

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN RE:

ENTRAVISION HOLDINGS, LLC

For Modification of License of Station KDVA(FM),
Buckeye, Arizona

)
)
) File No. BPH-20190723AAN
) Facility ID No. 2750
)
)
)

To: The Secretary
Attn: Chief, Audio Division

REPLY

Entravision Holdings, LLC ("Entravision"), by its counsel, hereby submits this Reply to the Opposition of Prescott Valley Broadcasting Co., Inc. ("PVBC"), submitted on October 9, 2020, to Entravision's Motion to Strike the PVBC Counterstatement for the Record, filed on September 25, 2020. In support thereof, the following is shown:

Entravision's Statement for the Record ("Statement"), presented on September 21, 2020, consisted of the transmittal of a copy of the Commission decision, in *Letter to Mark N. Lipp, Esq.*, 31 FCC Rcd 8916 (MB 2016), as part of the record in this particular matter. The Statement served to bring to the Commission's attention a Media Bureau decision that Entravision deemed relevant to the Commission's consideration of the matters in issue and which PVBC had not disclosed or discussed in its pleadings. It was not intended to and did not serve as a pleading on the merits, but merely an effort to be certain that the Commission considered all relevant precedent in reaching its decision. When PVBC took the submission of the Statement as the opportunity to engage in further argument in this proceeding, Entravision had no choice but to request the Commission to strike the improperly pleaded matter. *Industrial Business Corp.*, 26 RR 2d 1447 (Rev. Bd. 1973).

PVBC's Opposition fails to address the procedural issues and PVBC's own failure to bring the *Mark N. Lipp* decision to the Commission's attention. Instead, PVBC continues to argue the baseless claim that it is entitled to the payment of funds, either directly in a settlement or an escrow, before it commences work on the channel change that the Commission has required of it in this proceeding. These claims have been and remain wide of the mark.

First, PVBC contends that Entravision was incorrect in asserting that the *Mark N. Lipp* decision should have been brought by PVBC to the attention of the Commission. In this regard, PVBC asserts that the case was cited at n. 38 to the decision in *Letter to Entravision Holdings, LLC*, Ref. No. 1800B3-HOD, released July 21, 2020. However, PVBC incorrectly reads the decision.

The argument presented by Entravision was that PVBC has been asserting that since 1991 the Commission had not considered whether a party seeking a channel change was required to make some form of upfront payment to the licensee having to change channels. The *Mark N. Lipp* decision was a recent instance where the Commission considered and rejected such a result. Note 38 did not speak to that and dealt, instead, with an issue that has been considered time and time again by the Commission: what to do when parties disagree on the amount due and payable. Consequently, PVBC's argument as to the length of time its claim has not been considered is the one that has been debunked and lacks merit.

Next, PVBC repeats the contention that a pre-change escrow account is the only means to ensure that it will receive reimbursement for the expenses it incurs. Further, PVBC goes on, contrary to the facts, to claim that Entravision has incorrectly sought to paint PVBC as seeking to obtain "treasure" from it and that PVBC merely "wants to be reimbursed for its costs." Has PVBC forgotten, or seeks to deflect attention from, the attached (Exhibit A) email of October 9, 2019. In that email, PVBC demanded the sum of \$2.75 million in order for Entravision to secure PVBC's cooperation in securing the channel change it was seeking. Entravision has reviewed the history of *Circleville* related cases and has been unable to locate a single instance where reimbursement exceeded a tenth of that amount. Ignoring such an effort to secure, whether by

escrow, settlement, or utilizing administrative delay, being required to expend an unreasonable sum of money is a legitimate reason on Entravision's part not to accede to it and one that the Commission must not ignore.

PVBC goes on to present a new and novel argument that Entravision was somehow obliged to provide with an amount that "it is willing to reimburse PVBC" for the costs PVBC will incur. There has never been a reported instance where a party such as Entravision has agreed to guess at the expenses that a station it does not own or operate might incur. In fact, the process has always been that a station undertakes the necessary work, knowing that it will only be reimbursed for legitimate expenses, seeks such reimbursement, and if resolution cannot be secured, obtains the assistance of the Commission.

