

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

In the Matter of
HISPANIC CHRISTIAN COMMUNITY NETWORK, INC., aka HCCN
ANTONIO CESAR GUEL
Former President of HCCN
and
JENNIFER JUAREZ, aka Jenifer Juarez,
Licensee of Low Power Television Stations
Application for Renewal
KHDE-LD, Denver, CO
KJTN-LP, Abilene, TX
KZAB-LP, Abilene, TX
KZTE-LD, Fulton, AR
KTEQ-LP, Fulton, AR
WESL-LP, Jamestown, KY
KRPO-LD, Quartzite, AZ
MB Docket No. 23-267
NAL/Acct. No. 202341420025
FRNS: 0014120505; 0013410998
NAL/Acct. No. 202341420026
FRNS: 0006568448; 0023037682
NAL/Acct. No. 202341420027
FRN: 0024126237
Facility ID No. 189604
LMS File No. 0000176579
Facility ID No. 127351
CDBS File No. BRTTL-20160411AAZ and
LMS File No. 0000192978
Facility ID No. 130088
CDBS File No. BRTTL-20160412ABN and
LMS File No. 0000192977
Facility ID No. 128037
LMS File No. 0000132447
Facility ID No. 130047
LMS File No. 0000132448
Facility ID No. 128034
LMS File No. 0000142902
Facility ID No. 128964
LMS File No. 0000192826

ORDER RE MOTION TO COMPEL

Issued: February 22, 2024

Released: February 22, 2024

- 1. On October 6, 2023, the FCC’s Enforcement Bureau served on Antonio Cesar Guel a

request for the production of documents; his response was initially due on October 16, 2023.¹ Mr. Guel sought and was granted additional time to respond, until October 23.² Rather than respond by the new deadline, however, Mr. Guel sought to suspend discovery in this proceeding, to which the Enforcement Bureau objected and concurrently filed a motion to compel. On November 1, 2023, the Presiding Judge denied Mr. Guel's request to suspend discovery and granted the Bureau's first motion to compel.³

2. On January 29, 2024, the Enforcement Bureau filed a Second Motion to Compel Mr. Guel to produce the documents that it had requested on October 6, 2023.⁴ The Bureau submits that it has not received a complete and properly formatted set of responsive documents despite extensive coordination with Mr. Guel's counsel. It states that Mr. Guel's first production of documents, on November 9, 2023, was not numbered and that the numbered production provided on December 5, 2023, was missing several email attachments and included apparently privileged communications that were not identified as such.⁵ On January 22 and 24, 2024, the Bureau asserts, Mr. Guel produced a large number of emails that do not clearly correspond to the previous document production, that continue to lack attachments to several emails, and that do not identify whether any of the documents are privileged.⁶ It also contends that the most recent document production fails to indicate for each document which request it is responsive to and from whose files it was retrieved.⁷ As a result, the Bureau asks that Mr. Guel be compelled to produce a properly indexed submission of all of the missing email attachments, with a table that identifies for each email the original production number and the corresponding production number of the newly-produced documents.⁸ The Bureau also requests that Mr. Guel be compelled to indicate whether he intends to claim privilege over communications with counsel and, if so, that he be required to submit a privilege log.⁹

3. Mr. Guel, through counsel, responded to the Second Motion to Compel on February 4, 2024.¹⁰ He contends that the Enforcement Bureau's discovery requests were extensive and that the Bureau improperly implies that he has not been responsive. He submits that the Bureau had not indicated prior to filing its motion which of the emails that he provided lacked attachments and states that he has now produced the 11 items specified in the Bureau's motion.¹¹ He avers that if the Bureau identifies other

¹ Enforcement Bureau's First Set of Requests for the Production of Documents and Things to Antonio Cesar Guel, MB Docket No. 23-267 (dated Oct. 6, 2023).

² *Hispanic Christian Community Network, Antoinio Cesar Guel, and Jennifer Juarez*, Order Granting Additional Time, MB Docket No. 23-267, FCC 23M-14, 2023 WL 6793948 (ALJ Oct. 12, 2023).

³ *Hispanic Christian Community Network, Antoinio Cesar Guel, and Jennifer Juarez*, Order re Request to Hold Discovery in Abeyance, MB Docket No. 23-267, FCC 23M-15, 2023 WL 8593995 (ALJ Nov. 1, 2023).

⁴ Enforcement Bureau's Motion for Leave to File Second Motion to Compel, MB Docket No. 23-267 (filed Jan. 29, 2024); Enforcement Bureau's Second Motion to Compel, MB Docket No. 23-267 (filed Jan. 29, 2024) (EB Second Motion to Compel).

⁵ EB Second Motion to Compel at para. 3.

⁶ *Id.* at paras. 5-6.

⁷ *Id.* at n.12.

⁸ *Id.* at para. 7.

⁹ *Id.* at para. 8.

¹⁰ Antonio Cesar Guel, Response to Enforcement Bureau's Second Motion to Compel, MB Docket No. 23-267 (filed Feb. 4, 2024) (Guel Response to Second Motion to Compel).

¹¹ *Id.* at 2-3. The Enforcement Bureau lists the following documents produced in January 2024 as lacking attachments: 003752, 003902-03, 003932-33, 004006, 004088-89, 004351-52, 004418, 006847, 006858, 006995, and 007089. EB Second Motion to Compel at para. 6. Mr. Guel uses different numbers when referring to three of

(continued....)

emails that are lacking attachments, he will provide them within three days of notification.¹² As a result, he contends, the Enforcement Bureau's Second Motion to Compel is moot.

