

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Hispanic Arts of Tampa, Inc.) Facility ID No. 195070
Application for License to Cover a Construction) NAL # MB-201741410005
Permit for WVVF-LP, Town N' Country, Florida) FRN: 0023093875
File No. BLL-20150803AFO

ORDER

Adopted: March 8, 2017

Released: March 9, 2017

By the Acting Chief, Media Bureau:

1. By this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Hispanic Arts of Tampa, Inc. (Hispanic Arts or Licensee). The Consent Decree resolves issues regarding the broadcast of commercial advertising on a noncommercial educational (NCE) station in violation of Sections 73.503(d) of the Commission's rules (Rules) and Section 399b of the Communications Act of 1934, as amended (Act). Also before us are: (1) a complaint filed by Beasley Media Group, Inc. (Beasley) on July 31, 2015 (Complaint); (2) a response to the Complaint filed by Hispanic Arts on August 20, 2015 (Complaint Response); (3) the above-captioned application for a license to cover a construction permit for low power FM (LPFM) station WVVF-LP, Town N' Country, Florida (Station), filed by Hispanic Arts on August 3, 2015 (Application); (4) an informal objection to the Application filed by Beasley on October 14, 2015 (Informal Objection); (5) a response to the Informal Objection filed by Hispanic Arts on October 28, 2015 (Informal Objection Response); and (6) a reply to the Informal Objection Response filed by Beasley on November 12, 2015. For the reasons stated below, we deny the Complaint and Informal Objection and terminate further investigation into the matters resolved by the Consent Decree.

2. On November 14, 2013, Hispanic Arts filed an application for a new LPFM station, which was granted on February 5, 2015 (Construction Permit Application). In the Construction Permit Application, Hispanic Arts described its educational mission as "promoting the rich history and culture of Hispanics in the Tampa Bay area" through a variety of broadcast programs, including poetry, cultural programs, news and weather, live broadcasts of local events, community calendar, history, interviews,

1 47 U.S.C. § 399b (Section 399b); 47 CFR § 73.503(d) (Section 73.503(d)).

2 Although Beasley styles the Informal Objection as a "Reply to Response to Complaint," we find that the issues raised therein are necessary to resolve in order to dispose of the License Application. Accordingly, we construe this pleading as an informal objection to the License Application. For this reason, we find unavailing Hispanic Art's argument that Section 1.45 of the Commission's Rules—which prohibits parties from raising new arguments in a reply—precludes Beasley from raising the commercial advertising issue in the Informal Objection. See Informal Objection at 1-2; 47 CFR § 1.45.

3 File No. BNPL-20131114BNH; see also Broadcast Actions, Public Notice, Report No. 48423 (Feb. 10, 2015).

politics, discussion, and music programming.⁴

3. In the Complaint, Beasley claims that WVVF-LP “is operating in a manner inconsistent with the requirement that Low Power FM stations ‘be used for the advancement of an educational program.’”⁵ Specifically, Beasley contends that Hispanic Arts has thus far broadcast only music programming and has failed to disclose to potential sponsors that the Station is an NCE station.⁶ In its Informal Objection, Beasley further alleges that Hispanic Arts violated Section 399b of the Act and Section 73.503(d) of the Rules by broadcasting commercial announcements on an NCE station.⁷

4. In its Complaint Response and Informal Objection Response, Hispanic Arts concedes that it has not yet provided all of its proposed educational content but is trying to “build an audience” by initially offering Spanish-language popular music, including that of local artists.⁸ Hispanic Arts further states that it is “in compliance with the Commission’s rules prohibiting commercial advertising and only broadcasts permitted underwriting announcements.”⁹

5. *Advancement of an educational program.* We disagree with Beasley’s contention that Hispanic Arts, through a predominantly music format, has failed to advance an educational program in violation of Section 73.853(a)(1). The Commission generally defers to a licensee’s editorial judgment as to what constitutes “educational” programming, unless that judgment is arbitrary or unreasonable.¹⁰ The requirement to provide programming that advances an educational objective may be satisfied by a variety of programs, including “cultural programming.”¹¹ The Commission has previously accepted all-music formats as advancing an educational program.¹² Therefore, we reject Beasley’s contention that the Station’s programming does not constitute “arts and cultural programming [as] promised in the [Construction Permit] Application” and conclude that further investigation into this issue is not warranted at this time.¹³

6. *Underwriting announcements.* The Informal Objection is judged under the standard of Section 319(c) of the Act.¹⁴ Under Section 319(c), Hispanic Arts is entitled to a high degree of protection

⁴ Construction Permit Application, Exh. 2, Attach. 2 (“Educational Plan/Programming Plan”).

