum, because the compensation paid to Acevedo-Vila resulted from his “bona fide employment as radio host since 2017 -- an activity genuinely independent of his candidacy – and it was made exclusively in consideration of the services provided as part of his bona fide employment, and was not higher than compensation that would be provided to similarly qualified consultants, the compensation met the requirements of 11 C.F.R. 113.1(g)(6)(iii). Accordingly, MPG’s payments to Acevedo-Vila, as described above, were not contributions under FECA and the Commission’s regulations.

Finally, the press exemption set forth in 11 C.F.R. § 100.73 applies to the broadcast of “Sobre la Mesa”. In considering the application of the press exemption, in the first step of its analysis, the Commission asks whether the entity engaging in the activity is a media entity within the meaning of the Act and Commission regulations. See, e.g., Advisory Opinion 2016-01 (Ethiq) at 2-3. To determine whether an entity is a media entity, the Commission focuses on “whether the entity in question is in the business of producing on a regular basis a program that disseminates news stories, commentary, and/or editorials.” Advisory Opinion 2008-14 (Melothe) at 4. “Commentary” is interpreted broadly to include not only commentary by the media entity and its staff, but also guest commentary. Advisory Opinion 1982-44 (Democratic National Committee et al.) at 3 (“[T]he Commission is of the view that commentary cannot be limited to the broadcaster. The exemption already includes the term ‘editorial’ which applies specifically to the broadcaster’s point of view. In the opinion of the Commission, ‘commentary’ was intended to allow the third persons access to the media to discuss issues.”); Advisory Opinion 1998-17 (Daniels Cablevision) at 5 (30 seconds of free airtime provided to candidates on equal basis was “commentary” for purposes of the media exemption). As admitted by the Complaint, MPG is a media entity and, hence, no further analysis is needed as to this step.

In the second step of the Commission’s analysis, the Commission considers whether activity by a qualified media entity is within the scope of the exemption based on whether: a) the media entity is owned or controlled by a political party, political committee, or candidate, and b) the media entity is acting within its legitimate media function in conducting the activity at issue. Advisory Opinion 2016-01 (Ethiq) at 3-4; Advisory Opinion 2007-20 (XM Satellite Radio) at 3-5 (finding satellite radio company featuring news updates, candidate interviews, speeches, debate coverage, polling results, fundraising status, and live call-in shows within the media exemption in providing free airing of candidate-supplied content); Advisory Opinion 2005-16 (Fired Up) at 4, 6 (determining cost of carrying content on website that provided commentary, summaries and editorials of news stories created by others, as well as its own original reporting, within entity’s legitimate media function). Two considerations relevant to this analysis are whether the entity’s materials are: 1) available to the general public and 2) comparable to those ordinarily issued by the entity. See, e.g., Advisory Opinion 2000-13 (Ampex) at 3 (concluding costs of producing website “viewable by the general public and akin to a periodical or news program” within media entity’s legitimate media function).

MPG' broadcast of "Sobre la Mesa" with Acevedo-Vila as its host satisfy both elements of this second step of the media exemption analysis: a) MPG is not owned, or controlled by a political party, political committee, or candidate; and b) MPG acted within the scope of its legitimate media function in broadcasting the radio show. Commission decision on past MURs involving radio talk show hosts who later became candidates have never found that a host/candidate "owned or controlled" the entity for purposes of the press exemption on the basis that the host/candidate had a role in determining program content. See, e.g., MUR 5555 (Ross); MUR 4689 (Dorman).

Two considerations in determining whether an entity is acting in its legitimate press function include whether the entity's materials are available to the general public and whether they are comparable in form to those ordinarily issued by the entity. Advisory Opinion 2005-16 (fired Up!) (citing FEC v. Massachusetts Citizens for Life ("MCFL") 479 U.S. 238, 251 (1986)). Here, it must be noted and acknowledged by Complainant that the broadcasts of "Sobre la Mesa" were available to the general public. Second, the broadcasts of "Sobre la Mesa" from December 2019 to February 2020 are comparable in form to those broadcasts of the radio show ordinarily issued by the entity since 2017. See MUR 5555 (Ross) (radio talk show host who became a candidate was eligible for the press exemption where program format did not change after he began to consider candidacy); MUR 4689 (radio guest-host who later became a candidate was eligible for the press exemption for commentary critical of eventual opponent where there 'was no indication that the formats, distribution, or other aspects of production' were any different when the candidate hosted than they were when the regular host was present). In sum, MPG was acting within its legitimate press function in broadcasting "Sobre la Mesa" and Respondents are therefore subject to the press exemption.

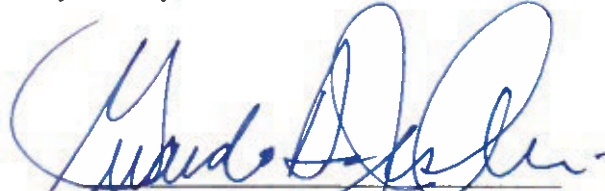
B. Book Publication

Count II of the Complaint must be dismissed by the Commission because it simply does not allege any discernible violation of the Act. As stated before, the printing and publication of the book alluded in the Complaint was paid by Publicaciones for Puerto Rico, a Puerto Rico corporation wholly owned by Acevedo-Vila. The promotion and marketing of the book was done by Acevedo Vila himself through a variety of events, in coordination with a local distributor (Libros el Navegante), that included book signings around Puerto Rico. As the Commission very well knows these activities are precisely what the First Amendment to the Constitution of the United States seeks to protect. Count II of the Complaint is so devoid of any substance that no further commentary is needed.

IN VIEW OF ALL OF THE ABOVE respondents Acevedo-Vila and his committee "Anibal Comisionado 2020" request the Commission to DISMISS the Complaint and find no reason to believe that Respondents violated the Act.

RESPECTFULLY SUBMITTED.

On San Juan, Puerto Rico, this 31st day of July, 2020.



Gerardo De Jesús Annoni
Counsel for Respondents
Anibal Acevedo-Vila and
"Anibal Comisionado 2020"

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VERIFICATION

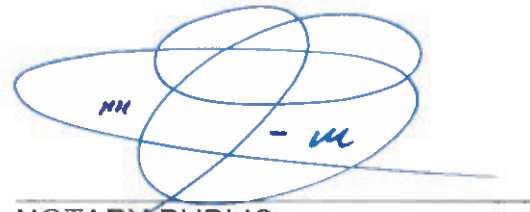
Anibal Acevedo-Vila hereby verifies that the statements made in the foregoing response and Motion to Dismiss are true as presented. Sworn pursuant to 11 C.F.R. 11.4 and 18 U.S.C.A. 1001.



Anibal Acevedo-Vila

AFFIDAVIT NUM: 5073

SWORN AND SUBSCRIBED before me by Anibal Acevedo-Vila, and whom I know personally, in San Juan, Puerto Rico, today 31st day of July 2020.



NOTARY PUBLIC

