

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

In the matter of	)	
	)	
Spanish Broadcasting System, Inc. (MegaTV)	)	MB Docket No. 10-89
	)	
Petition for Waiver of Section 73.658(i) of the Commission's Rules	)	
	)	

**ORDER**

**Adopted: December 19, 2011**

**Released: December 20, 2011**

By the Chief, Media Bureau:

1. Spanish Broadcasting System, Inc. (“SBS”) filed a petition seeking a permanent waiver of Section 73.658(i) of the Commission’s rules (“Petition”),<sup>1</sup> which prohibits broadcast stations from being represented by their affiliated networks in the spot sales television advertising market.<sup>2</sup> The Petition is unopposed.<sup>3</sup> For the reasons outlined below, the Bureau grants the Petition for Waiver.

2. In the Petition, SBS states that it is in the process of assembling affiliates nationally to air the content of a “relatively new” Spanish-language video programming service (MegaTV).<sup>4</sup> It argues that waiver of the “network representation” rule would serve the public interest, as it would foster new entry and competition in the Spanish-language television market.<sup>5</sup> Furthermore, SBS argues that the waiver is necessary to ensure a level playing field by holding SBS to the same regulatory requirements of its established competitors<sup>6</sup> in the U.S. Spanish-language broadcast television market, because the Commission has previously granted permanent waivers of this rule to the operators of other national

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<sup>1</sup> Spanish Broadcasting System, Inc. *Petition for Waiver of Section 73.658(i) of the Commission’s Rules with Respect to Network Representation* at 1 (filed April 14, 2010) (*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 MegaTV Petition for Waiver of 47 C.F.R. § 73.658(i), the Network Representation Rule, MB Docket No. 10-89, DA 10-775 (rel. May 6, 2010).

<sup>2</sup> We have considered SBS’s Petition to be a request for waiver of the network representation rule on behalf of any MegaTV-affiliated broadcast station, but only as it applies to representation by MegaTV. 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.

<sup>3</sup> Petitioner filed comments on July 7, 2010, noting the Bureau’s grant of a similar waiver in the *Estrella Order*. *Liberman Television LLC Petition for Waiver of Section 73.658(i) of the Commission’s Rules*, MB Docket No. 09-192, Order, 25 FCC Rcd. 4725 (MB 2010) (*Estrella Order*).

<sup>4</sup> *Petition* at 4.

<sup>5</sup> *Petition* at 1-2.

<sup>6</sup> Competing networks include Univision, Telemundo and Azteca. *Id.* at 5.

Spanish-language networks.<sup>7</sup>

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."<sup>8</sup> 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.<sup>9</sup> In the *Estrella Order*, the Media Bureau relied on Liberman's contention that without national coordination discrepancies will persist between English and Spanish-language broadcasts in terms of attainable revenue per viewer.<sup>10</sup> In all three 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,<sup>11</sup> 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."<sup>12</sup>

4. SBS contends that granting MegaTV a waiver of the network representation rule is essential if its affiliates are to compete effectively with affiliates of the "existing, well-established Spanish-language networks," which operate without the restrictions of the network representation rule.<sup>13</sup> In particular, SBS identifies network sales representation as essential for "niche networks" because traditional sales firms lack the necessary market expertise to effectively represent the specific interests of the Spanish-language market.<sup>14</sup> Furthermore, SBS argues that grant of the waiver to MegaTV will result in the same broad benefits that the Commission found in waiving the rule for other Spanish-language networks.<sup>15</sup> Specifically, SBS contends that the waiver will strengthen the network's chances for long-term success as an effective competitor to established Spanish-language networks while increasing the availability of Spanish-language programming (including original programming).<sup>16</sup> SBS also maintains that there will be no harms to the public interest as a result of the waiver, and that it will increase program diversity and competition in the marketplace.<sup>17</sup> As noted above, we received no oppositions to the Petition.

5. For the same reasons the Commission granted waivers to Univision, Telemundo, Azteca

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<sup>7</sup> *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, Order, 18 FCC Rcd. 10662 (MB 2003) (*Azteca Order*) (granting a permanent waiver of the rule to Azteca America); *Estrella Order* (granting a permanent waiver of the rule to Estrella TV).

<sup>8</sup> *Waiver Order* at 7281.

<sup>9</sup> *Azteca Order* at 10663.

<sup>10</sup> *Estrella Order* at 2.

<sup>11</sup> *Waiver Order* at 7281; *Azteca Order* at 10663.

<sup>12</sup> *Estrella Order* at 2 (citing *Azteca Order* at 10663).

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 8.

<sup>15</sup> *Id.* at 8-9.

<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 10.

America, and Liberman Television LLC, and in recognition of the competitive imbalance that could result in the absence of a waiver, the Bureau finds good cause to grant MegaTV a permanent waiver of the network representation prohibition in Section 73.658(i) of the Commission's rules.<sup>18</sup>

6. Accordingly, IT IS ORDERED that the Petition for Waiver of Section 73.658(i) of the Commission's rules filed by Spanish Broadcasting System, Inc. IS GRANTED.

7. 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

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<sup>18</sup> 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).