

# RECENT DEVELOPMENTS

## FOREIGN OWNERSHIP AND CONTROL OF U.S. BROADCAST ENTITIES: *IN RE* *SPANISH INTERNATIONAL* *COMMUNICATIONS CORP.*

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Early this year an Administrative Law Judge of the United States Federal Communications Commission (FCC) issued an unprecedented decision denying renewal of a Spanish language television network's broadcast licenses.<sup>1</sup> The action results from violations of federal broadcast license regulations concerning foreign control of the stations.<sup>2</sup> Despite the filing of an appeal,<sup>3</sup> the decision will have major repercussions for both current and future broadcasters and suppliers of non-English television in the United States.

American television is supported by advertisers seeking to play their commercials to a mass audience. Historically, the mass market, as defined by advertisers, has meant the white, English speaking middle class. Because of their relatively low numbers and low income, advertisers—and thus broadcasters—generally ignored the United States' various urban, non-English speaking communities. However, a growing number of entrepreneurs now recognize these

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1. *In re Spanish Int'l Communications Corp.*, Fed. Communications Comm'n Release No. 86D-1, slip op. (Jan. 3, 1986) (available Feb. 7, 1986, on LEXIS, Fedcom library, FCC file) [hereinafter *In re SICC*].

2. See *infra* text accompanying note 24.

3. *In re SICC*, — F.C.C. 2d —, *exceptions filed*, No. 83-540 (F.C.C. Rev. Bd., Apr. 16 and 17, 1986).

market segments and are working to penetrate this increasingly valuable consumer base.

Examples of such businessmen, and the focus of the instant action, are Emilio Azcarraga Milmo (Azcarraga M.) and his late father, Emilio Azcarraga Vidaurer (Azcarraga V.). The Azcarragas are Mexican citizens and principal owners of Televisa, one of the country's largest media enterprises.<sup>4</sup> In the early 1960's Azcarraga V. and an American business partner, Frank Fouce, commenced a plan to establish Spanish language television stations in the U.S. Through various corporate entities, Azcarraga, Fouce and their associates built a chain of seven full power television stations plus five low power and translator stations for extending the reach of nearby full power stations. In addition, they developed the Spanish International Network, Inc. (SIN), a national Spanish language television network providing programs to their own stations, four television stations owned by others and over 200 cable television systems.<sup>5</sup> Galavision, a pay cable service, described as a Spanish language HBO, was created as an outgrowth of SIN.

## I. OWNERSHIP AND CONTROL OF THE TELEVISION STATIONS AT ISSUE

The twelve broadcasting stations established by the Azcarragas and their business partners are owned by one of three separate entities: Spanish International Communications Corp. (SICC), Bahia de San Francisco Television Co. (Bahia), and Seven Hills Television

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4. Televisa, owner of four television channels in Mexico City, "produces programming [in] Mexico for a large network of commercial radio and television stations, . . . is involved in the recording, theater and newspaper businesses in Mexico . . . [and] is the largest producer and exporter of Spanish-language programming in the world." The Azcarraga family owns 58.25% of Televisa and Azcarraga M. is the president of the conglomerate. See *In re SICC*, *supra* note 1, paras. 32, 33.

5. The instant action does not address possible direct FCC action against the network, SIN. FCC authority over television networks is considerably more narrow than that over stations, apparently limited to regulation making. The only authority granted by the Communications Act to the FCC in this regard is "to make special regulations applicable to radio stations engaged in chain broadcasting [i.e., networks]." 47 U.S.C. § 303(i) (1982). See *Nat'l Broadcasting Co. v. United States*, 319 U.S. 190, 224, 63 S. Ct. 997, 87 L. Ed. 1344 (1943): "[T]he Communications Act of 1934 authorized the [Federal Communications] Commission to promulgate regulations designed to correct the abuses disclosed by its investigations of chain broadcasting."

It should also be noted that the FCC can exert indirect control over a network by its licensing authority over network-owned stations. In a recent related case, *Fed. Communications Comm'n v RKO General Co.*, 670 F.2d 215 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927, 102 S. Ct. 1974, 2931 (1982), petitioner was denied renewal of its television station license in Boston (WNAC-TV) because of a "staggering variety of corporate misconduct" by its corporate parent, General Tire and Rubber Co. *Id.* at 218. The FCC found that because of this misconduct, which included securities violations among other offenses, the licensee "lacked the requisite character" to retain the license. *Id.* at 217-18.

