

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In Re: Matter of:

HISPANIC ARTS OF TAMPA

Low Power FM Station WVVF-LP
Town N' Country, Florida

Facility ID No. 195070

TO: Secretary, Federal Communications Commission
Attention: Chief, Audio Division, Media Bureau

**Hispanic Arts of Tampa
Response to Complaint
of
Beasley Media Group, Inc.**

Comes now, Hispanic Arts of Tampa ("HAT"), permittee of 100 watt, low power FM station WVVF-LP, Town N' Country, Florida, through counsel, with a response to the Complaint of Beasley Media Group ("BMG") filed with the Commission on July 31, 2015.

Background

BMG operates WYUU, Safety Harbor, Florida, a 50,000 watt commercial FM radio station serving the Tampa, Florida market airing Spanish language programming. The interference-free signal contour of WYUU stretches in all directions with an approximately 35 mile radius. BMG considers WVVF-LP, Town N' Country, Florida, to be a serious competitor for audience in the Tampa market (Town N' Country is a small section of Tampa) despite the fact that the interference-free contour of WVVF-LP is approximately 3.5 miles and has a difficult time penetrating most buildings. WVVF-LP, a new, start-up radio station, has been on the air for approximately one month.

In its complaint, BMG urges the FCC to suspend the operational authority for WVVF-LP because, it claims, the station is operating in a manner inconsistent with the requirement that Low Power FM stations be used for the advancement of an educational program. BMG cites no law

or Commission precedent to support its request that WVVF-LP's operational authority be suspended until all of its programming elements are available for broadcast. BMG's allegations are wholly unsupported by any affidavit attesting to the allegations raised in its complaint. Specifically, BMG complains that, in its application for a construction permit, HAT represented that it would provide programming features such as:

- 1.) Broadcast live poetry and short story reading.
- 2.) Educational cultural programs daily.
- 3.) Broadcast local news and weather reports.
- 4.) Live broadcast of local Hispanic arts festivals and music events.
- 5.) Daily community calendar.
- 6.) Local history show.
- 7.) Interviews with local citizens.
- 8.) Political hour/civic participation.
- 9.) Discussion round-table, variety of topics.
- 10.) Music programming.

BMG complains that HAT airs only music programming and has not fulfilled its commitment to provide the educational programming it pledged to provide. BMG further complains that HAT is, in its opinion, airing professionally produced promotional announcements which create the impression that the station is a competitive, commercial operation rather than a locally focused community-oriented broadcaster; that WVVF-LP brands itself as "Viva FM", similar in style to some commercial Hispanic stations; that in local TV interviews, HAT promoted the station as an "alternative" to Tampa's existing Spanish-language commercial stations; that WVVF-LP distributes a "media kit", complete with coverage map, that promotes the station's "latin music recipe" as "the most popular and the most accepted music among Latinos from various regions, 35 to 64 years of age," but completely avoids any mention of the station's non-commercial status or the educational programming that FCC rules require it to provide; that, to BMG's knowledge and based on frequent monitoring of WVVF-LP by BMG employees, the station is not providing the educational programming promised by HAT, such as live poetry and short stories, daily educational cultural programs, local news and weather, daily community calendar, a local history show, and political/civic participation programs. (See BMG Complaint at 2, 3, 4)

HAT's Response

WVVF-LP is a brand new, low power FM station. It operates on a very small budget with most of the work performed by talented volunteers who are dedicated to making the station sound as exciting as possible. The first order of business, after constructing the station, was to get it on the air and attract an audience. Music programming, the cultural foundation of the station, was made available, first. Music programming was one of the programming elements HAT pledged to provide. HAT does believe that its on-air promotional announcements are quite professional and are designed to "position" the station in the market. WVVF-LP does "brand" itself as "Viva FM". Such positioning and branding of a non-commercial station violate no FCC rule or policy. As a matter of fact, good positioning and branding are essential to a station, whether commercial or non-commercial, to succeed in a market, such as Tampa, where there are some 69 AM and FM stations available, according to Radio Locator. PBS stations, as an example, utilize strong branding and positioning. Without such marketing elements, a radio station is doomed to oblivion in a sea of competing signals. Local TV interviews about this new, low-power FM station provided HAT with some very valuable, free promotion. When asked what audience the station was attempting to reach, HAT clearly stated that it sought to attract Latinos between the ages of 35 and 64. This is merely an intelligent response to the question, "who do you intend to serve"? Any radio station which isn't sure of the composition of its intended audience is flirting with failure. BMG cites no FCC regulation, policy or case law to substantiate its claims that any of these behaviors are prohibited.

