



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

**VIA ELECTRONIC MAIL AND  
UPS SIGNATURE REQUESTED**

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February 18, 2025

Tiffany Muller  
End Citizens United  
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Washington, DC 20003  
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RE: MUR 8238

Dear Mr. Ghosh and Mses. Gonsalves-Brown and Muller:

On January 14, 2025, the Federal Election Commission reviewed the allegations in your Complaint dated April 9, 2024, and, on the basis of the information provided in your complaint and information provided by Rafael Edward “Ted” Cruz and Truth and Courage PAC and Kris Ozanus in their official capacity as treasurer (the “PAC”), (1) dismissed the allegation that Cruz violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61 by soliciting, receiving, directing, transferring, or spending funds not subject to the limitations, prohibitions, and reporting requirements of the Federal Election Campaign Act of 1971, as amended (the “Act”), in connection with a federal election; and (2) dismissed the allegation that the PAC failed to properly report contributions from iHeart Media Inc. in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a). Accordingly, the Commission voted to close the file in this matter effective February 18, 2025.

The Commission will place documents related to the case on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). Any applicable Factual and Legal Analysis or Statements of Reasons available at the time of this letter’s transmittal are enclosed.

The Act allows a complainant to seek judicial review of the Commission’s dismissal of this action within 60 days of the dismissal, which became effective today. *See* 52 U.S.C.

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§ 30109(a)(8). If you have any questions, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574.

Sincerely,

Lisa Stevenson  
Acting General Counsel

*Ana J. Peña-Wallace*

BY: Ana J. Peña-Wallace  
Assistant General Counsel

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Truth and Courage PAC and Kris Ozanus  
in their official capacity as treasurer  
Rafael Edward "Ted" Cruz MUR 8238

## 6 I. INTRODUCTION

7 This matter arises from a Complaint alleging that Rafael Edward “Ted” Cruz, United  
8 States Senator from Texas, violated the Federal Election Campaign Act of 1971, as amended (the  
9 “Act”), by soliciting or directing over \$961,000 in soft money from the corporate distributor of  
10 his podcast, iHeart Media, Inc. (“iHeart”), to an independent expenditure-only political  
11 committee (“IEOPC”) supporting his 2024 reelection campaign, Truth and Courage PAC and  
12 Kris Ozanus in their official capacity as treasurer (the “PAC”), which the PAC incorrectly  
13 reported as federal receipts instead of contributions. Because it does not appear that Cruz  
14 solicited or directed any of the payments iHeart made to the PAC, the Commission dismisses the  
15 allegation that Cruz violated the soft money prohibition of 52 U.S.C. § 30125(e)(1)(A) and  
16 11 C.F.R. § 300.61. Further, because the payments appear to be *bona fide* commercial payments  
17 not made to influence any federal election, the Commission dismisses the allegation that the  
18 PAC violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) by inaccurately reporting  
19 contributions.

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1     **II. FACTUAL BACKGROUND**

2           Cruz is a sitting United States Senator from Texas who successfully ran for reelection in

3   2024.<sup>1</sup> He has co-hosted a podcast, “Verdict with Ted Cruz” (the “Podcast”), since 2020.<sup>2</sup>

4   iHeart, an audio media platform, has produced and marketed the Podcast since September 2022.<sup>3</sup>

5   Cruz states that he has never received payment for his role in the Podcast.<sup>4</sup>

6           The PAC is an IEOPC that first registered with the Commission on December 1, 2021.<sup>5</sup>

7   In the 2024 election cycle, it has reported total receipts of \$8.05 million and total disbursements

8   of \$4.09 million including independent expenditures comprised in relevant part of \$840,321.77

9   in support of Cruz, and \$533,900.26 opposing Cruz’s opponent, Colin Allred.<sup>6</sup> The PAC owns

10   the Podcast, and prior to entering into an agreement with iHeart in 2022, it had also produced it.<sup>7</sup>

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<sup>1</sup>           *Senator Ted Cruz*, CONGRESS.GOV, <https://www.congress.gov/member/ted-cruz/C001098> (last visited Jan. 14, 2025); Rafael Edward Ted Cruz, Amended Statement of Candidacy (May 16, 2024), <https://docquery.fec.gov/pdf/412/202405169646038412/202405169646038412.pdf>; Sean Murphy & Fernanda Figueroa, *Republican Ted Cruz of Texas Wins a Third Term to the US Senate*, ASSOC. PRESS (Nov. 6, 2024), <https://apnews.com/article/senate-texas-ted-cruz-colin-allred-e791c362621efac9fac78a3a146f77d1>.

