

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

In the matter of
Azteca International Corporation
(Azteca America)
Petition for Waiver of Section 73.658(i)
of the Commission's Rules
BSR-001

ORDER

Adopted: May 23, 2003

Released: May 27, 2003

By the Chief, Media Bureau:

1. Azteca International Corporation ("Azteca America") filed a petition for waiver of Section 73.658(i) of the Commission's rules ("Petition"), which prohibits network organizations from representing affiliated broadcast stations in the spot sales television advertising market. Pappas Telecasting filed an Opposition to the Petition. Azteca America replied to the Opposition and Pappas Telecasting later withdrew its Opposition; the Petition, therefore, is unopposed. For the reasons outlined below, the Bureau grants the Petition for Waiver.

1 Petition for Waiver ("Petition") (filed Mar. 6, 2003). The Bureau released a Public Notice in which it sought comment on the Petition. Public Notice, Petition for Special Relief Seeking a Waiver of Section 73.658(i) of the Commission's Rules, BSR-001, DA 02-913 (rel. Apr. 19, 2002). On April 24, 2002, Azteca America filed a petition for temporary waiver.

2 Section 73.658(i) of the Commission's Rules, 47 C.F.R. § 73.658(i), provides that:

No license shall be granted to a television broadcast station which is represented for the sale of non-network time by a network organization or by an organization directly or indirectly controlled by or under common control with a network organization, if the station has any contract, arrangement or understanding, express or implied, which provides for the affiliation of the station with such network organization: Provided, however, That this rule shall not be applicable to stations licensed to a network organization or to a subsidiary of a network organization.

3 Opposition to Petition for Waiver of Pappas Telecasting of Southern California, LLC and Pappas Telecasting of Nevada, a California Limited Partnership ("Pappas Telecasting") ("Opposition") (filed May 9, 2002).

4 Reply to Opposition to Petition for Waiver ("Reply") (filed May 20, 2002).

5 Letter to Kenneth Ferree, Chief, Media Bureau, Federal Communications Commission, from Harry J. Pappas, Pappas Telecasting Companies (filed Feb. 13, 2003).

6 In light of our ruling granting the Petition, it is unnecessary the address the petition for temporary waiver.

2. In its Petition, Azteca America states that it is a new Spanish-language national broadcast television network that is designed to serve the rapidly growing U.S. Hispanic community.⁷ Azteca America contends that waiver of the network representation rule is necessary to ensure a level playing field in the U.S. Spanish-language broadcast television market because the Commission previously granted permanent waivers of the rule (“*Waiver Order*”)⁸ to two competing Spanish-language networks, Univision Communication, Inc. (“Univision”) and Telemundo Group, Inc. (“Telemundo”).⁹ At the time of that proceeding, Univision and Telemundo were operating under temporary waivers of the rule.¹⁰

3. In the *Waiver Order* proceeding, Univision stated that traditional national sales firms lack “the specialized skill and experience required to market successfully Spanish-language television,” and Telemundo, among other things, stated that Spanish-language stations “cannot themselves effectively secure national spot advertising sales.”¹¹ The Commission concluded in the *Waiver Order* that “[b]ased on over a decade of experience in observing the consequences of our initial waiver to Univision and overall record herein, it appears clear to us that had we not waived the network representation rule in 1978, the development of the above referenced new foreign-language programming services would have been hampered, if not stifled completely, an outcome clearly inconsistent with the public interest.”¹² The Commission also stated that “the record evidence in this proceeding shows that the waivers granted to both Univision and Telemundo continue to provide additional benefits in that they further several of the Commission’s longstanding goals: encouraging the growth and development of new networks; fostering foreign-language programming; increasing programming diversity; strengthening competition among stations; and fostering a competitive UHF service.”¹³

4. Azteca America contends that its station affiliates suffer from the same competitive handicaps that were found to justify waivers of the rule for Univision and Telemundo. Specifically, Azteca America contends that the resources are not otherwise available to its affiliates to market national spot advertising competitively.¹⁴ Azteca America also states that, as of March 6, 2002, Univision and Telemundo “control approximately 95 percent of the U.S. Hispanic broadcast television market,” and that “[i]n order to compete effectively with Univision and Telemundo affiliates for national spot advertising, Azteca America and its affiliates must be able to operate unconstrained by a rule that does not apply to their established competitors.”¹⁵

5. For the same reasons the Commission granted waivers to Univision and Telemundo, the Bureau finds good cause to grant Azteca America a permanent waiver of the network representation prohibition in Section 73.658(i) of the Commission’s rules.¹⁶

⁷ Azteca America states that it is a wholly-owned subsidiary of TV Azteca, S.A. de C.V., the second largest broadcast television network in Mexico. Petition at 2, n. 3.

⁸ Amendment of § 73.658(i) of the Commission’s Rules, 5 FCC Rcd 7280 (1990) (“*Waiver Order*”).

⁹ Petition at 1-2.

¹⁰ Univision and Telemundo were granted temporary waivers of the rule in 1978 and 1987, respectively. *Waiver Order*, 5 FCC Rcd at 7281-82.

¹¹ *Id.* at 7281.

¹² *Id.*

¹³ *Id.* at 7281-82.

¹⁴ Petition at 7.

¹⁵ *Id.* at 4.

¹⁶ 5 U.S.C. § 553(b)(3)(B). The Commission may waive its rules where good cause is shown. See 47 C.F.R. § 1.3; *Wait Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

6. Accordingly, IT IS ORDERED that the Petition for Waiver of Section 73.658(i) of the Commission's rules filed by Azteca International Corporation IS GRANTED.

7. IT IS FURTHERED ORDERED that the Petition for a Temporary Waiver of the rule filed by Azteca International Corporation IS DISMISSED.

8. This action is taken pursuant to authority delegated by Sections 0.61(h) and 0.283 of the Commission's rules, 47 C.F.R. §§ 0.61(h), 0.283.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau