

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

In the Matter of)
)
ENTRAVISION HOLDINGS, LLC) File No. BPH-20190723AAN
) Facility ID No. 2750
For Construction Permit)
KDVA(FM), Buckeye, AZ)

To: Office of the Secretary
Attention: Audio Division, Media Bureau

PETITION FOR RECONSIDERATION
OF CERTAIN SUBSTANTIVE ISSUES

Prescott Valley Broadcasting Co. Inc. (“PVBC”), by its counsel, respectfully files this Petition for Reconsideration of certain substantive issues set forth in the Letter Decision in this proceeding.¹ Specifically, PVBC requests that the Commission order Entravision Holdings, LLC (“Entravision”) to deposit funds into an escrow account before PVBC incurs any expenses associated with changing the frequency of KPPV(FM), Prescott Valley, AZ.

PVBC has explained to both the Commission and Entravision that a change in KPPV’s frequency, even by one channel, would be a massive undertaking for PVBC to incur. All of KPPV’s branding, logos and marketing materials, including on-air jingles, billboards and advertising identify the station as “KPPV 106.7” or “The Mix 106.7.” Any change in frequency would not only seriously disrupt the business of PVBC, but also would upset KPPV’s listeners (estimated at 250,000 or more persons in the northern Arizona communities of Prescott, Prescott Valley, Cottonwood and the Verde Valley), who have come to rely on tuning into 106.7 MHz for KPPV. To the extent there

¹ *Letter to Entravision Holdings, LLC c/o Barry Friedman, Esq. from Albert Shuldiner, re: KDVA(FM), Buckeye, AZ, et al.*, dated July 21, 2020 (“Letter Decision”). To clarify, PVBC is not seeking reconsideration of the portions of the Letter Decision with respect to the Procedural Issue (Letter Decision at 4) or the portion of the Substantive Issues confirming that PVBC’s Comments and Statement (as such terms are defined in the Letter Decision) were not strike pleadings (Letter Decision at 6).

is any question at all, PVBC reiterates and clearly avers here that any proposal requiring KPPV to change its frequency to 106.9 MHz (or any other frequency) is not in the public interest because of the obvious deleterious impact on KPPV's listeners.

Notwithstanding its strong objection to being forced to take on such a colossal set of chores, PVBC has indicated to Entravision and the Commission its willingness to cooperate, consistent with the *Circleville* principles. However, also consistent with *Circleville*, Entravision must reimburse PVBC for its engineering, legal and equipment charges; printing, including replacement of apparel that would become outdated by the frequency change; out of pocket nonreducible expenses while KPPV is off the air; changes to all of KPPV's social media outlets; and advertising and promotion associated with changing to any new frequency. Several months ago, PVBC provided Entravision with a prediction of the costs that PVBC expected to incur associated with the channel change, but Entravision never responded. Nor has Entravision reached out to PVBC since the release of the Letter Decision.

PVBC has proposed that Entravision deposit an agreed-upon amount into an escrow account that would be managed by an independent third party. PVBC explained that the establishment of an escrow account would serve two key purposes: first, the escrow agent would distribute funds to PVBC within a reasonable amount of time (perhaps 10-15 days) after PVBC provides invoices or receipts documenting the costs/expenses that it incurs associated with the frequency change. All funds remaining after PVBC completes its legal, technical and marketing efforts associated with the KPPV channel change would be returned to Entravision.

Second, under this approach, Entravision (and the Commission) would have confirmation that PVBC is not seeking a "financial windfall" from Entravision, but instead is acting reasonably to

ensure that it will be entirely reimbursed associated with implementing a frequency change that has a negative impact on KPPV and full benefit to Entravision and its stations.

PVBC also has explained that the creation of an escrow account would avoid the very common situations with which the Commission is well-aware: where the accommodating licensee, such as PVBC, expends significant funds to accommodate the aggressive licensee, such as Entravision, but the aggressive licensee never reimburses the accommodating licensee. *See, e.g.*, the proceeding involving Victoria Radio Works, the licensee of KVIC-FM, Victoria, Texas, where the accommodating licensee has been seeking reimbursement from the aggressive licensee for over ten years, to no avail.² *See also* the proceeding involving Christian Media, Inc., where the accommodating licensee waited for nearly eight years to obtain reimbursement, and such reimbursement was made only because the Commission suspended the aggressive station's program test authority until the accommodating licensee was paid.³

Despite being quite familiar with the situations that have befallen accommodating licensees, both Entravision and the Audio Division inexplicably have opposed taking the very simple approach to avoid these disputes: the establishment of an escrow account. The Letter Decision relies on a case from nearly 30 years ago (*Othello, et al.* (MMB 1991), at Letter Decision at 6 (note 39)) in support of its stance that the Commission does not “generally” or “normally” require the establishment of escrow accounts. But the Letter Decision does not set forth adequate reasoning for rejecting PVBC's suggestion to establish an escrow account in this proceeding.

Given the litany of cases demonstrating the unwillingness of the aggressive licensee to reimburse the accommodating licensee, it is time for the Commission to revisit its stance regarding the establishment of escrow accounts. That is, in 1991, the need for an escrow account may not have

² *See Letter to John C. Trent, Esq., from Albert Shuldiner, re: KHTZ(FM), Ganado, TX, dated September 12, 2019 (resulting in the dismissal of the aggressive station's license renewal application and deletion of its call sign).*

been “normally” necessary, but because of the actions taken by numerous aggressive licensees over the past 30 years to stonewall the ability of accommodating licensees to seek reimbursement, and because such accommodating licensees have been left “holding the bag” after they have undertaken undesired changes at the behest of aggressive licensees, the need for an escrow account now absolutely is necessary. That is especially the case in 2020, when many radio stations have suffered enormous losses in listenership and revenues due to the impact of COVID-19. Undertaking a channel change in any climate is difficult, but undertaking a channel change during a global pandemic without a guarantee of full reimbursement could lead to economic ruin for an accommodating licensee such as PVBC.

