

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

In the Matter of:)
)
Mambo, LLC)
Petition for Waiver of Section 73.658(i)) MB Docket No. 10-161
of the Commission's Rules)
)
)
)
_____)

To: The Chief, Media Bureau

REPLY COMMENTS OF PETITIONER MAMBO, LLC

Mambo, LLC (“Mambo”), through its undersigned counsel, submits these Reply Comments pursuant to the Public Notice in *Comment Dates Established for Mambo Petition for Waiver of 47 C.F.R. § 73.658(i), the Network Representation Rule*, DA 10-1455 (released Aug. 9, 2010) (“Public Notice”). Through these Reply Comments, Petitioner Mambo respectfully renews its request for waiver of Section 73.658(i) of the Commission’s Rules.¹

I. Introduction

Section 73.658(i), commonly known as the “Network Representation Rule,” provides:

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.²

¹ See 47 C.F.R. §§ 1.3, 73.658(i).

² 47 C.F.R. § 73.658(i).

By its terms, the Network Representation Rule generally prohibits a broadcast television affiliate (other than a network O&O) from being represented by its network in the sale of non-network advertising. As discussed throughout the Petition and Supplement filed by Mambo, application of the Network Representation Rule to Mambo and its affiliates will hinder competition, threaten the viability of Mambo's start-up Spanish-language network GenTV, and unfairly and impermissibly favor established Spanish-language networks Univision, Telemundo, Azteca TV, and Estrella TV—each of whom has already been granted a permanent waiver of the Rule—over Mambo. Indeed, the rationale behind the Commission's grant of permanent waivers to Univision, Telemundo, Azteca TV, and Estrella TV applies *a fortiori* to Mambo's GenTV because it is one of the newest entrants to the Spanish-language video programming market. Only an expeditious grant of the Petition will ensure that Mambo and its affiliates have a fair opportunity to compete against the more-entrenched Spanish-language networks, and increased competition in the Spanish-language television marketplace would clearly be in the public interest.

II. Mambo's Affiliates Support Grant of the Waiver, and the Petition Is Unopposed

Del Caribe Orlando, LLC and Del Caribe Partners, LLC (collectively "Del Caribe") filed comments in support of a grant of Mambo's Petition.³ *See* Comments of Del Caribe Orlando, LLC and Del Caribe Partners, LLC in Support of Petition for Waiver, MB Docket No. 10-161

³ Notably, of the three most recent Network Representation Rule proceedings—Lieberman Television LLC/Estrella TV, Spanish Broadcasting System, Inc./MegaTV, and Mambo, LLC/GenTV—the instant Mambo proceeding is the *only* one where supportive comments appear to have been filed by an affiliate of the network seeking the waiver. *See* MB Docket 10-89 (pending waiver request of Spanish Broadcasting System, Inc./MegaTV; no supporting comments appear in ECFS); MB Docket 09-192 (waiver granted to Lieberman Television LLC/Estrella TV; no supporting comments appear in ECFS).

(filed Sept. 8, 2010) (“Del Caribe Comments”). As noted in its comments, Del Caribe has entered into affiliation agreements with Mambo to air Mambo’s GenTV network programming. *See* Del Caribe Comments, at 1-2. Its comments make clear that Del Caribe, as a GenTV affiliate, strongly and unequivocally supports grant of Mambo’s waiver request:

Del Caribe does not yet have a national/regional sales staff, and *it is extremely important* to Del Caribe’s long-term viability that Mambo be able to provide that service.

* * *

The waiver sought by Mambo is *absolutely justified and supportable*.

* * *

It is urged that the Commission act expeditiously on this waiver request. Del Caribe’s broadcast operations using Mambo’s innovative and unique Spanish language GenTV network programming must be supported by the sale of national/regional advertising, and Mambo should be authorized at the *earliest possible time* to provide sales representation to its affiliates

* * *

Del Caribe *urges in the strongest terms* that the Commission *expeditiously grant* the Mambo request for waiver of the Network Representation Rule

Del Caribe Comments, at 2, 3, 4, 5 (respectively) (emphases added).

In fact, Mambo’s affiliate Del Caribe is so eager to have Mambo’s representation and assistance in the sale of non-network time that Del Caribe filed requests for special temporary authority (“STA”) more than six months ago, in an effort to secure such authorization during the pendency of the Petition.⁴ *See* FCC File Nos. BLSTA-20100316AAK and BLSTA-20100316AAQ. These STA requests are further evidence that GenTV affiliates *want and need* Mambo’s representation and assistance in the sale of non-network time.

Moreover, no party has filed comments opposing Mambo’s Petition. *Accord Liberman Television LLC (Estrella TV), Petition for Waiver of Section 73.658(i) of the Commission’s*

⁴ Mambo supports the STA requests, which remain pending as of the date of this filing, and urges that they be processed and granted as soon as possible while the Petition remains pending.

Rules, Order, 25 FCC Rcd 4725 (2010), ¶ 1 (observing that Liberman’s petition was “unopposed” and granting it). Thus, the only comments filed in response to the Public Notice are from GenTV affiliates who support grant of the requested waiver, a circumstance which clearly supports grant of the Petition.