<sup>2</sup>           *Verdict with Ted Cruz*, iHEART, <https://www.iheart.com/podcast/1119-verdict-with-ted-cruz-56253661/> (last visited Jan. 14, 2025) (reflecting first episode dated January 19, 2020); Compl. ¶ 6 (Apr. 9, 2024).

<sup>3</sup>           Resp. (May 30, 2024), Ex. A ¶ 2 (Aff. of Julie Talbott, President, Premiere Networks) [hereinafter Talbott Aff.]; *iHeartPodcasts*, iHEART MEDIA, <https://www.iheartmedia.com/podcasts> (last visited Jan. 14, 2025).

<sup>4</sup>           See Resp. at 2 (“Senator Cruz is not, and has never been, compensated in any manner for his role with the Podcast.”); RAFAEL E. CRUZ, ANNUAL REPORT FOR CALENDAR 2020, Part 9 (Aug. 16, 2021) (reflecting no reportable agreement concerning the Podcast); RAFAEL E. CRUZ, ANNUAL REPORT FOR CALENDAR 2021, Part 9 (Aug. 15, 2022) (same); RAFAEL E. CRUZ, AMENDED ANNUAL REPORT FOR CALENDAR 2022, Part 9 (Aug. 16, 2024) (same); RAFAEL E. CRUZ, ANNUAL REPORT FOR CALENDAR 2023, Part 9 (Aug. 13, 2024) (same). Senate financial disclosures are accessible online. *Financial Disclosures*, U.S. SENATE, <https://edfsearch.senate.gov/search> (last visited Jan. 14, 2025) (search for last name: Cruz; report type: annual).

<sup>5</sup>           Truth and Courage PAC, Amended Statement of Organization (Jan. 5, 2024), <https://docquery.fec.gov/pdf/833/20240105959977833/20240105959977833.pdf>; Truth and Courage PAC, Original Statement of Organization (Dec. 1, 2021), <https://docquery.fec.gov/pdf/794/202112019469538794/202112019469538794.pdf>.

<sup>6</sup>           *Truth and Courage PAC: Raising 2023-2024*, FEC.GOV, <https://www.fec.gov/data/committee/C00796045/?tab=raising&cycle=2024> (last visited Jan. 14, 2025); *Truth and Courage PAC: Spending 2023-2024*, FEC.GOV, <https://www.fec.gov/data/committee/C00796045/?tab=spending&cycle=2024> (last visited Jan. 14, 2025).

<sup>7</sup>           See *infra* note 14 and accompanying text.

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- 1 Since March 1, 2023, the PAC has received over \$961,000 from iHeart Media Management
- 2 Services Inc. as shown in the table below:<sup>8</sup>

Name	Description	Date	Amount
iHeart Media Management Services Inc.	Digital income	Mar. 1, 2023	\$48,797.87
iHeart Media Management Services Inc.	Digital income	Apr. 24, 2023	\$77,352.33
iHeart Media Management Services Inc.	Digital revenue	Aug. 30, 2023	\$129,030.56
iHeart Media Management Services Inc.	Digital revenue	Nov. 16, 2023	\$160,916.35
iHeart Media Management Services Inc.	Digital revenue	Feb. 15, 2024	\$214,752.98
iHeart Media Management Services Inc.	Digital revenue	May 15, 2024	\$156,185.72
iHeart Media Management Services Inc.	Digital revenue	Aug. 15, 2024	\$174,398.95
<b>Total:</b>			<b>\$961,434.76</b>

- 3 The PAC reported these receipts as “other federal receipts,” which are not contributions.<sup>9</sup> The
- 4 Complaint cites a *Forbes* article that quoted representatives of iHeart stating that the revenue the
- 5 PAC disclosed to the Commission is “associated with . . . advertising sales” for Cruz’s podcast.<sup>10</sup>

