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August 3, 2021

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, DC 20554

**Re: KDVA(FM), Buckeye, Arizona (Facility No. 2750) (“KDVA”)
File No. BPH-20190723AAN (“KDVA Permit”)**

Dear Ms. Dortch:

On behalf of Prescott Valley Broadcasting Co., Inc. (“PVBC”), the following is a response to the letter that Entravision Holdings, LLC (“Entravision”) transmitted on July 23, 2021 (“July 23, 2021 Entravision Letter”).

The July 23, 2021 Entravision Letter reiterates its peculiar request to allow Entravision to ignore Condition #4 of the KDVA Permit and allow KDVA to commence operating on Channel 294 (106.7 MHz) without any regard whatsoever to the listeners of KPPV, Prescott Valley, Arizona (Facility No. 52414) (“KPPV”),¹ which is licensed to PVBC. Boiled down to its simplest form, Entravision would like the Commission to re-write its rules in a manner that benefits only Entravision, and moreover would like to avoid having to comply with the obligations of aggressive licensees, as set forth in *Circleville*.² Entravision has provided no justification whatsoever for the extraordinary relief that it seeks, and indeed, no such justification exists. Because the July 23, 2021 Entravision Letter merely is a regurgitation of Entravision’s position set forth in its Letters dated January 6, 2021, January 15, 2021, January 25, 2021 and February 4, 2021, PVBC’s Responses, dated January 14, 2021, January 22, 2021 and February 3, 2021 are hereby incorporated herein by reference.

PVBC’s first Response, dated January 14, 2021, lays out in painstaking detail the actual

¹ The July 23, 2021 Entravision Letter at 1 erroneously stated that KPPV’s community of license is “Buckeye, Arizona.”

² *Amendment of Section 73.202, Table of Assignments (Leitchfield, KY, et al.)*, 8 FCC 2d 159 (1967).

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facts of this proceeding. The bottom line is that, since the Commission issued an Order to Show Cause in this proceeding (“Show Cause Order”),³ PVBC has acted in full compliance with the Commission’s rules governing the proposed change of channel of KPPV from Channel 294C2 (106.7 MHz) to Channel 295C2 (106.9 MHz). Indeed, consistent with the Show Cause Order, PVBC timely filed an application for a construction permit to change KPPV to Channel 295C2, and the Commission granted that application on January 15, 2021 (File No. 0000124846) (“KPPV Channel Change CP”). Pursuant to the face of the KPPV Channel Change CP, the deadline for completion of construction of the channel change is three years later, on January 15, 2024.

Although the July 23, 2021 Entravision Letter at 2 states that there is “an intolerable abuse” because PVBC has not completed construction of the KPPV Channel Change CP during the first six and a half months of a thirty-six month term, the fact remains that Section 73.3598(a) of the Commission’s rules states that the deadline for building out construction permits is three years. Section 73.3598(a) was revised over 20 years ago following an extensive rule making proceeding, and Entravision has not provided any justification as to why Section 73.3598(a) should be applied differently in this case.

Like all aggressive licensees in these types of proceedings, Entravision is obligated, pursuant to *Circleville*, to reimburse accommodating licensees, such as PVBC, for all of the costs that the accommodating licensee incurs associated with the channel change. That is because the channel change benefits only Entravision, as the aggressive licensee, not PVBC. And PVBC has provided Entravision with cost estimates associated with the channel change, but Entravision, in apparent reliance on a long-ago proceeding in which it was involved, has grossly underestimated the anticipated expenses in a blatant effort to escape having to reimburse PVBC for the amounts that PVBC would reasonably incur associated with implementing the KPPV Channel Change CP. If Entravision had contacted PVBC regarding the proposed KDVA Permit before pursuing the application with the Commission, Entravision would have understood the expenses that PVBC would need to undertake in order to change channels. Instead, Entravision wrongly assumed that its prior experience with a channel change somehow was relevant to this matter. In actuality, Entravision’s past experience has no bearing whatsoever on the costs PVBC will incur.

As the record in this proceeding indicates, the process involved with changing KPPV’s channel to 106.9 FM is not so simple. KPPV is a leader in Prescott Valley and surrounding communities (Prescott, Chino Valley, Cottonwood, Verde Valley and other incorporated areas of Yavapai County). Letting each person know about the proposed abrupt alteration of KPPV’s operating frequency requires substantial marketing and advertising expenses to minimize the potential damage to KPPV’s loyal listening audience, consistent with *Circleville*. However, Entravision has stated, both publicly and privately, that it does not intend to reimburse PVBC for PVBC’s costs, despite the clear mandate of *Circleville*.

³ *Prescott Valley Broad. Co. Inc.*, BLH-19930204KB, Letter Order (MB Oct. 10, 2019) (“Show Cause Order”).

For reasons that are known only to Entravision, Entravision also has strongly opposed PVBC's eminently-reasonable suggestion to establish an independent, third-party managed escrow account to govern the disbursement of the reimbursements to PVBC. Such an escrow account would serve two key purposes: first, the escrow agent would distribute funds to PVBC within a reasonable amount of time after PVBC provides invoices or receipts documenting the costs and expenses that are incurred. All funds remaining in the escrow account after PVBC completes all of its legal, technical and marketing efforts associated with the KPPV channel change would be returned to Entravision. 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 would be entirely reimbursed associated with implementing facilities changes that have zero benefit to KPPV, and full benefit to Entravision and its stations.