Co. (Seven Hills).<sup>6</sup> The major shareholder lists for all three corporations bear striking similarity. Indeed, three names appear among the largest five or six shareholders of each entity, and the top five for Bahia and Seven Hills are identical.<sup>7</sup>

The FCC identified, within this pattern of interlocking ownership, a web of financial dealings and relationships that points to control of the television station chain by the Mexican Azcarraga family. Three of the largest American stockholders, all principal officers involved in the stations, "obtained their equity interest in . . . SICC, through loans from members of the Azcarraga family."<sup>8</sup> In addition, Azcarraga V., or companies under his control, funded and financed the various stations through loans, lines of credit, deferred payment plans, etc.<sup>9</sup> These facts by themselves may not have been sufficient to deny license renewal. However, the petitioner demonstrates a vehicle by which the Azcarragas illegally exert control.

A review of the cumulative control exerted by Reynold V. "Rene" Anselmo provides the evidence of undue influence. Anselmo, a long-time employee and associate of Azcarragas, owns 23.9%, 41.7% and 55% of the outstanding shares of SICC, Bahia

6. Spanish International Communications Corporation owns television stations in Fresno, Los Angeles, Miami, New York and San Antonio, with translators and low power television stations in five other cities. The second corporation, Bahia de San Francisco Television Company, owns a television station in San Francisco. Finally, Seven Hills Television Company owns a station in Phoenix.

7. The top six shareholders in SICC, holding 91% of its stock are:

|                             |       |
|-----------------------------|-------|
| Fouce Amusement Enterprises | 25.5% |
| Reynold V. Anselmo          | 23.9% |
| Laura Investment Co., Inc.  | 20.0% |
| Estate of James M. Jacobson | 9.1%  |
| Emilio Nicolas, Sr.         | 6.7%  |
| Daniel D. Villanueva        | 6.0%  |

Laura Investment Co. is wholly-owned a subsidiary of Pan American Television, S.A., which is owned in equal shares by Azcarraga M. and his two sisters, all Mexican citizens. *In re SICC, supra* note 1, para. 7.

The top five shareholders in Bahia de San Francisco Television Co., owning 76% of the total are:

|                      |       |
|----------------------|-------|
| Reynolds V. Anselmo  | 41.7% |
| Joaquin Blaya        | 12.1% |
| Daniel D. Villanueva | 11.7% |
| Emilio Nicolas, Sr.  | 5.8%  |
| William D. Stiles    | 5.0%  |

*Id.* para. 9.

The top five shareholders of Seven Hills Television Co., are:

|                      |       |
|----------------------|-------|
| Reynold V. Anselmo   | 55%   |
| Emilio Nicolas, Sr.  | 15%   |
| Daniel D. Villanueva | 15%   |
| William D. Stiles    | 6.25% |
| Joaquin Blaya        | 3.75% |

Together they own 95% of Seven Hills' stock. *Id.* para. 10.

8. *Id.* para. 167. *See also id.* at paras. 81, 82, 84-87, 91-99, 160.

9. *Id.* paras. 50-53, 81, 90.

and Seven Hills, respectively.<sup>10</sup> However, Anselmo receives a salary of \$450,000 from SIN in addition to the \$250,000 received from SICC.<sup>11</sup> He has worked for the Azcarragas for over 30 years, originally with the family's various Mexico City media enterprises.<sup>12</sup> Anselmo owns 25% of SIN with the Azcarraga family, through Televisa, owning the other 75%.<sup>13</sup>

As President and Chief Executive Officer of all three corporations Anselmo personally appoints the general managers of the entities' television stations.<sup>14</sup> Beyond his duties with the three operating companies, Anselmo serves as President<sup>15</sup> and Director<sup>16</sup> of SIN. As head of both companies Anselmo's activities were found, on occasion, to create a conflict of interest.<sup>17</sup>

## II. BROADCAST LICENSE REGULATION IN THE UNITED STATES

Broadcasting in the United States is regulated by the Federal Communications Commission. The FCC licenses all U.S. television broadcasters, generally for a five year renewable term.<sup>18</sup> At each renewal, interested parties may challenge a licensee's fitness to continue operating a station.<sup>19</sup> As a result of review, renewal of a license may be denied for, among other reasons, factors "which would warrant [the FCC] in refusing to grant a license . . . on an original application,"<sup>20</sup> or "willful . . . violation of [any broadcasting] . . . regulation."<sup>21</sup>

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10. See *supra* note 5.