6 The Complaint alleges that Cruz, either directly or through his agents, violated the Act’s  
 7 soft money prohibition by soliciting or directing the iHeart payments to the PAC in connection  
 8 with the 2024 federal election.<sup>11</sup> It further alleges that the PAC misreported the receipts from  
 9 iHeart as “other receipts” when it should have reported them as contributions.<sup>12</sup>

<sup>8</sup> FEC Receipts: Filtered Results, FEC.GOV, [https://www.fec.gov/data/receipts/?data\\_type=processed&committee\\_id=C00796045&contributor\\_name=iHeart](https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00796045&contributor_name=iHeart) (last visited Jan. 14, 2025).

<sup>9</sup> See, e.g., Truth and Courage PAC, 2024 June Monthly Report, Sched. A at 8 (June 20, 2024), <https://docs.query.fec.gov/pdf/529/202406209649260529/202406209649260529.pdf#navpanes=0> (reflecting that the iHeart receipts appear on line 17 of the form). The Commission’s instructions for this form state that line 17 is for “other receipts (including dividends and interest)” and that committees should report contributions on line 11. FED. ELECTION COMM’N, INSTRUCTIONS FOR FEC FORM 3X AND RELATED SCHEDULES at 6, 7 (May 2016), <https://www.fec.gov/resources/cms-content/documents/policy-guidance/fecfrm3xi.pdf>.

<sup>10</sup> Molly Bohannon, *Super PAC Backing Ted Cruz Received \$215,000 From iHeartMedia — Fueling Ethics Concerns After Podcast Deal*, FORBES (Mar. 20, 2024), <https://www.forbes.com/sites/mollybohannon/2024/03/20/super-pac-backing-ted-cruz-received-215000-from-iheartmedia-fueling-ethics-concerns-after-podcast-deal/> (cited in Compl. at 5 n.16).

<sup>11</sup> Compl. ¶¶ 24-35; see 52 U.S.C. § 30125(e)(1)(A).

<sup>12</sup> Compl. ¶¶ 36-43; see 52 U.S.C. § 30104(b).

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1 Cruz and the PAC submitted a joint Response denying the allegations, as well as two  
 2 sworn affidavits: one by Julie Talbott, president of iHeart subsidiary Premiere Networks, and  
 3 another by Sam Cooper, a consultant for the PAC.<sup>13</sup> The Response states that, prior to  
 4 September 2022, the PAC “wholly owned and produced” the Podcast.<sup>14</sup> At that time, after a  
 5 suggestion by co-host Ben Ferguson that iHeart contact Jeff Roe, a consultant to Cruz, and  
 6 Cooper, the PAC agreed with iHeart for iHeart to “tak[e] over the production, distribution, and  
 7 marketing of the Podcast.”<sup>15</sup> The Response states, and Cooper and Talbott attest, that Cruz was  
 8 involved in only one of the business discussions with iHeart concerning the Podcast, and that he  
 9 signed a “talent inducement” rider appended to the contract between iHeart, the PAC, and  
 10 Ferguson’s company, Ben Ferguson Enterprises LLC.<sup>16</sup> Roe, Cruz’s consultant, participated in  
 11 further discussions with iHeart, the PAC, Cooper, and Ben Ferguson’s company.<sup>17</sup> The  
 12 Response states that Cruz receives no compensation for co-hosting the Podcast.<sup>18</sup> Talbott attests  
 13 that the Podcast agreement with iHeart provides as follows:

14 iHeart, [the PAC, and Ben Ferguson Enterprises LLC] jointly own  
 15 the Podcast, including all intellectual property rights in the Podcast  
 16 and existing Podcast episodes; . . .

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<sup>13</sup> Resp.; *id.*, Talbott Aff.; *id.*, Ex. B (Aff. of Sam Cooper) [hereinafter Cooper Aff.].

<sup>14</sup> Resp. at 1; Cooper Aff. ¶ 3 (“Prior to the PAC entering into the agreement with [iHeart] for iHeart to produce, distribute, and market the Podcast, the PAC exclusively owned the Podcast, including its intellectual property, previously produced episodes, assets, infrastructure for producing and distributing the Podcast, and subscriber lists.”).