4. Mr. Guel's counsel indicates a desire to work with the Enforcement Bureau, which is gratifying, but he does not address all of the Bureau's concerns. The Enforcement Bureau properly brought to the attention of Mr. Guel's counsel that some of the documents produced in discovery appear to be attorney-client communications that would normally be entitled to privilege.¹³ Mr. Guel's counsel has not addressed this issue. If Mr. Guel has provided to the Enforcement Bureau communications that are subject to attorney-client privilege, the privilege has been waived.¹⁴ This is true even if the disclosure was inadvertent.¹⁵ Nonetheless, in light of the volume of documents involved, and because the Enforcement Bureau is amenable to honoring the privilege, the Presiding Judge is willing, in this one and only instance, to permit Mr. Guel and his counsel to review the documents already produced and determine whether to invoke attorney-client privilege for some items. If the privilege is asserted, those documents must be identified and retracted.¹⁶ Mr. Guel's counsel must produce a privilege log for those documents and any other relevant documents being withheld. That privilege log shall identify each document covered with sufficient specificity to enable the Enforcement Bureau and the Presiding Judge to understand the character of the document, the basis for the claimed privilege, the identity of the person who originated it, the date it was originated, and the number of pages it includes. In the case of correspondence, the privilege log shall also provide the names of all individuals to whom each item of correspondence was addressed. When a document has attachments, the information delineated above must be provided for each attachment. The privilege log must provide the Bates numbers of documents already produced for which privilege is claimed. With respect to future disclosures, the Presiding Judge expects to act pursuant to the pronouncement of the District of Columbia Court of Appeals that "[t]he courts will grant no greater protection to those who assert the privilege than their own precautions warrant."¹⁷

5. It also appears that the document production thus far, which consists of several thousand

those documents. The Presiding Judge will presume unless informed otherwise that Mr. Guel meant to indicate 00003752 instead of "0037," 004088-89 instead of "004008-89," and 004418 instead of "00418." *See* Guel Response to Second Motion to Compel at 3.

¹² Guel Response to Second Motion to Compel at 3.

¹³ *See* EB Second Motion to Compel at Exhibit 2, Email dated December 14, 2023, from Pamela Kane, counsel for Enforcement Bureau, to Dan Alpert, counsel for Antonio Cesar Guel ("Guel has produced a significant number of communications between you, Guel, and other members of Guel's family. There are also other documents reflecting communications between Guel and other attorneys.").

¹⁴ *See, e.g., In re Sealed Case*, 676 F.2d 793, 818 (D.C. Cir. 1982) ("Any disclosure inconsistent with maintaining the confidential nature of the attorney-client privilege waives the privilege").

¹⁵ *In re Sealed Case*, 877 F.2d 976, 980 (D.C. Cir. 1989). Section 502(b) of the Federal Rules of Evidence, adopted in 2008, provides that inadvertent disclosure of privileged material to a federal agency will not waive attorney-client privilege if the holder of the privilege took reasonable steps to prevent disclosure and reasonable steps to rectify the error. Fed. R. Evid. 502(b). Even if it could be said that the disclosure of the attorney-client messages was inadvertent in this case, the conditions specified in Rule 502(b) have not been satisfied.

¹⁶ Any disputes over assertions of privilege and methods of retraction will be ruled upon in due course. Because the Presiding Judge does not possess the produced documents, it is not clear what method or methods of retraction would be effective and she therefore makes no specific ruling as to methodology. For example, while paper documents can be handed back, documents included in PDF files, especially large PDF files containing many documents, cannot. It might be that deleting a particular PDF file or deleting pages from a PDF file will be the only practical method of retraction.

¹⁷ *In re Sealed Case*, 877 F.2d at 980.

pages, lacks sufficient organization to enable the parties to clearly communicate about individual items. While Mr. Guel was able to produce attachments for the 11 emails that the Enforcement Bureau identified by production number, he submits that the Bureau has not provided production numbers or other clear identifiers to enable it to produce other missing email attachments. The Enforcement Bureau contends that the production numbers on the two sets of documents that Mr. Guel has provided, one in December 2023 and one in January 2024, do not readily correspond. The Bureau further argues that the later production includes more than 6,000 additional pages but Mr. Guel has not identified those documents that are newly-produced.

6. It benefits both parties and furthers the efficiency of this proceeding when discovery is properly indexed. Accordingly, the Presiding Judge directs Mr. Guel's counsel to provide a chart, organized by document request, that cross-references the production numbers of the December document production with those of the January document production. This should reveal those items in the January production that were being produced for the first time. The chart should also note when an item is being retracted due to privilege, as permitted above. A suggested format would include at least three corresponding columns, and perhaps a fourth column showing the Bates numbers of document for which a claim of privilege is asserted:

EB Document Request No.	December Production Bates Nos.	January Production Bates Nos.	Bates Nos. of Privileged Documents (if applicable)
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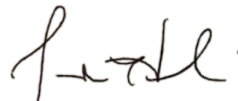
Given the large number of documents covered, the Presiding Judge affords Mr. Guel three weeks from the date of this Order to compile and submit this chart to the Enforcement Bureau. That will enable both parties to pinpoint those emails that are still missing attachments, and will provide a template for future discovery responses. The date for completion of discovery, currently April 30, 2024, will be extended in a future Order.

7. Accordingly, **IT IS ORDERED** that the Enforcement Bureau's Motion for Leave to File Second Motion to Compel in MB Docket No. 23-267, filed on January 29, 2024, **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the Enforcement Bureau's Second Motion to Compel in MB Docket No. 23-267, filed on January 29, 2024, **IS GRANTED** to the extent indicated herein.

9. **IT IS FURTHER ORDERED** that Antonio Cesar Guel, through counsel, **SHALL FILE** (1) the privilege log described above, if applicable, and (2) the cross-reference chart described above on or before **MARCH 14, 2024**.

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin
Administrative Law Judge