Second, as described in the Application for Review and other PVBC pleadings in this matter, the creation of an escrow account would avoid the quite 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.⁴

Entravision's market capitalization now is well over Five Hundred Million Dollars (\$500,000,000), an amount that has more than doubled in fewer than two years' time. PVBC has suggested that Entravision place an amount that is less than one-third of one percent (approximately 0.03%) of Entravision's market cap into an escrow account, but Entravision instead is insisting on continuing to fight over amounts that are basically a rounding error when compared to Entravision's total value. Quite obviously, the public interest would be served by the establishment of an escrow account. And the public interest would not be served by implementing the KPPV Channel Change CP without a guarantee from Entravision regarding cost reimbursement. Given Entravision's efforts to date to avoid complying with *Circleville*, there is a strong likelihood that Entravision will never abide by its obligations. PVBC will not allow itself to end up in the same posture as the accommodating licensees in the *Appaloosa* and *Roy E. Henderson* proceedings.

PVBC's most recent responses in this proceeding also demonstrate that it is uncontroverted that if the Commission were to grant Entravision's request and waive Condition #4 to the KDVA Permit, over 300,000 listeners would not be able to listen to either KDVA or KPPV without interference. Such a result certainly would not be in the public interest, and it would erode the trust that licensees and listeners have in the ability of the Commission to serve as a spectrum

⁴ See, e.g., *Letter to Barry A. Friedman, Esq. from Peter H. Doyle*, re: KYAP(FM), Nunn, Colorado, dated August 23, 2017. This also is known as the *Appaloosa* proceeding, cited in PVBC's Application for Review at 8-9. See also *Letter to John C. Trent, Esq., from Albert Shuldiner*, re: KHTZ(FM), Ganado, TX, dated September 12, 2019. This also is known as the *Roy E. Henderson* proceeding, cited in PVBC's Application for Review at 6 and 9-10.

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referee, which is the primary purpose for the Commission's existence. The Commission could stop right here and reject Entravision's request on this ground alone.

PVBC also previously has demonstrated how there is no basis in law to justify the removal of Condition #4 from the KDVA Permit. The July 23, 2021 Entravision Letter repeats the baseless claim that PVBC may hold merely an "implied STA" to operate KPPV on its existing frequency (106.7 MHz). Entravision likens this situation with the one in *Brian M. Madden*, 25 FCC Rcd 4765 (Audio Div. 2010) ("*Madden Letter*"). In PVBC's prior responses, it explained how such analogy is wholly inapposite. As set forth in Note 55 of the *Streamlining Order*,⁵ the Commission concluded that in allotment rule making proceedings (where a licensee has elected **voluntarily** to make a channel change), the moving/aggressive licensee is entitled only to an "implied STA" on its old channel. However, in non-allotment non-rule making proceedings, where the accommodating party is not the moving/aggressive party, the accommodating party's existing station does not operate only with an implied STA.⁶

Accordingly, unlike the aggressive licensee in the *Madden Letter*, PVBC did not file a **voluntary** request for a rule making to change KPPV's community of license, and there has been no allotment rule making that has become "final." Instead, PVBC's application for construction permit was filed in response to the Show Cause Order, and no allotment rule making has ever been initiated associated with the proposed KPPV channel change. Thus, consistent with the conclusion of the full Commission in Note 55 of the *Streamlining Order*, KPPV does not hold an implied STA to operate on 106.7 MHz. Instead, KPPV's rights to operate on Channel 294 (106.7) remain in full force and effect.

Entravision could end its complaints regarding time that is "unjustifiably lost,"⁷ and could see implementation of its proposed changes to KDVA proceed on a much faster track, with a few simple actions. All Entravision needs to do is agree to deposit less than one third of one percent of its total market cap into an independently-managed escrow account that would govern the disbursement of reimbursements to PVBC. There is no question that, under *Circleville*, PVBC is

⁵ *Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17540, n.55 (1999) ("*Streamlining Order*").

⁶ In *Mark N. Lipp*, 31 FCC Rcd 8916 (Audio Div. 2016) ("*Lipp Letter*"), the Audio Division improperly extended the application of an "implied STA" to "channel substitution situations." As PVBC explained in its Response dated January 14, 2021, this extension was improper because Note 55 of the *Streamlining Order* explicitly states that "implied STAs" are applicable only in allotment rule making proceedings. Indeed, the very case cited within Note 55 in support of that proposition was to a rule making proceeding. Further, all of the cases cited in the *Lipp Letter* as purported precedent to apply the concept of an implied STA to a non-rule making proceeding such as the one here actually were to rule making proceedings. Stated simply, there is no rule, Commission Order, or statute that permits the Audio Division to extend the application of Note 55 to a non-rule making proceeding.

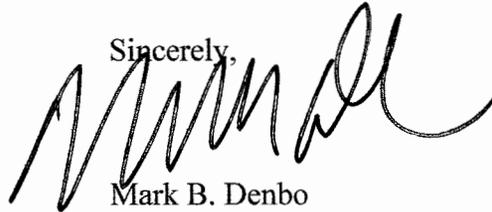
⁷ July 23, 2021 Entravision Letter at 2.

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entitled to reimbursement of its expenses. So, at some point in time, Entravision will be required to repay PVBC **some amounts**. A real question must be raised in the Commission's mind as to why Entravision is fighting this concept so ferociously. The answer must be that Entravision never intends to reimburse PVBC. The Commission cannot let that position stand.

Based on the foregoing, PVBC urges the Commission to deny or dismiss the Entravision Letter because grant of Entravision's request for extraordinary relief: (1) would cause hundreds of thousands of listeners to receive interference; (2) would result in the failure of Entravision to live up to its promises and the Commission's rules regarding reimbursement; and (3) has no basis in law.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Denbo', written in a cursive style.

Mark B. Denbo

Counsel to Prescott Valley Broadcasting Co., Inc.

cc: Rodolfo Bonacci/FCC
Nazifa Sawez, Esq./FCC
Barry Friedman, Esq.