<sup>15</sup> Resp. at 2 (“Ferguson had a preexisting relationship with iHeart, which produces and markets ‘The Ben Ferguson Podcast’ and ‘The Ben Ferguson Show’ (through iHeart’s subsidiary Premiere Networks.”); Talbott Aff. ¶ 3; Cooper Aff. ¶ 4.

<sup>16</sup> Resp. at 3-4; Talbott Aff. ¶¶ 4, 9.

<sup>17</sup> Resp. at 3; Talbott Aff. ¶ 4; Cooper Aff. ¶ 5. The Response states, and Talbott attests, that neither Cruz nor Roe “solicited or directed iHeart to provide the PAC with a portion of the Podcast revenue share.” Resp. at 4; Talbott Aff. ¶ 8.

<sup>18</sup> Resp. at 2 (“Senator Cruz is not, and has never been, compensated in any manner for his role with the Podcast.”); *see* Talbott Aff. ¶¶ 6, 9 (outlining the terms of the Podcast agreement and stating that Cruz is not a party to the agreement); *supra* note 4 (citing Cruz’s Senate financial disclosures).

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1                   iHeart retains a specified percentage of net profits derived from  
 2                   uses of the Podcast on any media other than broadcast radio, and a  
 3                   specified percentage of net profits derived from uses of the Podcast  
 4                   on broadcast radio; and

5                   the PAC and [Ben Ferguson Enterprises LLC], as the other two  
 6                   parties to the Agreement, equally split the remaining net profits  
 7                   derived from uses of the Podcast.<sup>19</sup>

8                   Talbott describes that the “Agreement is generally consistent with the standard terms  
 9                   that iHeart offers to other podcast owners and talent with who it partners” and that, among its  
 10                  750 podcasts, “most of its agreements includes similar terms.<sup>20</sup> The Response states that  
 11                  iHeart’s payments to the PAC are not contributions;<sup>21</sup> that the PAC has properly reported its  
 12                  income from the Podcast agreement;<sup>22</sup> and that Cruz has not solicited or directed any payments  
 13                  to the PAC.<sup>23</sup>

### 14           **III.    LEGAL ANALYSIS**

#### 15           **A.    The Commission Dismisses the Allegation That Cruz Violated the Soft 16                  Money Prohibition at 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 300.61**

17                  The Act prohibits federal candidates and officeholders from soliciting, receiving,  
 18                  directing, transferring, or spending funds in connection with a federal election “unless the funds  
 19                  are subject to the limitations, prohibitions, and reporting requirements of the Act.”<sup>24</sup> The Act  
 20                  limits contributions to non-authorized, non-party committees to \$5,000 in any calendar year.<sup>25</sup>

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19                  Talbott Aff. ¶ 6.

20                  *Id.* ¶ 7.

21                  Resp. at 5-10.

22                  *Id.* at 11-13. The Response also states that, even if the Commission were to consider the payments to be contributions, there is no informational harm associated with how the PAC has reported the receipts, as the only difference between reporting the funds as contributions or as “other receipts” is which line number box the PAC checks on the page of the disclosure report on which the relevant receipt appears. *Id.* at 12-13.

23                  *Id.* at 10-11.

24                  See 52 U.S.C. § 30125(e)(1)(A); *see also* 11 C.F.R. §§ 300.60, 300.61.

25                  52 U.S.C. § 30116(a)(1)(C).

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1 IEOPCs, however, may accept contributions from corporations and individuals without regard  
 2 to that \$5,000 limitation,<sup>26</sup> but federal officeholders and candidates may only solicit up to  
 3 \$5,000 from permissible sources on behalf of such a committee.<sup>27</sup>

4 Through regulation, the Commission has defined “to solicit” to mean “to ask, request, or  
 5 recommend, explicitly or implicitly, that another person make a contribution, donation, transfer  
 6 of funds, or otherwise provide anything of value.”<sup>28</sup> It has defined “to direct” as “to guide,  
 7 directly or indirectly, a person who has expressed an intent to make a contribution, donation,  
 8 transfer of funds, or otherwise provide anything of value, by identifying a candidate, political  
 9 committee or organization, for the receipt of such funds, or things of value.”<sup>29</sup>

