



FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

April 19, 2022

Via Electronic Mail

José E. Céspedes Sabater, Esq
405 Enrique Amedeo
Urb. Roosevelt
San Juan, PR 00918

RE: MUR 7688

Dear Mr. Céspedes Sabater:

On February 5, 2020, the Federal Election Commission notified your client, Media Power Group, Inc. d/b/a Radio Isla, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 7, 2022, on the basis of information in the complaint and provided by the Respondents, the Commission found that there is no reason to believe that Media Power Group Inc. d/b/a Radio Isla violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Ray Wolcott, the attorney assigned to this matter, at (202) 694-1302 or rwolcott@fec.gov.

Sincerely,

Ana J. Peña-Wallace

Ana J. Peña-Wallace
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

RESPONDENT: Media Power Group, Inc. d/b/a Radio Isla MUR 7688

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission alleging that Aníbal Acevedo-Vilá, a 2020 candidate for Resident Commissioner of Puerto Rico, and his authorized committee, Aníbal Comisionado 2020 (the “Committee”), received prohibited in-kind corporate contributions from Media Power Group, Inc. (“MPG”), the corporation that paid to broadcast a daily political radio talk show hosted by Acevedo-Vilá, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).

As discussed below, the available information indicates that MPG’s corporate costs related to Acevedo-Vilá’s radio show are covered by the press exemption and thus did not constitute in-kind contributions. The Commission therefore finds no reason to believe that MPG made prohibited in-kind corporate contributions in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b).

II. FACTUAL BACKGROUND

Acevedo-Vilá was a 2020 Democratic candidate for Resident Commissioner of Puerto Rico.¹ Aníbal Comisionado 2020 is his authorized campaign committee and Jose Luis Mendoza is the committee’s treasurer.² Acevedo-Vilá previously served as Resident Commissioner of

¹ Acevedo-Vilá, Amended Statement of Candidacy (Feb. 21, 2020). The Resident Commissioner of Puerto Rico, a non-voting Member of the U.S. House of Representatives, is a federal office. 11 C.F.R. § 100.4.

² Aníbal Comisionado 2020, Amended Statement of Org. (May 12, 2020).

1 Puerto Rico from 2001 to 2005 and as Governor of Puerto Rico from 2005 to 2009.³ After
2 leaving public office in 2009, as described below, Acevedo-Vilá hosted a radio talk show.

3 Acevedo-Vilá publicly announced his intention to run for Resident Commissioner in a
4 video message posted to his Facebook page on December 10, 2019.⁴ On February 12, 2020,
5 Acevedo-Vilá filed a Statement of Candidacy with the Commission and, on the same day, the
6 Committee filed a Statement of Organization.⁵ Acevedo-Vilá ran unopposed for his party's
7 nomination in the primary election held on August 9, 2020, but lost the general election.⁶

8 MPG is a corporation, registered in Puerto Rico since 2003, that owns and operates a
9 network of four AM radio stations broadcasting “talk-news” programming under the trade name
10 “Radio Isla.”⁷ In its Response, MPG states that its programming includes talk news shows
11 hosted by former politicians who “analyze and share . . . their different political and social views
12 and perspectives related to current news and events.”⁸ MPG states that it has distributed content

³ U.S. House of Representatives, History, Art & Archives, *Acevedo-Vilá, Aníbal*, https://history.house.gov/People/Detail/8754?current_search_qs=%3Ffilter%3D11%26PreviousSearch%3D%26CurrentPage%3D1%26SortOrder%3DLastName%26ResultType%3DGrid (last visited Sep. 13, 2020).

⁴ Compl. at 2 (Jan. 29, 2020); Aníbal Acevedo-Vilá (@anibalacevedo), TWITTER (Dec. 10, 2019), <https://twitter.com/anibalacevedo/status/1204542159971586049?s=20c> (“Acevedo-Vilá Twitter Account”).

⁵ Aníbal Comisionado 2020, Statement of Org. (Feb. 14, 2020); Acevedo-Vilá, Statement of Candidacy (Feb. 14, 2020).