11. *In re SICC*, *supra* note 1, para. 88. Until 1976, Anselmo's salary came entirely from Azcarraga controlled companies. *Id.* para. 169.

12. *Id.* para. 88.

13. *Id.* para. 29.

14. *Id.* para. 165.

15. *Id.* para. 36.

16. *Id.* para. 29. SIN and SICC share offices and staff, *id.* para. 112, of which there has been occasional intermingling, to the stations' detriment. *Id.* para. 111. In addition, most of the tv stations' general managers have spent a "tour of duty" with SIN. *Id.* para. 166.

17. In the course of negotiations between Televisa and SIN, on one hand, and the SICC/Bahia/Seven Hills stations on the other, Anselmo, who "knew how much Televisa had agreed to pay" first asked the station managers to advise him what they considered was appropriate compensation, then "testified that 'now I played SIN' and asked the general managers how much they would charge if they had a fixed guaranteed rate. Pointing out that in every case SIN paid more than the managers requested, Anselmo explained: 'I was just testing the managers to see [sic], and so we played this game with them, because we knew how much we were going to spend with them.'" See *id.* para. 57. See also *id.* para. 170.

18. 47 U.S.C. § 307(c) (1982).

19. *Id.* § 309(d)(1).

20. *Id.* § 312(a)(2).

21. *Id.* § 312(a)(4).

The Communication Act of 1934,<sup>22</sup> which established the modern FCC, included requirements for radio (and later television) licenses. Among these is § 310(b) (as amended in 1974) which holds that no radio or television station license shall be held by:

(1) an alien or the representative of an alien.

(3) any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives . . .

(4) any corporation directly or indirectly controlled by any other corporation of which any officer or more than one fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens [or] their representatives . . .<sup>23</sup>

In the past the FCC has denied applications for new licenses based on § 310(b) violations, but never—until this January—has a license renewal been denied because of foreign ownership or control.<sup>24</sup>

The FCC administrative law judge had no difficulty identifying the stations' foreign control as manifested in Rene Anselmo's business relationships. Summarizing his findings, the Judge stated:

[Anselmo] must be regarded as a representative of aliens within the meaning of Section 310(b)(3) of the [Communications] Act. As the chief executive of SIN he is, in effect, an agent of Televisa, and his position of dominance in SICC, Bahia and Seven Hills

22. Communications Act of 1934, 48 Stat. 1064, 47 U.S.C. §§ 151-610 (1982).

23. 47 U.S.C. § 310(b) (1982).

24. The FCC's authority to renew or revoke a broadcast station license was first upheld by the Supreme Court in a 1933 case involving the current FCC's predecessor, *Fed. Radio Comm'n v. Nelson Bros. Bond and Mortgage Co.*, 289 U.S. 266, 276, 53 S. Ct. 627, 77 L. Ed. 1166 (1933) ("Congress established the commission as its instrumentality to provide continuous and expert supervision and to exercise the administrative judgment essential in applying [the] legislation standards" prescribed).

In a later case further illuminating FCC authority, the Court said "[i]f a license applicant does not qualify under standards set forth in [the Communication Act and FCC regulations] . . . the Commission may deny the application without further inquiry." *Fed. Communication Comm'n v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775, 793, 98 S. Ct. 2096, 56 L. Ed. 2d 697 (1978).

The constitutionality of the foreign ownership rule has not been challenged. Addressing this issue, (now Dean) Monroe Price wrote:

[This] requirement might possibly be challenged under recent Supreme Court decisions holding that alienage is a suspect classification. *See, e.g., Sugarman v. Dougall*, 413 U.S. 634 (1973). . . . But the Supreme Court cases are not dispositive . . . and admit that there is some room permitted, on a compelling showing, for citizenship-related qualifications. One might suppose that the section 310(a) [now section 310(b)] citizenship requirement is imposed for security reasons, or at least out of a possibly constitutionally impermissible assumption that citizens are more trustworthy than aliens in the image of the United States that they will convey.