10 Here, there is insufficient information to indicate that Cruz solicited or directed that  
 11 iHeart pay the Podcast’s advertising profits to the PAC, nor is there any indication that he

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<sup>26</sup> See *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*) (holding that contribution limits are unconstitutional as applied to individuals’ contributions to political committees that only make independent expenditures); Advisory Opinion (“AO”) 2010-11 at 2-3 (Commonsense Ten) (concluding that corporations, labor organizations, political committees, and individuals may each make unlimited contributions to IEOPCs).

<sup>27</sup> AO 2011-12 at 3 (Majority PAC, *et al.*) (“Federal officeholders and candidates . . . may solicit up to \$5[,]000 from individuals (and any other source not prohibited by the Act from making a contribution to a political committee) on behalf of an IEOPC, because those funds are subject to the Act’s amount limitations and source prohibitions.”); *see also* Factual & Legal Analysis (“F&LA”) at 4, MUR 7682 (Honor Bound PAC (f/k/a Amy McGrath for Senate, Inc.), *et al.*) (citing AO 2011-12 at 3); F&LA at 11, MURs 6563, 6733 (Aaron Schock (“[F]ederal candidates, officeholders, and other covered persons . . . only may solicit contributions of \$5,000 or less for [IEOPCs].”) (citing AO 2011-12)); Conciliation Agreement ¶ IV.7-8, MUR 7048 (Cruz for President, *et al.*) (explaining that “[t]he Act’s solicitation restrictions under § 30125(e)(1)(A),” including the contribution limit of \$5,000 to non-authorized, non-party committees, “remain applicable to agents acting on behalf of federal candidates and individuals holding federal office” (citing, *inter alia*, AO 2011-12)).

<sup>28</sup> 11 C.F.R. § 300.2(m); *see also* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,086 (July 29, 2002) [hereinafter Soft Money E&J] (defining “to solicit” as to “ask another person to make a contribution or donation, or transfer of funds, or to provide anything of value, including through a conduit or intermediary”).

<sup>29</sup> 11 C.F.R. § 300.2(n); Soft Money E&J, 67 Fed. Reg. at 49,086 (defining “to direct” as “to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value, including through a conduit or intermediary”).

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1 received, transferred, or spent those funds.<sup>30</sup> Instead, it appears that the PAC and iHeart formed  
 2 a business relationship regarding the Podcast in which iHeart would pay the PAC for the rights  
 3 to air the Podcast. Cruz's role was limited to hosting the Podcast and he does not appear to  
 4 have been involved with the decision for iHeart to pay the PAC, meaning that he did not direct  
 5 or solicit any funds.

6 The Response states, and the PAC's consultant, Cooper, attests, that prior to the 2022  
 7 agreement with iHeart, the PAC owned and produced the Podcast.<sup>31</sup> Cruz was an  
 8 uncompensated co-host and did not himself own the Podcast. Further, Cruz is not a party to the  
 9 2022 agreement between iHeart, the PAC, and Ben Ferguson Enterprises LLC beyond the  
 10 "talent inducement" rider providing that he would continue to co-host the Podcast when iHeart  
 11 took over its production and marketing.<sup>32</sup> While the Response concedes that Cruz attended one  
 12 meeting with representatives of iHeart to discuss its acquisition of the Podcast, and that Roe,  
 13 Cruz's consultant, attended additional discussions, the available information does not indicate  
 14 that Cruz or Roe suggested how the Podcast's profits were to be allocated.<sup>33</sup> The Response  
 15 states, and Talbott attests, that "iHeart offered the PAC a share of the Podcast's net profits in  
 16 recognition of the PAC's preexisting ownership of the Podcast and its assets, consistent with  
 17 iHeart's standard commercial terms and practices."<sup>34</sup> Talbot attests that "[t]he PAC was simply

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<sup>30</sup> The Soft Money E&J does not define the terms "to receive," "to transfer," or "to spend" beyond their usual meaning. *See generally* Soft Money E&J. The Complaint does not allege, and we are aware of no information indicating, that Cruz himself received, transferred, or spent the funds at issue; as such, this analysis focuses on whether he solicited or directed the funds.