⁶ Puerto Rico State Election Commission, List of 2020 Party Primary Candidates, <https://www.ceepur.org/primarias/docs/ListadoAspirantesPrimaria.pdf>. Jennifer González, the sitting Resident Commissioner at the time of the events described in the Complaint, won reelection in the general election. Puerto Rico State Election Commission, 2020 Resident Commissioner General Election Results, https://elecciones2020.ceepur.org/Noche_del_Evento_92/index.html#es/default/COMISIONADO_RESIDENTE_Resumen.xml (reporting that González won reelection with 40.85% of the vote and Acevedo-Vilá finished second with 32.05% of the vote).

⁷ MPG Resp. at 1 (May 6, 2020). MPG asserts, and public records confirm, that “Radio Isla” is a trade name for a network of four AM radio stations in Puerto Rico owned and operated by MPG, WDEP, WSKN, WKFE, and WLEY. *Id.*; Public Files, Radio Isla, <https://radioisla.tv/public-files> (last visited Oct. 15, 2020) (listing the four stations operating under the Radio Isla trade name); AM Query Broadcast Station Search, <https://www.fcc.gov/media/radio/am-query> (search for call signs “WDEP,” “WSKN,” “WKFE,” and “WLEY” in “PR - Puerto Rico”) (listing Media Power Group, Inc. as the owner of all four stations).

⁸ MPG Resp. at 1.

1 created by members of multiple political parties, including the party in opposition to Acevedo-
2 Vilá’s party.⁹ MPG describes itself as a “traditional press corporation” and asserts that it is not
3 owned or controlled by any political party or candidate.¹⁰

4 In January 2017, Acevedo-Vilá signed a contract with MPG to produce and host a
5 morning radio talk show called “Sobre la Mesa” that focused on news, politics, and opinion.¹¹
6 MPG paid Acevedo-Vilá \$4,500 per month (later decreased to \$3,500) to host and produce the
7 show, which MPG broadcast on the “Radio Isla” stations across Puerto Rico.¹² MPG asserts that
8 it hired Acevedo-Vilá because, in addition to being a prominent former politician, he was a well-
9 known author and public figure in Puerto Rico.¹³ According to both Acevedo-Vilá and MPG,
10 “Sobre la Mesa” regularly hosted guests with diverse backgrounds, viewpoints, and political
11 party affiliations.¹⁴

12 In December 2019, Acevedo-Vilá informed MPG that he was considering running for
13 Resident Commissioner.¹⁵ After informing MPG of his intention to run for office, Acevedo-Vilá
14 and MPG mutually agreed that Communications Commission (“FCC”) regulations would require
15 him to cease hosting “Sobre la Mesa” when he became a “legally qualified candidate” as defined
16 by FCC rules.¹⁶ According to MPG, on advice of counsel, it determined Acevedo-Vilá would

⁹ *Id.* at 2. Acevedo-Vilá was ultimately certified as a candidate by the Puerto Rican State Election Commission in March 2020. *Id.* at 4; Acevedo-Vilá Resp. at 2 (July 31, 2020).

¹⁰ MPG Resp. at 4; *see also id.* at 1 (listing shareholders).

¹¹ Acevedo-Vilá Resp. at 1; MPG Resp. at 1.

¹² Acevedo-Vilá Resp. at 1; MPG Resp. at 2.

¹³ MPG Resp. at 4.

¹⁴ *Id.* at 3; Acevedo-Vilá Resp. at 1.

¹⁵ MPG Resp. at 3; Acevedo-Vilá Resp. at 2.

¹⁶ MPG Resp. at 3; Acevedo-Vilá Resp. at 2.