Price, *The First Amendment and Television Broadcasting by Satellite*, 23 UCLA L. REV. 879, 899 n. 101 (1976).

was achieved largely through the auspices and financial banking of the Azcarragas. Through Anselmo the influence of the Azcarraga's [sic] is pervasive, the more so because of the absence of any other center of power in the corporate structure of the Licensees, several of the other major principals being long-standing associates of Anselmo who achieved their positions through him and with the financial backing of the Azcarragas.<sup>25</sup>

The principal players' extremely close personal relationship is clearly established in the record.<sup>26</sup>

Mindful of United States law prohibiting more than 20% foreign ownership of television and radio stations,<sup>27</sup> Azcarraga V. holds no more than 20% of SICC's stock. Neither has he any ownership interest in either Bahia nor Seven Hills. Additionally, the corporations' board members are all U.S. citizens. However, the difficulties with the FCC concern alien control, rather than ownership, of the companies: "The fundamental issue . . . is whether SICC, Bahia and/or Seven Hills are 'controlled by aliens or their representatives' in violation of Section 310(b) of the Communications Act."<sup>28</sup>

Several of the questions raised concerned the "intermingling of personnel" between Televisa-owned SIN and SICC/Bahia/Seven Hills, resulting in "a number of the principals in the Licensee corporations [being] or hav[ing] been financially dependent on SIN or its owners."<sup>29</sup> In addition, the decision noted that "a number of early investors in the Licensee stations had preexisting associations with the Azcarraga family."<sup>30</sup>

In view of the evidence the Judge held that "business relationships, interlocking directors, personal relationships, and other factors"<sup>31</sup> contributed to the dominance of the stations by the Azcarraga family.

### III. RELATED DEVELOPMENTS

It is significant that the SICC decision comes at a time of increasing activity in the foreign language television area. This increased activity extends beyond Spanish language programming.

The Asian-American community comprises one of the fastest

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25. *In re SICC*, *supra* note 1, para. 176.

26. In 1963, Anselmo came to New York to run SIN at Azcarraga V.'s behest. *Id.* at para. 169. Azcarraga V. helped Anselmo to get settled in New York and financed his major stakes in the ownership of the three U.S. broadcast entities. *Id.* paras. 80, 82, 84-87, 167.

27. 47 U.S.C. § 310(b)(3) (1982).

28. *In re SICC*, *supra* note 1, para. 158.

29. *Id.* para. 167.

30. *Id.* para. 100.

31. *Id.* para. 159.

growing ethnic groups in the United States.<sup>32</sup> Reflecting this fact, the Los Angeles area is home to communities of people from nearly all Pacific Basin countries. KSCI, UHF channel 18 in Los Angeles, demonstrates this increasing diversity by airing programming in over a dozen different Asian languages. This effort serves both the members of these communities and advertisers, but not without controversy.

Among the communities served by KSCI is Los Angeles' large Korean population. The station broadcasts twelve hours per week of programming in Korean supplied by a company known as Korean Television Enterprises, Ltd. (KTE). It has been alleged by the Korean-American Free Press Committee, in a brief filed with the FCC on the Committee's behalf by the Media Access Project,<sup>33</sup> that KTE is owned by the Korean government, which "exercises considerable influence over the content of [the] programming, and is frequently accused of slanting news coverage to favor the ruling party and against opposition parties."<sup>34</sup> It is further alleged that KSCI has cooperated in concealing the Korean government connection,<sup>35</sup> and that KSCI has failed to monitor or exercise control over the Korean programming.<sup>36</sup>

The complaint contains several accusations which could result in revocation of KSCI's, and other similarly operated stations<sup>37</sup> licenses. The allegedly violated regulations require that broadcasters announce the source or sponsor of any programs for which the station, as is the accusation here, has received direct compensation.<sup>38</sup> In particular, "[f]ailure of licensees to establish and maintain such control over foreign language programming will raise

32. In fact, the term "Asian" is somewhat inadequate, since it refers to persons from dozens of nations who speak many diverse languages.

33. Complaint of Korean-American Free Press Committee v. KSCI, Inc., filed before the Complaints and Investigations Branch, Fed. Communications Comm'n, Oct. 9, 1985 [hereinafter cited as KAFPC brief]. A copy of this complaint is on file with the UCLA Pacific Basin Law Journal.

34. *Id.* at 7.

35. *Id.* at 8.

36. *Id.* at 13.

37. The Korean-American Free Press Committee has asked the FCC to "investigate the sponsorship identification practices" of television stations in Fairfax (Virginia), Newark, New York City and San Francisco. *Id.* at 6.

38. 47 U.S.C. § 317(a)(1) (1982) states:

All matter broadcast by any radio [or television] station for which any money, service or other valuable consideration is directly or indirectly paid . . . [to] the station so broadcasting, from an person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person . . . .