WVVF-LP is a low-power FM station with a serious competitive disadvantage in that it operates with a tiny fraction of the power of all other stations in the market, doesn't penetrate buildings very well and has a tiny operational budget. WVVF-LP has to do whatever is permissible to build an audience.

BMG represents in its complaint that WVVF-LP distributes a media kit but completely avoids any mention of the station's non-commercial status or the educational programming that FCC

rules require it to provide. (See Complaint at 4) BMG either didn't completely read the media kit or doesn't understand Spanish. In Attachment A of its complaint, BMG points the Commission to the WVVF-LP media kit at <http://www.vivaradiotampa.com/>. An English translation of the "About Us" section of that media kit is attached hereto in Exhibit One. Clearly, HAT has disclosed, with examples, the nature of its license and the restrictions imposed by that license on its underwriting messages.

It cannot be emphasized enough that WVVF-LP is a start-up, non-commercial, low power FM station on a shoe-string budget trying to carve out a niche in a tiny corner of a major radio market. The station is just starting out and has been on the air for approximately one month. Certainly, all of the promised programming elements are not offered, yet. The station intends to grow into those programming elements as it slowly builds an audience and attracts underwriting commitments. As the station grows in acceptance, talented members of the listening audience will be encouraged to share their art with WVVF-LP listeners. Furthermore, HAT has been in discussions with local providers to supply news and weather programming starting in October, 2015. The station has been successful in attracting local Latin music artist Omar Negrón whose music now is featured on the station. As the station attracts an audience, much of its programming will be provided by the roots of the community. Poetry and story reading, by local artists, will come as the station steadily grows. This is the essence of community broadcasting and the reason why Congress authorized the low-power FM service. It is illogical and unreasonable to expect a low budget, low power FM station to sign-on the air with all of its intended program elements in place. BMG may have the ability to spend hundreds of thousands of dollars in introducing a new format for one of its powerhouse stations but small budget, low power stations with severe signal handicaps don't have that luxury and are forced to grow, slowly.

BMG wants the FCC to throw WVVF-LP off the air until WVVF-LP is able to provide all of the intended local programming it pledged to provide. Nowhere in its program pledge did WVVF-LP represent that it would provide all of the elements of its programming mission beginning

on the first day of its operation. If BMG were to prevail in its quest to silence WVVF-LP, it is conceivable that every low-power FM station in the country would be subjected to the same, draconian fate. This was never the intent of Congress.

WVVF-LP is not some scratchy, unprofessional, hobby radio station as BMG probably hoped it would be. WVVF-LP is seriously trying, very hard, to engage the local Latino community in making this LP station a community success. Engaged communities do not happen, overnight.

It just doesn't make logical sense that a "blow-torch" radio station such as WYUU, owned by a major, publicly-traded media corporation, would be concerned about a tiny little low-power FM station. Nevertheless, BMG solicits the FCC's assistance in silencing WVVF-LP because BMG is worried that, if WVVF-LP is successful in its on-going community radio station project, it could do some damage to WYUU's ratings. HAT struggles to find a better example of an abuse of the Commission's processes.

The term "abuse of process" has been defined as "the use of a Commission process, procedure or rule to achieve a result which that process, procedure or rule was not designed or intended to achieve or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying intended purpose of that process, procedure, or rule." An abuse of process ordinarily involves an intent to gain some benefit by manipulating the Commission's procedures. (High Plains Wireless, L.P., 15 F.C.C. Rcd. 4620) Here, BMG seeks to eliminate competition by urging the FCC to suspend HAT's right to broadcast until every one of HAT's intended program elements are operational. There is no precedent for such a request. The Complaint filed by BMG has generated unnecessary legal expenses that HAT is not able to afford and frivolous complaints such as this needlessly drain the resources of the start-up, minority radio station. The money spent by HAT in defending this Complaint could have been better spent in adding new program elements to the stations offerings.

Conclusion

HAT urges the Commission to dismiss BMG's Complaint and to find that BMG has, with full intent, attempted to manipulate the Commission's processes to gain the benefit of eliminating competition and draining the limited resources of a competitor through the filing of its baseless Complaint.

Respectfully submitted,

A handwritten signature in black ink that reads "Richard Hayes". The signature is written in a cursive style with a large initial "R".

Richard J. Hayes, Jr.

Counsel to
Hispanic Arts of Tampa

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Exhibit One

About Us

Viva 100.1 FM is owned and operated by Hispanic Arts of Tampa, a non-profit entity. Our mission is to help the communities we serve to be a better place to live and to offer families educational programs, cultural and entertainment, news, weather and emergency information necessary to keep the family informed, safe and animated.