1 become a candidate when he was certified by the Puerto Rico State Election Commission.¹⁷
2 Though Acevedo-Vilá did not become a certified candidate until March 2020, on February 28,
3 2020, Acevedo-Vilá and MPG mutually agreed to terminate his contract.¹⁸

4 Acevedo-Vilá and MPG state that the format and content of “Sobre la Mesa” did not
5 change during the approximately three-month period between Acevedo-Vilá’s announcement of
6 his intention to run for Resident Commissioner in December 2019, and his departure from the
7 show in February 2020.¹⁹ Acevedo-Vilá denies ever using “Sobre la Mesa” to “campaign in
8 favor or against any political candidate or party, or [his] candidacy” or to solicit contributions,
9 and asserts that he did not run any ads for his campaign during the show.²⁰

10 The Complaint alleges that Acevedo-Vilá used his radio show “as a platform for his
11 campaign for Congress, and to attack other candidates,” and claims that he also used other shows
12 broadcast by MPG to “promote his political campaign.”²¹ As an example, the Complaint claims
13 that on January 14, 2020, Acevedo-Vilá used his radio show to “move public opinion against” a
14 competing political talk radio host who the Complaint claims is a “severe critic” of Acevedo-
15 Vilá and his party, and supports ideas that conflict with Acevedo-Vilá’s policy positions
16 regarding Puerto Rican statehood.²² In the same broadcast, the Complaint alleges, Acevedo-Vilá
17 expressed support for the Mayor of San Juan, who is a member of his political party.²³ A review

¹⁷ Acevedo-Vilá Resp. at 2; MPG Resp. at 3.

¹⁸ MPG Resp. at 3-4; Acevedo-Vilá Resp. at 2. After Acevedo-Vilá’s contract was terminated, MPG states that it continued to broadcast “Sobre la Mesa” with the same format, but with a new host. MPG Resp. at 4.

¹⁹ MPG Resp. at 4; Acevedo-Vilá Resp. at 2.

²⁰ Acevedo-Vilá Resp. at 2.

²¹ Compl. at 5.

²² *Id.*

²³ *Id.*

1 of the portion of the broadcast cited in the Complaint, which includes a clip of another host’s
2 comments about the Mayor of San Juan, shows that the other host used a vulgar term to describe
3 the mayor, and Acevedo-Vilá criticized the host for using such language that he described as
4 discriminatory against women.²⁴ A review of the segment does not reveal that Acevedo-Vilá
5 made any statements related to the election.

6 The Complaint further alleges that on January 16, 2020, Acevedo-Vilá used his show to
7 criticize the current Resident Commissioner, Jennifer González, who would later become one of
8 his opponents in, and go on to win, the general election, and Donald Trump for a delay in signing
9 a federal disaster declaration in response to the earthquakes in December 2019.²⁵ A review of
10 the broadcast, however, shows that he mentioned González in passing, along with the current
11 Governor of Puerto Rico, in the context of discussing an article in the *Washington Post* from the
12 previous day reporting on the federal government’s release of disaster aid.²⁶

13 The Complaint alleges that by paying Acevedo-Vilá to produce his show and paying to
14 broadcast “Sobre la Mesa,” which the Complaint characterizes as a “platform to advance
15 [Acevedo-Vilá’s] campaign,” MPG made prohibited in-kind corporate contributions that
16 Acevedo-Vilá accepted and did not report.²⁷ Both MPG and Acevedo-Vilá assert that their
17 contractual relationship was a bona fide employment relationship that was independent from his

²⁴ A nine-minute clip of the January 14, 2020, episode is hosted on the Radio Isla website and available at a link provided in the Complaint. Compl. at 5 (citing <https://radioisla.tv/acevedo-vila-arremete-contra-analista-politico-por-insultar-a-carmen-yulin>).

²⁵ *Id.* at 6; *supra* note 6.

²⁶ A video broadcast of the January 16, 2019, episode of “Sobre la Mesa” can be found on Acevedo-Vilá’s Facebook page. <https://www.facebook.com/acevedovila.net/videos/643827736362052> (“Jan. 16 Broadcast”). In the broadcast, Acevedo-Vilá stated: “The Washington Post published a story yesterday—incredibly—the Washington Post said that the White House, and Donald Trump, and Jennifer González, and [Puerto Rican Governor] Wanda Vázquez—because Wanda is a Republican—are going to put more conditions on the release of federal funds. *Id.*”

²⁷ Compl. at 12.