Further, Entravision is surprised that PVBC continues to assert the Christian Media proceeding as one in which the requesting party refused to pay the obligations incurred by the party faced with the involuntary channel change. As Entravision, which is intimately familiar with the facts of the Christian Media proceeding, has advised in this case, the dispute arose because Christian Media utilized delay and every procedural avenue it could find in order to prevent a channel change it did not approve of from occurring. Having suffered the expenses and delay resulting from Christian Media's tactics, the affected station argued to the Commission that it was entitled to offset the costs of Christian Media's dilatory behavior against its *Circleville* obligation. When the Commission elected not to deal with the question of the impact of dilatory behavior and directed the licensee to make the payment, it promptly did so.

Finally, Entravision has previously said and repeats at this time, it will follow the rules set out by *Circleville* and the line of cases that rely on it as precedent. Entravision will pay PVBC what PVBC is legally entitled to receive, when Entravision is legally required to make the payment. These are the rules that others have abided by, as well as Entravision in the one instance it previously was a party to, and Entravision intends to play by the rules. While PVBC, much to its disappointment, will not be able to turn this proceeding into the profit center it has


envisioned, PVBC will receive what *Circleville* mandates it be compensated for in the manner that such compensation is to be paid out.

WHEREFORE, it is respectfully submitted that the Counterstatement for the Record submitted by Prescott Valley Broadcasting Co., Inc. be stricken from the record of this proceeding.

Respectfully submitted,

ENTRAVISION HOLDINGS, LLC

By: _____


Barry A. Friedman
Thompson Hine LLP
Suite 700
1919 M Street, N.W.
Washington, D.C. 20036
(202) 331-8800

Dated: October 13, 2020

EXHIBIT A

October 9, 2019

Privileged and confidential; for settlement purposes only

To: Jeff Liberman, Entravision

Fr: Sanford Cohen, PV Broadcasting

Re: KVVA-FM – Proposal to Upgrade to Class C2 from Sun Lakes, AZ

We have carefully reviewed the impact of what would happen to our stations if Entravision's proposal were to be implemented (our KPPV would have to move from 106.7 to 106.9 and we would have to find a new frequency for our JUAN translator (KPPV HD 3), currently operating on 107.1). We understand that, under the FCC's policies, we can obtain reimbursement from Entravision for the engineering, legal and equipment costs, plus other costs (advertising, loss of revenue, etc.) that we would incur if Entravision moved forward with its proposal.

We estimate that the total amount subject to reimbursement would be approximately \$2.75 million. If Entravision agrees with this figure, then we will sign an agreement, whereby we would provide Entravision with an itemized list of our expected costs. Entravision then would place the estimated \$2.75 million in an escrow account that would be released to us following the grants by the FCC of construction permits associated with KPPV, the FM translator and KVVA-FM. While the applications are pending, each of us would agree not to oppose the other party's applications and would agree to reasonably cooperate with each other towards getting the FCC's approvals.

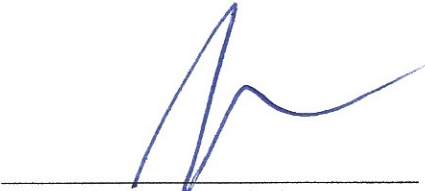
In the event that we are unable to reach a settlement at this time, Prescott Valley Broadcasting would reserve all of its rights to protect itself that are provided under the FCC's rules.

If this is satisfactory, please notify me at your earliest convenience regarding next steps towards the opening of escrow.

CERTIFICATE OF SERVICE

I, Barry A. Friedman, hereby certify that I have served on this 13th day of October, 2020,
a copy of the foregoing **Reply** on the following party by first-class mail, postage pre-paid:

Mark Denbo, Esq.
Smithwick & Belenduik, P.C.
Suite 301
5028 Wisconsin Avenue, N.W.
Washington, D.C. 20016



Barry A. Friedman