FCC License

Our station holds a license granted by the Federal Communications Commission (FCC). To review our license file please visit the official web page for the FCC www.fcc.gov.

Notifications

Hispanic Arts of Tampa is an equal opportunity employer. Under the FCC and EEO rules, any organization that distributes information about employment opportunities to individuals seeking for employment or applying for employment can request to be notified of opportunities from WVVF, if and when these become available.

If your organization wants to be notified of these vacancies, please contact us at: 813-649-8100. Each organization that wishes to be notified must provide us with their name, address, electronic address (if applicable), telephone number, and contact person and identify the category or categories of available job openings solicited in the notice. (An organization can receive notices of all available vacancies).

Business Underwriting

What is Underwriting?

The Federal Communications Commission (FCC) allows businesses to underwrite or fund programs on stations like WVVF, but it does not allow commercial advertising. Viva FM also known as Hispanic Arts of Tampa, depends on underwriting donations from businesses like yours and individuals to defray operating costs. Unlike many other non-commercial stations, we do not receive funding from the government, but rely on the community to in turn support our broadcast efforts.

How can underwriting benefit your business?

While underwriting is not commercial advertising, it can provide your firm with some of the same benefits plus some that commercial advertising can't offer. Research indicates that Low Power community radio is an excellent public relations tool. Listeners have a positive image of companies that support Low Power radio and report their purchasing decisions are influenced by such underwriting support.

Target and reach a select audience

Because of the wide variety of programming done on WVVF, the listeners are a diversified group of people who share many common interests and life styles. WVVF provides programs for groups ranging from most all ages that are not widely available or have been abandoned by commercial stations or considered not compatible with their mandates or corporate guidelines.

Demonstrate your community concern

Hispanic Arts of Tampa works with local charities, music schools and art groups to help promote their charitable events. This is part of our mission, and your partnership with WVVF 100.1 FM reflects that community commitment.

Expand awareness of your name and presence

Awareness of your business is expanded each time you are mentioned on WVVF. With our diverse program offerings, you will be able to reach more types of listeners than any single format station.

Enhance your business image

Your association with non-commercial community radio enhances your image. You will be joining other fine businesses that support our quality radio programming.

Tax benefits

WVVF 100.1 FM is a non-profit, non-commercial, radio station. We are a 501(c3) corporation. Any contribution is tax deductible. Consult your tax preparer.

Increase your opportunities for your business or personal name!

The publicity of your business as a sponsor of one of the many local segments or station events on WVVF is an excellent way of increasing the public awareness about your business. It is a strong statement about your company's contribution to our community's well being.

What defines Underwriting?

Underwriting is highly similar to commercial advertising, but differs in a few very important areas. The FCC forbids announcements that issue a call to action. This means that statements like "stopping in, shopping here, call, call now, limited time only, mention WVVF", are not allowed. Underwriter announcements also may not contain qualitative words. Qualitative words such as largest selection, newest model, and best in town, finest selection, and state of the art are prohibited. Finally, announcements may not mention or give reference to prices. The FCC also prohibits references such as free, sale, discount, clearance, reduced, going out of business sale, and liquidation.

The following are examples of permitted and prohibited underwriting announcements for your reference:

PROHIBITED ANNOUNCEMENT: "This Viva FM program is brought to you by Speedy Lube, where you can now get a 10-point oil change and lube for the unbelievably low price of just \$12.99. So come on down to 115 Main Street for fast, reliable service and a free gift."

PERMITTED ANNOUNCEMENT: "This program/segment is underwritten by Speedy Lube located at 115 Main Street. Speedy Lube provides oil changes using Quaker State lubricants, tune-ups, and other minor vehicle maintenance services. Our thanks to Speedy Lube of Main Street. 555-555-5555."

ANALYSIS: The first text mentions price and contains two calls to action. It contains statements, which include qualitative statements. The second text identifies the sponsor, the sponsor's address, telephone number, product line, and establishes a relationship to the program. The second text is permitted by the FCC.

Certificate of Service

I, Richard J. Hayes, Jr., counsel to Hispanic Arts of Tampa, hereby certify that on August 20, 2015, a copy of the foregoing Response to the Complaint of Hispanic Arts of Tampa, was sent, via first-class mail, to the following:

F. Scott Pippin, Esq.
Lerman Senter, Attorneys
2000 K Street NW – Suite 600
Washington DC 20006

A handwritten signature in black ink that reads "Rick Hayes". The signature is written in a cursive style with a large initial "R".

Richard J. Hayes, Jr.

August 20, 2015