PVBC does not question that Entravision, a publicly-traded company with a market capitalization greater than one hundred million dollars (\$100,000,000), has the financial **ability** to reimburse PVBC for its costs (and to fund an escrow account). But a real question arises as to Entravision’s **willingness** to undertake such reimbursement (and/or escrow account funding.) Why is Entravision opposed to the establishment of an escrow account? As explained above, there is no harm that would be done to Entravision, as such account would be managed by an independent third-party, meaning PVBC would be prevented from reaping a financial windfall. And Entravision is required anyway, under *Circleville*, to eventually make PVBC whole. PVBC simply wants to be guaranteed, through the establishment of an escrow account, that it will be reimbursed for its costs associated with a channel change for KPPV that Entravision – not PVBC – desires to undertake.

It would be grossly unfair for the Commission to require PVBC (or any accommodating licensee) to shoulder the entire burden of a channel change in the mere hopes that Entravision (or any aggressive licensee) will provide reimbursement. There is ample evidence and precedent confirming that this approach is unworkable. The Commission has the opportunity now to signal to

³ Letter to Barry A. Friedman, Esq. from Peter H. Doyle, re: KYAP(FM), Nunn, Colorado, dated August 23, 2017.

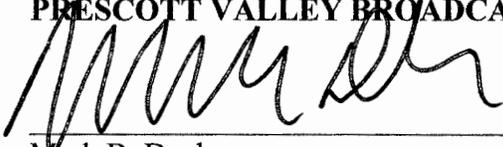
the broadcast radio community that accommodating stations will not have to suffer not only the hardship of changing channels, but also the indignity of begging for reimbursement from an unwilling aggressive licensee. By reconsidering that portion of the Letter Decision that rejects PVBC's call for the establishment of an escrow account to handle reasonable reimbursement requests, the Commission can level the playing field for accommodating licensees such as PVBC and aggressive licensees such as Entravision.

As set forth above, PVBC merely is protecting itself against having to enter into protracted *post hoc* negotiations with Entravision, a company that already has demonstrated its unwillingness to entertain reasonable suggestions as to the amounts it is willing to reimburse PVBC for changing channels. Mere promises from Entravision are insufficient to assuage PVBC that it will not be left anything less than completely whole after PVBC steps aside to allow Entravision to complete upgrades to its stations.

For the foregoing reasons, PVBC urges that the Commission grant this petition and reconsider the portion of the Letter Decision relating to the rejection of the establishment of an escrow account to govern the reimbursement of the expenses PVBC will have to undertake in order to accommodate Entravision.

Respectfully submitted,

PRESCOTT VALLEY BROADCASTING CO. INC.

By: 

Mark B. Denbo
Its Attorney

SMITHWICK & BELENDIUK, P.C.
5028 Wisconsin Avenue, N.W., Suite 301
Washington, DC 20016
202-350-9656
August 19, 2020

DECLARATION OF SANFORD COHEN

I, Sanford Cohen, hereby declare under penalty of perjury as follows:

1. I am the President of Prescott Valley Broadcasting Co. Inc., the party that would be aggrieved by the implementation of the channel change proposed by Entravision Holdings, LLC.
2. I have I have read the foregoing Petition for Reconsideration of Certain Substantive Issues ("Petition"). The statements made in the Petition are true and correct to the best of my personal knowledge, information and belief.

Executed on the 7th day of August, 2020.



Sanford Cohen

CERTIFICATE OF SERVICE

I, Mark B. Denbo, do hereby certify that a copy of the foregoing “Petition for Reconsideration of Certain Substantive Issues” was mailed by First Class U.S. Mail, postage prepaid (or via electronic mail if marked with an asterisk), this 19th day of August, 2020 to the following:

Albert Shuldiner, Esq. *
Chief, Audio Division
Media Bureau
Federal Communications Commission
9050 Junction Drive
Annapolis Junction, MD 20701

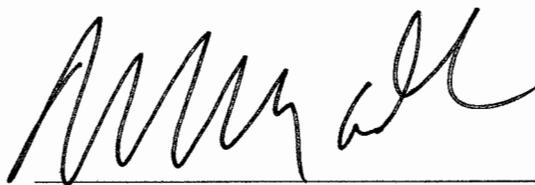
Mr. Rodolfo Bonacci *
Assistant Chief, Audio Division
Media Bureau
Federal Communications Commission
9050 Junction Drive
Annapolis Junction, MD 20701

Mr. Gary Loehrs *
Audio Division, Media Bureau
Federal Communications Commission
9050 Junction Drive
Annapolis Junction, MD 20701

Nazifa Sawez, Esq. *
Assistant Chief, Audio Division
Federal Communications Commission
9050 Junction Drive
Annapolis Junction, MD 20701

Ms. Rolanda Smith *
Audio Division, Media Bureau
Federal Communications Commission
9050 Junction Drive
Annapolis Junction, MD 20701

Barry A. Friedman, Esq.
Thompson Hine LLP
1919 M Street, NW, Suite 700
Washington, DC 20036
(Counsel to Entravision Holdings, LLC)



Mark B. Denbo