1 current candidacy.²⁸ Respondents further argue that MPG’s payments to produce and broadcast
2 Acevedo-Vilá’s radio show fall under the press exemption.²⁹

3 **III. LEGAL ANALYSIS**

4 The Act defines the term “contribution” to include “any gift, subscription, loan, advance,
5 or deposit of money or anything of value made by any person for the purpose of influencing any
6 election for Federal office.”³⁰ The term “anything of value” includes in-kind contributions, such
7 as goods or services provided without charge or at a charge that is less than the usual and normal
8 charge for such goods or services.³¹ The Act and Commission regulations prohibit corporations
9 from making contributions to a candidate or authorized committee.³² Likewise, it is unlawful for
10 any candidate, political committee, or other person to knowingly accept or receive a prohibited
11 corporate contribution.³³ Authorized committee treasurers are required to disclose the
12 identification of each person who makes one or more contributions to the committee aggregating
13 in excess of \$200 within the election cycle, together with the date and amount of any such
14 contribution.³⁴

15 The Act and Commission regulations exempt from the definitions of contribution and
16 expenditure, “[a]ny cost incurred in covering or carrying a news story, commentary, or editorial

²⁸ Acevedo-Vilá Resp. at 4; MPG Resp. at 4.

²⁹ MPG Resp. at 4; Acevedo-Vilá Resp. at 4-5.

³⁰ 52 U.S.C. § 30101(8)(A)(i); *see also id.* § 30101(9)(A)(i) (defining “expenditure” as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office”).

³¹ 11 C.F.R. § 100.52(d)(1).

³² 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

³³ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

³⁴ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a).

1 by any broadcasting station . . . unless the facility is owned or controlled by any political party,
2 political committee, or candidate.”³⁵ This exemption is generally referred to as the “press
3 exemption” or “media exemption.” The Commission has determined whether the exemption
4 applies by first assessing whether the entity that engaged in the challenged activity is a “press
5 entity.”³⁶ Second, the Commission determines the scope of the exemption by applying the two-
6 part analysis presented in *Reader’s Digest Ass’n v. FEC*: (1) whether the entity is owned or
7 controlled by a political party, political committee, or candidate; and (2) whether the entity is
8 acting within its “legitimate press function.”³⁷

9 The Complaint alleges that MPG made prohibited in-kind corporate contributions to
10 Acevedo-Vilá by paying to broadcast his radio talk show program, which the Committee failed
11 to report. As discussed below, MPG’s activities are covered by the press exemption and, thus,
12 any payments by MPG in connection with “Sobre la Mesa” are not in-kind contributions.

13 First, MPG is a press entity. “[T]he Commission has focused on whether the entity in
14 question produces on a regular basis a program that disseminates news stories, commentary,
15 and/or editorials.”³⁸ That description applies here. MPG states that it owns and operates four
16 AM radio stations that broadcast news and “talk-news” programming.³⁹ MPG further explains
17 that its talk-news programs hosted by “prestigious professionals, including politicians, who
18 analyze and share with [MPG’s] audience their different political and social views and

³⁵ *Id.* §§ 100.73, 100.132; *see* 52 U.S.C. § 30101(9)(B)(i).

³⁶ *See, e.g.*, Advisory Op. 2011-11 at 6-7 (Colbert) (“AO”) (collecting cases); AO 2010-08 at 5-6 (Citizens United); AO 2005-16 at 5 (Fired Up!).

³⁷ *See Reader’s Digest*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); AO 2011-11 at 7-9 (Colbert); AO 2010-08 at 6-7 (Citizens United); AO 2005-16 at 6 (Fired Up!).

³⁸ Advisory Op. 2010-08 (Citizens United) at 7 (“AO 2010-08”).