⁵ Complaint at 1 (citing 47 CFR § 73.853(a)(1) (“An LPFM station may be licensed only to [n]onprofit educational organizations and upon a showing that the proposed station will be used for the advancement of an educational program”).

⁶ Complaint at 3-4.

⁷ Informal Objection at 4.

⁸ Response to Complaint at 4.

⁹ Informal Objection at 2.

¹⁰ *Enid Public Radio Ass’n*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd 9138, 9141 n.23 (MB 2010); *WQED Pittsburgh and Cornerstone Television, Inc.*, Order on Reconsideration, 15 FCC Rcd 2534, 3535 (2000).

¹¹ *Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2214 (2000). As stated in its articles of incorporation, the specific purpose for which Hispanic Arts is organized in Florida as a not-for-profit corporation is “to provide cultural awareness of Tampa’s rich Hispanic history, through arts, entertainment, events, and media.” Construction Permit Application, Exh. 2, Attach. 2, “Proof of Incorporation,” at 1.

¹² *University of San Francisco*, Memorandum Opinion and Order, 30 FCC Rcd 10530, 10534-35, n.34 (2015) (describing as advancing an educational program “creating and disseminating cultural broadcast material in the form of specially formatted classical music programming. . .”).

¹³ See Informal Objection at 3.

¹⁴ 47 U.S.C. § 319(c).

and a presumption that the Section 309(e) public interest determination made during the construction permit proceeding continues in effect unless circumstances have arisen that would make operation of the station against the public interest.¹⁵ We are traditionally reluctant to designate license applications for hearing in these circumstances and, in most instances, consider the grant of such application to follow almost automatically from the issuance of a construction permit and the completion of construction in accordance therewith.¹⁶

7. Under this stringent standard, Beasley's challenge to the operation and licensing of WVVF-LP on the basis that it broadcasted commercial announcements in violation of Section 73.503(d) of the Rules fails. Although the facts on record indicate that Hispanic Arts has violated the Commission's prohibition on commercial announcements aired by NCE stations, we conclude that the violations at issue are appropriately resolved by the Consent Decree adopted herein. We find that nothing else in the record creates a substantial or material question of fact whether Hispanic Arts possesses the basic qualifications to be a Commission licensee. For these reasons, we find that the public interest will be served by adopting the Consent Decree and denying the Complaint and Informal Objection.

8. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,¹⁷ and by the authority delegated by Sections 0.61 and 0.283 of the FCC's Rules,¹⁸ the Consent Decree attached hereto IS ADOPTED.

9. IT IS FURTHER ORDERED that the complaint filed by Beasley Media Group, Inc. (Beasley) on July 31, 2015, and the informal objection filed by Beasley on October 14, 2015, ARE DENIED.

10. IT IS FURTHER ORDERED that the investigation by the Media Bureau of the matters noted above IS TERMINATED.

11. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to: (1) Richard J. Hayes, Jr., Esq., 27 Water's Edge Dr, Lincolnville, ME 04849; and (2) F. Scott Pippin, Esq., Lerman Senter PLLC, 2000 K St NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Acting Chief, Media Bureau

¹⁵ 47 U.S.C. § 319(c) (requiring the Commission to issue a license where a construction permit has been granted and it appears that the terms of such permit have been met, and "that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest . . ."); *Focus Cable of Oakland, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 35, 39-40, para. 11 (1977).

¹⁶ See, e.g., *Meyer Broadcasting Company*, 65 FCC 2d 438, 441 (1977).

¹⁷ 47 U.S.C. § 4(i).

¹⁸ 47 CFR §§ 0.61, 0.283.

CONSENT DECREE

I. Introduction

1. This Consent Decree is entered into by: (a) the Media Bureau of the Federal Communications Commission; and Hispanic Arts of Tampa, Inc., licensee of low power FM (LPFM) station WVVF-LP, Town N' Country, Florida.