Similarly, 47 C.F.R. § 73.1212(a) (1985) reads:

When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to . . . such station, the station at the time of the broadcast, shall announce: (1) That such matter is sponsored, paid for, or furnished

serious questions as to whether the station's operation serves the public interest, convenience and necessity,<sup>39</sup> and is grounds for revocation of a broadcast license.<sup>40</sup>

Perhaps a more serious violation is KSCI's alleged failure to maintain control over the Korean language programs. The complaint claims that KSCI never monitored the Korean programming,<sup>41</sup> in apparent violation of a rule that "[a] licensee cannot adequately fulfill his responsibility to maintain control over programming unless he knows what is actually being broadcast over his station."<sup>42</sup> This same allegation also raises the possibility of FCC foreign ownership rules violations, so important in the SICC decision, as well as violations of the Foreign Agent Registration Act.<sup>43</sup>

. . . and (2) by whom or on whose behalf such considerations was supplied . . . .

39. See KAFPC brief, *supra* note 33, at 13, quoting *Foreign Language Programs*, 9 RAD. REG. (P & F) 2d 1901 (1967) (FCC gives public notice that broadcasting stations should maintain adequate controls over their foreign language programming).

40. See text accompanying note 27, *supra*. In addition, "[s]ection 317 [of the Communication Act] makes clear the intention of Congress that the American public shall be fully aware and informed as to the source of all propaganda material broadcast by an American [broadcast] station. . . ." *Taped Programs From Foreign Principals*, 17 RAD. REG. (P & F) 2d 405, 406 (1969) (letter sent by FCC General Counsel to Justice Department in response to views expressed by Justice Department on the use by broadcast stations of taped program material provided by foreign principals).

41. KAFPC brief, *supra* note 33, at 13.

42. See *Cosmopolitan Broadcasting Corp. v. Fed. Communication Comm'n*, 581 F.2d 917, 924 (D.C. Cir. 1978). Petitioner lost an appeal of an FCC action denying renewal of its radio station, WHBI. In affirming the FCC, the court stated:

[Sixty-Eight percent] of WHBI's schedule was devoted to ethnic programming broadcasting some 18 foreign languages.

Virtually all of WHBI's ethnic programming, and a significant portion of its English language programming, is produced and presented by time brokers who pay Cosmopolitan a flat fee for the right to present programs on WHBI in specific time periods.

*Id.* at 919 (footnotes omitted). The FCC administrative law judge who heard the case found that "Cosmopolitan 'had operated its broadcast facility so as virtually to relinquish all interest and control over the station's programming to time brokers, religious broadcasters and commercial salesman.'" *Id.* at 921 (quoting *In re Cosmopolitan Broadcasting Corp.*, 59 F.C.C.2d 558, 560 (1976)). These are substantially the same allegations made against KSCI.

43. 22 U.S.C. §§ 611-621 (1982), generally prohibits any person from acting as an agent of a foreign government, citizen or corporation, without registering as such with the Attorney General. Section 611(c) defines an agent of a foreign principal as:

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—(i) engages within the United States in political activities for or in the interests of such foreign principal; (ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal. . . .

#### IV. CONCLUSION

The patterns uncovered in these cases are not new, in fact, the relationship between SIN and the licensees (SICC, Bahia and Seven Hills) is more than a decade old. However, the FCC did not act to deny renewal of the licenses until 1983. The natural question, then, is why now?

The answer seems to be related to the increased profitability and interest in foreign language television. The FCC action against SICC/Bahia/Seven Hills was initiated in 1983 in response to an Informal Objection filed by Spanish Radio Broadcasters of America, apparently a trade group consisting of American-owned Spanish language broadcast station operators.

The suggestion of this scenario is that foreign owned or influenced broadcasters and program suppliers can probably expect increasing challenges in the future. The competition will come both from the market and through federal regulators. As the U.S. becomes increasingly populated with non-English speakers who wish to remain linked to their native language and culture, non-English language television will grow. As this occurs, the FCC can be expected to continue enforcing restrictions on foreign ownership and control, both of its own volition and in response to challenges from interested parties. The issues raised by the SICC case, and the Korean-American Free Press Committee challenge to KSCI, go beyond mere ownership requirements. Rather, they reflect the increasing mobility of Pacific Basin peoples and the challenges to entrenched nationalist interest which this mobility will bring forth.