³⁹ MPG Resp. at 1, 4.

1 perspectives related to current news and events.”⁴⁰ A review of MPG’s public website and
2 available programming generally confirms these descriptions.

3 Second, there is no suggestion or information that MPG is owned or controlled by a
4 political party, political committee, or candidate.⁴¹ In its Response, MPG lists its shareholders,
5 none of whom are political parties, political committees, or candidates, and specifically denies
6 that any such person or entity owns or controls MPG, and the Commission is not aware of any
7 information to the contrary.⁴² Although Acevedo-Vilá announced his intention to run on
8 December 10, 2019, registered with the Commission on February 12, 2020, and did not terminate
9 his contract with MPG until February 28, 2020, this overlap does not establish that MPG was
10 owned or controlled by a candidate. The Commission has previously concluded that a
11 “host/candidate” does not own or control the media entity for purposes of the press exemption
12 “on the basis that the host/candidate had a role in determining program content.”⁴³ By contrast,
13 in MUR 7073 (Meluskey for U.S. Senate), the Commission determined that the press exemption
14 did not apply because “Meluskey was not a paid radio host employed by the radio station,” but
15 “purchased airtime and related services [using companies that he owned and controlled].”⁴⁴ As
16 explained above, Acevedo-Vilá was paid by MPG to host “Sobre la Mesa,” and MPG was
17 responsible for airing the show on its radio stations.

⁴⁰ *Id.* at 1.

⁴¹ *See Readers Digest Ass’n. v. FEC*, 509 F. Supp. 1210, 1214-15 (S.D.N.Y. 1981).

⁴² MPG Resp. at 1.

⁴³ Factual & Legal Analysis at 5, MUR 6242 (J.D. Hayworth 2010); (citing MUR 5555 (Friends of Dave Ross); MUR 4689 (Robert Dornan)).

⁴⁴ Factual & Legal Analysis at 7-8, MUR 7073 (Meluskey for U.S. Senate).

1 Third, there is no indication that MPG acted outside of its legitimate press function in
2 connection with its broadcasting of Acevedo-Vilá’s radio program, “Sobre la Mesa.” When
3 determining whether an entity was acting within in a legitimate press function, the Commission
4 considers two factors: (1) whether the entity’s materials are available to the general public; and
5 (2) whether they are comparable in form to those ordinarily issued by the entity.⁴⁵

6 Here, “Sobre la Mesa” was broadcast on multiple AM radio channels throughout Puerto
7 Rico, making it readily available to the public.⁴⁶ Further, the available information indicates that
8 “Sobre la Mesa” was comparable in form to other programming regularly aired by MPG; the
9 format and content of the show itself did not change after Acevedo-Vilá announced his intention
10 to become a candidate; and MPG continues to air the show with the same format and different
11 host.⁴⁷

12 The Complaint argues that two of Acevedo-Vilá’s statements on “Sobre la Mesa”
13 undercut the application of the press exemption because they effectively “converted [the show]

⁴⁵ See *Readers Digest*, 509 F. Supp. at 1215; Factual & Legal Analysis at 4, MUR 7231 (CNN, *et al.*); Advisory Op. 2016-01 at 3 (Ethiq); Advisory Op. 2010-08 at 6 (Citizens United). When distinguishing between an entity’s press functions and its participation in campaign functions, the Commission has applied the “considerations of form” analysis described in *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 251 (1986), and has examined whether the activity in question is comparable in form to the press entity’s regular activities and has approved of activities and content produced in the same manner, using the same people, and subject to the same review and distribution as the press entity’s general activities. Advisory Op. 2011-11 (Colbert) at 8.

⁴⁶ Compl. at 4; MPG Resp. at 1-2.

⁴⁷ See Factual & Legal Analysis at 5-6, MUR 6242 (J.D. Hayworth 2010) (determining that the press exemption applied with respect to a radio show host who was testing the waters, and later became a candidate, where the broadcasts during the testing-the-waters period were similar in form to those broadcast before the host began testing the waters); Certification, MUR 5555 (Ross) (Feb. 10, 2006) (finding no reason to believe under the press exemption with respect to a radio show host who became a candidate where the program format did not change after he began to consider candidacy); Certification, MUR 4689 (Dornan) (Aug. 15, 1999) (finding no reason to believe under the press exemption with respect to radio guest-host who later became a candidate where there was no indication that the formats, distribution, or other aspects of productions when the candidate hosted than they were when the regular host was present); *see also* Factual & Legal Analysis at 5-6, MUR 6242 (J.D. Hayworth 2010) (describing the Commission’s holdings in MURs 4689 and 5555).

1 to a vehicle to promote Anibal Acevedo-Vila's purely private interests, namely, his candidacy.”⁴⁸
2 As an initial matter, the Commission has long recognized that an entity otherwise eligible for the
3 exemption “would not lose its eligibility merely because of a lack of objectivity in a news story,
4 commentary, or editorial, even if the news story, commentary, or editorial expressly advocates
5 the election or defeat of a clearly identified candidate for Federal office.”⁴⁹ Moreover, there is
6 no information indicating that his statements referenced his own campaign or materially differed
7 from the normal content of his show, which regularly addressed Puerto Rico law, policy, and
8 politics. Regarding the January 14, 2020, episode in which Acevedo-Vilá used his radio show to
9 criticize a competing political talk show host and express support for the Mayor of San Juan, a
10 review of that broadcast does not reveal that Acevedo-Vilá made any statements related to his
11 election.⁵⁰ Regarding the January 16, 2020, episode in which Acevedo-Vilá allegedly criticized
12 his opponent, Jennifer González, a review of the broadcast shows that he mentioned González’s
13 name in passing during a segment in which he criticized actions by the federal government.⁵¹ In
14 the segment, Acevedo-Vilá criticized González for supporting the federal government’s decision
15 not to release federal disaster funds to Puerto Rico following the December 2019 earthquake.⁵²
16 In MUR 4689 (Dornan), the Commission determined that the press exemption applied where a
17 radio guest host who later became a candidate made comments critical of his eventual opponent
18 but there was “no indication that formats, distribution, or other aspects of production” were any

⁴⁸ Compl. at 5-6, 11.

⁴⁹ F&LA at 5, MUR 7206 (Bonneville International Corp.) (quoting AO 2005-16 at 6; Factual & Legal Analysis at 3, MUR 6579 (ABC News, Inc.) (July 5, 2012)).

⁵⁰ *Supra* note 24 and accompanying text.

⁵¹ *Supra* note 26.

⁵² *Id.*

1 different when the candidate hosted than they were when a guest host was present.⁵³ Based on
2 the available information, Acevedo-Vilá’s statements criticizing sitting government officials for
3 policy decisions affecting Puerto Rico appear to be a regular feature of his show and no different
4 that the format and content of the programming prior to his announcement that he intended to
5 become a candidate. In sum, there is no reasonable basis to conclude that MPG acted outside of
6 its legitimate press function.

7 Therefore, given the available information, the Commission concludes that MPG’s
8 payments for the production and distribution of “Sobre la Mesa” are entitled to the press
9 exemption and are thus not considered in-kind contributions to Acevedo-Vilá or the
10 Committee.⁵⁴ The Commission therefore finds no reason to believe that MPG made prohibited
11 in-kind corporate contributions in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) in
12 connection with the radio show.

⁵³ Certification, MUR 4689 (Dornan); Statement of Reasons, Comm’rs Wold, Elliott, Mason & Sandstrom at 2, MUR 4689; *see also* Factual & Legal Analysis at 6, MUR 6242 (J.D. Hayworth 2010) (stating the Commission’s holding in MUR 4689).

⁵⁴ *See* Factual & Legal Analysis at 4-7, MUR 6481 (RTTV) (applying the press exemption to a media entity that co-produced and broadcast a radio program hosted by an independent contractor where, as here, the independent contractor host maintained editorial control).