III. The Assumptions Underlying the Network Representation Rule Do Not Apply Here, and Application of the Rule Would Frustrate Competition and Diversity

In its Petition, Mambo observed that the reasons originally underlying promulgation of the Network Representation Rule are inapplicable in the Spanish-language television programming market. *See* Petition, at 8-11. The Comments of Del Caribe demonstrate that Mambo’s own affiliates echo that sentiment:

The Network Representation Rule was enacted a half-century ago for the clear purpose of preventing anticompetitive actions by networks. Because the effect of the Mambo waiver will be to *encourage* and *create* competition and diversity in Spanish language broadcasting, the purpose of the rule will not be frustrated, but will be satisfied, by the waiver. The Commission last considered eliminating the Rule in 1990, but decided not to do so, finding that some networks and affiliates might have an incentive to reach collusive agreements to raise network and national spot advertising prices above competitive levels. In reaching that conclusion, the Commission implicitly assumed that the competition or rivalry among the existing networks was not sufficient to prevent any such collusion from harming competition in the television advertising market. *That assumption is, in today’s marketplace, and especially in today’s Spanish language broadcasting marketplace, completely misplaced.*

Del Caribe Comments, at 3 (first two emphases in original; last emphasis added).⁵ *See also, e.g.*, Del Caribe STA Request, File No. BLSTA-20100316AAK, Exh. 38 (“Because the Network Representation Rule was enacted a half-century ago for the clear purpose of preventing

⁵ In the Petition, Mambo states that it will assert no control over GenTV affiliate advertising rates or programming decisions, *see* Petition, at 12, which should alleviate any concerns the Commission may have relevant to those issues.

anticompetitive actions by networks, and because the clear effect of the Mambo waiver will be to *encourage* and *create* competition and diversity in Spanish language broadcasting, the purpose of the rule will not be frustrated, but will be satisfied, by the waiver and the proposed short-term STA.”). Mambo agrees with Del Caribe that application of the Network Representation Rule here would create an anomalous result by hindering—rather than encouraging—competition and diversity in the Spanish-language television programming marketplace. In that regard, grant of the Petition would neither frustrate the public interest nor create countervailing harms and, instead, would encourage the growth and development of a new network, foster foreign language programming, increase programming diversity, and enhance competition among stations.

In addition, without grant of the Petition, Mambo’s affiliates will be disadvantaged in competing with affiliates of Univision, Telemundo, Azteca TV, and Estrella TV, all of whom are free to obtain national spot sales advertising representation from their own networks pursuant to the permanent waivers those networks have received. Allowing Mambo to represent its affiliates in the sale of non-network time will help to ensure the economic health and competitive standing of GenTV’s affiliates. *See Del Caribe Comments*, at 4; *Petition*, at 8-9.

Moreover, in considering whether to grant Mambo’s Petition, the Commission must consider the importance and necessity of treating similarly-situated parties alike. *See Del Caribe Comments*, at 4; *Petition*, at 11-12. Aside from MegaTV’s petition for a waiver which remains pending,⁶ the Commission appears to have granted a permanent waiver of the Network Representation Rule to every Spanish-language television programming network that has requested it. Indeed, a failure to grant the requested waiver, which is factually indistinguishable

⁶ *See Comment Dates Established for MegaTV Petition for Waiver of Section 73.658(i), the Network Representation Rule*, Public Notice, 25 FCC Rcd 4728 (2010) (comment period in MB Docket No. 10-89 closed June 22, 2010).

from requests previously granted, would be arbitrary and capricious to the extent it would favor one similarly-situated party over another and bestow a regulatory advantage to well-established Spanish-language networks and their affiliated stations. *See* Petition, at 12.

IV. Conclusion

As discussed in the Petition and Supplement and in the comments filed by Mambo's affiliate Del Caribe, grant of Mambo's Petition will encourage the growth and development of the nascent GenTV network, foster foreign language programming, increase programming diversity, and strengthen competition among stations.⁷ For the foregoing reasons, the reasons stated in the Petition and Supplement, and the reasons set forth in Del Caribe's Comments, Mambo respectfully requests that it be expeditiously granted a permanent waiver of Section 73.658(i) of the Commission's Rules.

Respectfully submitted,

MAMBO, LLC

By: _____ /s/

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September 23, 2010

⁷ *See* Petition, at 10 (quoting *Amendment of § 73.658(i) of the Commission's Rules, Concerning Network Representation of TV Stations in National Spot Sales*, Report and Order, 5 FCC Rcd 7280 (1990), ¶12).

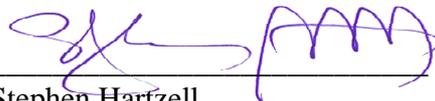
CERTIFICATE OF SERVICE

I, Stephen Hartzell, do hereby certify that I have this day transmitted a copy of the foregoing Reply Comments via email addressed to the following:

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This, the 23rd day of September 2010.



Stephen Hartzell