<sup>31</sup> *Supra* note 14 and accompanying text.

<sup>32</sup> Resp. at 4; Talbott Aff. ¶ 9.

<sup>33</sup> *Supra* note 16-17 and accompanying text.

<sup>34</sup> Resp. at 10; Talbott Aff. ¶ 8. For further discussion of the apparent *bona fide* commercial nature of the transaction, *see* Part III.B, *infra*.

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1 presented as the prior owner of the Podcast entitled to a share of revenue just as [Ben  
 2 Ferguson's company] was entitled to a share of the revenue as a new co-owner of the Podcast,  
 3 following execution of the Agreement.”<sup>35</sup> For this reason, Cruz's participation in the Podcast  
 4 appears more akin to a candidate speaking at, but not soliciting funds in connection with, an  
 5 event held by an independent expenditure-only political committee, which is permissible under  
 6 the Act.<sup>36</sup>

7 Because there is no available information to indicate that Cruz solicited, directed,  
 8 received, transferred, or spent the funds iHeart paid to the PAC in violation of the Act's soft  
 9 money provision, the Commission dismisses the allegation that Cruz violated 52 U.S.C.  
 10 § 30125(e)(1)(A) and 11 C.F.R. § 300.61.<sup>37</sup>

11                   **B. The Commission Dismisses the Allegation That the PAC Incorrectly  
 12                   Reported Its Receipts from iHeart in Violation of 52 U.S.C. § 30104(b) and  
 13                   11 C.F.R. § 104.3(a)**

14                   Political committees are required to report the identifying information of each person  
 15 who makes an aggregate contribution in excess of \$200 within the calendar year (or election  
 16 cycle, in the case of an authorized committee), together with the date and amount of any such  
 17 contribution.<sup>38</sup> A contribution is any gift, subscription, loan, advance, or deposit of money or  
 18 anything of value made by any person for the purpose of influencing any election for Federal

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<sup>35</sup> Talbott Aff. ¶ 8

<sup>36</sup> See AO 2011-12 at 4-5 (Majority PAC, *et al.*) (“Federal officeholders and candidates . . . may attend, speak at, or be featured guests at fundraisers for the Committees, at which unlimited individual, corporate, and labor organization contributions will be solicited, so long as [the officeholders or candidates] restrict any solicitations they make to funds subject to the limitations, prohibitions, and reporting requirements of the Act.”); Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events, 75 Fed. Reg. 24,375-01, 24,379-80 (May 5, 2010).

<sup>37</sup> 52 U.S.C. § 30125(e)(1)(A).

<sup>38</sup> *Id.* § 30104(b)(3)(A); *see also* 11 C.F.R. § 104.3(a).

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1 office.<sup>39</sup> In analyzing whether a payment made by a third party is a “contribution” or  
2 “expenditure,” the Commission has concluded that “the question under the Act is whether” the  
3 donation, payment, or service was “provided for the purpose of influencing a federal election  
4 [and] not whether [it] provided a benefit to [a federal candidate’s] campaign.”<sup>40</sup> The electoral  
5 purpose of a payment may be clear on its face, as in payments to solicit contributions or for  
6 communications that expressly advocate for the election or defeat of a specific candidate, or  
7 inferred from the surrounding circumstances.<sup>41</sup>

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<sup>39</sup> 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52.

<sup>40</sup> F&LA at 6, MUR 7024 (Van Hollen for Senate).

<sup>41</sup> See, e.g., AO 2000-08 at 1, 3 (Philip D. Harvey) (concluding private individual’s \$10,000 “gift” to federal candidate would be a contribution because “the proposed gift would not be made but for the recipient’s status as a Federal candidate”); AO1990-05 at 4 (Margaret R. Mueller) (explaining that solicitations and express advocacy communications are for the purpose of influencing an election and concluding, after examining circumstances of the proposed activity, that federal candidate’s company newsletter featuring discussion of campaign resulted in contributions); AO 1988-22 at 5 (San Joaquin Valley Republican Assocs.) (concluding third party newspaper publishing comments regarding federal candidates, coordinated with those candidates or their agents, thereby made contributions because “the financing of a communication to the general public, not within the ‘press exemption,’ that discusses or mentions a candidate in an election-related context and is undertaken in coordination with the candidate or his campaign is ‘for the purpose of influencing a federal election’); F&LA at 17-20, MURs 4568, 4633, 4634 (Triad Mgmt. Servs., Inc.) (finding reason to believe corporation and related nonprofit organizations made contributions by providing federal candidates with “uncompensated fundraising and campaign management assistance” and “advertising assistance[,]” including spending “several million dollars” on coordinated advertisements).

