

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

In the matter of)
)
Liberman Television LLC) MB Docket No. 09-192
(Estrella TV))
)
Petition for Waiver of Section 73.658(i))
of the Commission's Rules)

ORDER

Adopted: May 6, 2010

Released: May 6, 2010

By the Chief, Media Bureau:

1. Liberman Television LLC ("Liberman") filed a petition for a permanent or temporary waiver of Section 73.658(i) of the Commission's rules ("Petition"), which prohibits broadcast stations from being represented by their affiliated networks in the spot sales television advertising market. The Petition is unopposed. For the reasons outlined below, the Bureau grants the Petition for Waiver.

2. In the petition, Liberman states that it is the operator of a new Spanish-language national broadcast television network (Estrella TV). It argues that waiver of the "network representation" rule would be in the public interest, as it would encourage the growth of the new network, enhancing both diversity and competition in the broadcast television market. Furthermore, Liberman argues that the waiver is necessary in order to ensure a level playing field in the U.S. Spanish-language broadcast television market, because the Commission has previously granted permanent waivers of this rule to the operators of three competing national Spanish-language networks.

1 Liberman Television LLC Petition for Waiver of Section 73.658(i) of the Commission's Rules at 1 (filed June 29, 2009) (Petition). The Bureau released a Public Notice in which it sought comment on the Petition; there were no comments or replies filed. Public Notice, Comment Dates Established for Estrella TV Petition for Waiver of 47 C.F.R. § 73.658(i), the Network Representation Rule, MB Docket No. 09-192, DA 09-2279 (rel. Oct. 23, 2009).

2 We have considered Liberman's Petition to be a request for waiver of the network representation rule on behalf of any Estrella TV-affiliated broadcast stations, but only as it applies to representation by Estrella TV. 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 In light of our ruling granting the Petition, it is unnecessary the address the alternative petition for temporary waiver.

4 Petition at 1-2.

5 Id at 2. See Amendment of § 73.658(i) of the Commission's Rules, BC Docket No. 78-309, Report and Order, 5 FCC Rcd 7280 (1990) (Univision and Telemundo Waiver Order) (granting permanent waivers of the rule to networks including Univision Communications, Inc. and Telemundo Group, Inc.); Azteca International Corporation Petition for Waiver of Section 73.658(i) of the Commission's Rules, Broadcast Special Relief Petition BSR-001,

3. In the *Univision and Telemundo Waiver Order*, the Commission relied upon Univision's statement that traditional national sales firms lack "the specialized skill and experience required to market successfully Spanish-language television," and Telemundo's argument that Spanish-language stations "cannot themselves effectively secure national spot advertising sales."⁶ In the *Azteca Order*, the Media Bureau relied on Azteca's similar assertion that, absent national coordination, resources are not available to its affiliates to market national spot advertising competitively.⁷ In both cases, the evidence before the Commission supported the petitioners' argument that waiver of the network representation rule had been and would be beneficial to the development of foreign language networks,⁸ which provide important public benefits, including "encouraging the growth and development of new networks; fostering foreign-language programming; increasing programming diversity; [and] strengthening competition among stations."⁹

4. Liberman states that the two largest networks, Univision and Telemundo, collectively control no less than 85% of the Spanish-language market.¹⁰ It contends that granting Estrella TV a waiver of the network representation rule is essential if its affiliates are to effectively compete with affiliates of these "entrenched Spanish-language programming networks," which operate without the restrictions of the network representation rule.¹¹ It notes that the waivers are still necessary across the Spanish-language broadcasting industry because stations targeting Spanish-speaking audiences may earn less revenue per viewer than those broadcasting in English.¹² Furthermore, Liberman argues that grant of the waiver will result in the same broad benefits that the Commission found in waiving the rule for other Spanish-language networks. Specifically, Liberman contends that the waiver will permit growth of Estrella TV into a viable competitor to the existing Spanish-language networks, increasing the availability of Spanish-language programming (including original programming).¹³ It also argues that there will be no harms to the public interest as a result of the grant of the waiver, and that affiliates, rather than the national network, will retain ultimate discretion over the programming they air.¹⁴ As noted above, we received no oppositions to the Petition.

5. For the same reasons the Commission granted waivers to Univision, Telemundo, and Azteca America, and in recognition of the competitive imbalance that could result in the absence of a waiver, the Bureau finds good cause to grant Estrella TV a permanent waiver of the network representation prohibition in Section 73.658(i) of the Commission's rules.¹⁵

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

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Order, 18 FCC Rcd. 10662 (MB 2003) (*Azteca Order*) (granting a permanent waiver of the rule to Azteca America).

⁶ *Waiver Order* at 7281.

⁷ *Azteca Order* at 10663.

⁸ *Waiver Order* at 7281; *Azteca Order* at 10663.

⁹ *Azteca Order* at 10663 (citing *Waiver Order* at 7281-82).

¹⁰ *Id.* at 3.

¹¹ *Id.* at 8.

¹² *Id.* at 3.

¹³ *Id.* at 9.

¹⁴ *Id.* at 10.

¹⁵ 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).

7. IT IS FURTHERED ORDERED that the Petition for a Temporary Waiver of the rule filed by Liberman Television LLC 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

William T. Lake
Chief, Media Bureau