II. Definitions

2. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §§151 et seq.;
 - (b) "Application" means the pending application for a license to cover low power FM (LPFM) station WVVF-LP, Town N' Country, Florida (File No. BLL-20150803AFO);
 - (c) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (d) "Commission" or "FCC" means the Federal Communications Commission;
 - (e) "Effective Date" means the date on which the Bureau releases the Order;
 - (f) "Investigation" means the Bureau's investigation of Licensee's violations of the Underwriting Announcements Rule;
 - (g) "Licensee" means Hispanic Arts of Tampa, Inc.
 - (h) "Underwriting Announcements Rule" means 47 U.S.C. § 399b and 47 CFR § 73.503(d).
 - (i) "Order" means an order of the Bureau adopting this Consent Decree;
 - (j) "Parties" means Licensee and the Bureau;
 - (k) "Rules" means the FCC's regulations set forth in Title 47 of the Code of Federal Regulations;
 - (l) "Station" means LPFM station WVVF-LP, Town N' Country, Florida, licensed to Hispanic Arts of Tampa, Inc. (Fac. ID No. 195070); and
 - (m) "Violation" means the subject violation of the Underwriting Announcements Rule.

III. Background

3. In a pleading filed on October 14, 2015, Beasley Media Group, Inc. submitted recordings, transcripts, and translations of certain over-the-air underwriting announcements broadcast by Licensee. These materials indicate that on at least one occasion, Licensee violated the Underwriting Announcement Rule. Licensee does not dispute that it broadcast the underwriting announcements at issue.
4. Because of the issues identified on the record, the Parties have agreed to enter into this Consent Decree, to which both the Licensee and the Bureau intend to be legally bound.

IV. Agreement

5. The Parties acknowledge that any proceeding that might result from the Licensee's violation of the Underwriting Announcement Rule referred to in Paragraph 3 above, would be time consuming and require substantial expenditure of public and private resources. In order to conserve such resources and to resolve the matter, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.
6. The Licensee and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. Both the Licensee and the Bureau each represent and warrant that their signatory is duly authorized to enter into this Consent Decree on their behalf. The Licensee agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree.

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Licensee and the Bureau concerning the Licensee's Violation at the Station, as discussed herein.
8. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees that it will not use the Violation in any action against the Licensee, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.
9. The Licensee hereby stipulates that it violated the Underwriting Announcement Rule to the extent described in Paragraph 3 above.
10. The Bureau has agreed to accept and Licensee has agreed to make a civil penalty payment to the United States Treasury in the amount of Two Thousand Dollars (\$2,000) within thirty (30) calendar days after the Effective Date. Licensee will also send electronic notification of payment to Christine Goepp at Christine.Goepp@fcc.gov, Alexander Sanjenis at Alexander.Sanjenis@fcc.gov and Karen Workeman at Karen.Workeman@fcc.gov on the date said payment is made. Such payment will be made, without further protest or recourse to a trial de novo, by a check or similar instrument, wire transfer or credit card and must include the Account Number and FRN referenced in the caption to the Order. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:
 - Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2- GL, 1005 Convention Plaza, St. Louis, MO 63101.
 - Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
 - Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
11. The Bureau will grant the pending Application (File No. BLL-20150803AFO) after the Effective Date, provided that the following conditions have been met: 1) the Licensee has fully and timely satisfied its obligation to make the payment referenced in Paragraph 10 of this Decree; and 2) there are no issues other than the Violation that would preclude the grant of the Application.
12. The Licensee agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent the Licensee fails to satisfy any condition, in the absence of Commission alteration of the condition or Rule, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, designation of the matter for hearing, letters of admonishment, or forfeitures.

13. The Consent Decree will be binding on the Licensee's successors-in-interest and assigns.
14. The Licensee waives any and all rights that it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided that the Order adopts the Consent Decree without change, addition or modification.
15. The Licensee waives any claims that it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 CFR § 1.1501 et seq., relating to the matters discussed in this Consent Decree.
16. The Licensee and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided that the Order adopts the Consent Decree without change, addition, or modification.
17. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Order, none of the Parties shall contest the continuing validity of the Consent Decree or the Order. The Licensee and the Bureau further agree that they will waive any statutory right to a trial de novo with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and that they will consent to a judgment incorporating the terms of this Consent Decree.
18. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.
19. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: Michelle Carey
Michelle Carey, Acting Chief

Date: 3-8-17

HISPANIC ARTS OF TAMPA, INC.

By: Samuel Lopez

Date: 3-7-17