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1        The Commission has long considered activity engaged in for *bona fide* commercial

2        reasons not to be “for the purpose of influencing an election,” and thus, not a contribution or

3        expenditure.<sup>42</sup> This is true even if a candidate benefitted from the commercial activity.<sup>43</sup>

4        Here, the PAC’s reporting of payments it received from iHeart as “other federal

5        receipts” on its disclosure reports with the Commission appears to be accurate. The available

6        information indicates that the payments iHeart made to the PAC were for a commercial purpose

7        pursuant to a contract made at arm’s length and for the usual and normal charge for such

8        agreements, and not for the purpose of influencing any election for federal office. The

9        Response states that the payments consist of the PAC’s share of the net profits derived from

10      (1) uses of the Podcast on broadcast media and (2) derived from uses of the Podcast, including

11      advertising sales.<sup>44</sup> The Response also states, and Talbott attests, that the agreement’s profit

12      allocation percentages are “standard in iHeart’s podcast agreements” across the majority of the

13      “more than 750 podcasts” iHeart produces.<sup>45</sup> Though the PAC’s election activities may have

14      been funded by the payments, that does not transform the iHeart payments into contributions

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<sup>42</sup>        See, e.g., F&LA at 11-14, MUR 7991 (Google, LLC, *et al.*) (finding that email service provider’s spam filter that blocked the emails of one party more frequently than those of another was not a contribution to the less-blocked party because the spam filter was implemented for *bona fide* commercial reasons); F&LA at 13-19, 21, MURs 7821, 7827, 7868 (Twitter, Inc., *et al.*) (finding that a social media company’s decision to place labels on particular posts and block others concerning a presidential candidate’s son where the choice to do so was grounded in the company’s preexisting content moderation policies did not result in a contribution to the candidate); F&LA at 4, MUR 6586 (World Wrestling Ent., Inc.) (finding that a corporation acted with the “sole intent to defend its business reputation” and not for the purpose of influencing an election when its senior vice president sent a letter to a newspaper seeking a retraction of a negative article about the corporation’s owner and CEO).

<sup>43</sup>        See F&LA at 6, MUR 7024 (Van Hollen for Senate, *et al.*) (opining that the “question under the Act is whether the legal services were provided for the purpose of influencing a federal election, not whether they provided a benefit to Van Hollen’s campaign,” and concluding there was no contribution given the “absence of any objective or subjective indication” respondents acted for the purpose of influencing the election); First Gen. Counsel’s Rpt. at 16 & Cert. ¶ 5 (June 6, 1994), MUR 3622 (The Clinton/Gore ‘92 Comm.) (“[T]he fact that any of these candidates . . . may have received an indirect benefit (dissemination of their political positions) as a result of the sale of these tapes does not convert commercial activity into a corporate contribution.”).

<sup>44</sup>        Resp. at 3; *see id.* at 11 n.54 (referring to “advertising revenues”); Talbott Aff. ¶ 6.

<sup>45</sup>        Resp. at 3; Talbott Aff. ¶ 7.

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1 since the payments from iHeart to the PAC were not themselves made for the purpose of  
2 influencing a federal election. We are aware of no information indicating that iHeart made the  
3 payments to influence a federal election, or for any reason beyond a *bona fide* commercial  
4 arrangement that would have required the PAC to disclose the payments as “contributions”  
5 instead of “other federal receipts.”

6 For these reasons, the Commission dismisses the allegation that the PAC failed to  
7 properly report contributions from iHeart in violation of 52 U.S.C. § 30104(b) and 11 C.F.R.  
8 § 104.3(a).