

FEDERAL ELECTION COMMISSION

Washington, DC 20463

VIA ELECTRONIC MAIL

July 29, 2020

Brad Deutsch
Garvey Schubert Barer
1000 Potomac Street, NW, Suite 200
Washington, DC 20007
BDeutsch@gsblaw.com

RE: MUR 7619

Vermont ETV, Inc. d/b/a Vermont PBS

Dear Mr. Deutsch:

On June 26, 2019, the Federal Election Commission ("Commission") notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations. A copy of the complaint was forwarded to your clients at that time. On July 21, 2020, based upon the information contained in the complaint and information provided by respondents, the Commission voted to dismiss allegations that Vermont ETV, Inc. d/b/a Vermont PBS, violated provisions of the Act. The Commission then closed its file in this matter. A copy of the General Counsel's Report, which more fully explains the basis for the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson

Acting General Counsel

BY: Jeff S. Jordan

Assistant General Counsel

Enclosure:

General Counsel's Report

12 BEFORE THE FEDERAL ELECTION COMMISSION 3 **ENFORCEMENT PRIORITY SYSTEM** 4 DISMISSAL REPORT 5 6 **MUR:** 7619 **Respondent:** Vermont ETV, Inc. d/b/a 78 Vermont Public Broadcasting System¹ 9 Complaint Receipt Date: June 21, 2019 Response Date: July 31, 2019 10 11 12 13 14 **Alleged Statutory** 52 U.S.C. §§ 30104(f)(3)(B)(iii); 30116(a)(1)(A); 30121 15 **Regulatory Violations:** 11 C.F.R. §§ 110.13; 114.4(f); 110.20 16 The Complaint alleges that Vermont Public Broadcasting System ("Vermont PBS") 17 excluded the Complainant² from its candidate debates because she was an independent candidate.³ 18 19 Specifically, the Complaint alleges that Vermont PBS favored Democratic and Republican Party 20 candidates over independent candidates, and by doing so made in-kind contributions to the Democratic and Republican Party candidates.⁴ In response, Vermont PBS states that the U.S. 21 22 House of Representatives candidates' debate that it aired complied with the Commission's candidate 23 debate staging regulations, using pre-established selection criteria that were in no way designed to

Vermont PBS is the Public Broadcasting Service member network for the state of Vermont, and is owned by Vermont ETV, Inc., a domestic nonprofit corporation.

² Complainant Cris Ericson was a candidate to represent Vermont in the U.S. House in 2018. She lost in the November 6, 2018, general election with 3.3% of the vote. She describes herself as a "perennial political candidate" who has run for federal office every two years since 2004. Compl. at 1 (June 21, 2019).

Compl. at 2-3.

Compl. at 3. Complainant also alleges that because Vermont PBS is able to be viewed in Canada, it is possible that Vermont PBS received donations from Canadian citizens, and may have used those funds to finance televised debates, and by doing so may have facilitated foreign national contributions to the candidates that participated in the debates. *Id.* at 3-5. The Complainant also questions whether Canadian lawyers or lobbyists paid Vermont PBS specifically to exclude her from the 2018 debates, due to her stated opposition to foreign nationals voting in U.S. elections. *Id.* at 4-5. The Complaint does not provide any information supporting these claims.

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result in the selection of pre-chosen candidates.⁵ Respondent also asserts that it did not accept any funds donated for the purpose of staging the debate at issue or any candidate debate.⁶

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating, the lack of available information to support the Complaint's assertions, and Vermont PBS's assertions that it used pre-established objective selection criteria for the debate, we recommend that the Commission dismiss the Complaint consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources. We also recommend that the Commission close the file and send the appropriate letters.

17	Acting General Counsel
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20	Charles Kitcher
21	Acting Associate General Counsel
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Resp. at 1-2 (July 31, 2019). See 11 C.F.R. §§ 110.13 and 114.4(f). Respondents assert that Vermont ETV is a nonprofit organization which does not endorse, support, or oppose political candidates or political parties (see 11 C.F.R. § 110.13(a)(1)) and is a broadcaster that is not owned or controlled by a political party, political committee or candidate (see 11 C.F.R. § 110.13(a)(2)). Id. Respondents further state that the debate included at least two candidates and was not structured to promote or advance one candidate over another (see 11 C.F.R. § 110.13(b)); and pre-established objective criteria were used to determine which candidates participated in the debate (see 11 C.F.R. § 110.13(c)). Id.

Lisa J. Stevenson

Id. Cf. 11 C.F.R. § 114.4(f).

⁷ Heckler v. Chaney, 470 U.S. 821, 831-32 (1985).

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1	10.2.19	BY: Steple Jua
2	Date	Stephen Gura
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