

**BASIS FOR SUBMISSION AND REQUEST FOR CONTINGENT
WAIVER OF SECTION 73.3517**

The instant application requests that the Commission issue to Entravision Holdings, LLC (“Entravision”) a construction permit for a digital companion channel in connection with Entravision’s operation of Class A Television Station KVER-CA, Indio, California. The application requests that the Commission grant a construction permit for operation of the LPTV digital companion channel on Channel 41. A paired channel filing is permissible despite the application of the current freeze on new digital low-power television stations. *Public Notice*, Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations, 25 FCC Rcd 15120 (MB 2010).

Entravision wishes to make note that it presently holds a construction permit for a digital companion channel, under the call sign KVER-LD, for Station KVER-CA (File No. BDCCDVL-20120920ABN). However, the construction permit is for Channel 11. It has long been recognized that VHF stations provide inferior signal propagation for digital signals. This is particularly a concern for LPTV stations which have the inherent disadvantage of operating at output power levels far below that of their full-power competitors. That is why Entravision is submitting this application on output Channel 41.

Entravision submits that the rules adopted by the Commission for digital companion channels allow licensees to select channels based on their determination of what will provide the optimum service, subject to channel availability. There are no restrictions in the rules that prohibit a current licensee from its selection of companion channels and Section 74.787(a)(2)(v) provides that a digital companion channel application is treated as a minor change application. However, the rules were not crafted to deal with a change in the output channel of a digital

companion channel and the means for doing so appear to be limited to the filing of a new station application.

Entravision is aware of the terms of Section 73.3517 of the Commission's rules and, in an abundance of caution, wishes to address it and request a contingent waiver of it. Section 73.3517 prohibits the filing of a contingent application. One might read the instant application as a contingent application since Entravision already is the permittee of a digital companion channel for Channel 11. However, as noted above, Entravision has determined that it can better serve the public by operating on output Channel 41. Hence, it fully intends to operate on Channel 41, if the requested permit is granted, and return the permit or license for Channel 11. At no time will Entravision operate on both channels.

In addition, Entravision also seeks to make note of the impact of the Mexican concurrence process on its actions in regard to the companion channel for Station KVER-CA. As the Commission is well aware, the Mexican concurrence process is long and cumbersome. While Channel 11 had previously been coordinated, Channel 41 has never been coordinated with Mexico. By securing a permit on Channel 11, Entravision has been certain of obtaining digital operating authority. In that the timing of any Mexican coordination is uncertain, at best, an initial Channel 41 application would have delayed digital service to the public, a result that neither Entravision nor the FCC would consider to be in the best interest of the public.

Considering this, Entravision submits that this application is not contingent. Should it be considered to be contingent, Entravision requests that there be a waiver of Section 73.3517. Such a waiver will be in the public interest since there is no harm to any other party and it will enable Entravision to serve the public interest through a more robust transmission operation. These support a finding that the hurdle has been overcome and a waiver of the rules should be

granted. See *WAIT Radio v. FCC*, 418 F. 2d 1153, 1157 (D.C. Cir. 1969), cert denied, 409 U.S. 1027 (1972).