

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

IN RE:)
)
ENTRAVISION HOLDINGS, LLC) File No. BPH-20190723AAN
) Facility ID No. 2750
)
For Modification of License of Station KDVA(FM),)
Buckeye, Arizona)

To: The Secretary
Attn: Chief, Audio Division

RESPONSE

Entravision Holdings, LLC (“Entravision”), the licensee of Station KDVA(FM), Buckeye, Arizona, by its attorneys, hereby submits this Response to the Report Regarding Progress of Negotiations and Preliminary Assessment of Legitimate and Prudent Expenses (“Report”), submitted by Prescott Valley Broadcasting Co. Inc. (“PVBC”), the licensee of Station KPPV(FM), Prescott Valley, Arizona, on February 24, 2022. The Report was required to be submitted by PVBC under the terms of the Ordering Clauses of the Commission’s decision in *Entravision Holdings, LLC*, FCC 22-4, released January 25, 2022 (the “Decision”), as Entravision and PVBC had failed to reach a negotiated resolution of their dispute over the legitimate and prudent expenses (or reasonable costs) that Entravision will be required to reimburse PVBC as a result of Station KPPV undertaking an involuntary channel change as ordered by the Commission. *Entravision Holdings, LLC, and Prescott Valley Broadcasting Co. Inc.*, Letter Order (MB July 21, 2020) (the “Initial Decision”).

In the Decision, the Commission directed that, where no agreement was reached, PVBC was to prepare and provide “a list of all expenses that it claims are reimbursable along with a justification and documentation (such as invoices or estimates from third parties) to support the estimated cost of each expense.” Decision at Para. 29. Before engaging in the expense showing, PVBC offers an unsolicited and meritless six-page, single-spaced set of arguments that have little to do with its expense showing and much to do with rearguing issues that have already resulted in three written decisions that have rejected the substantive claims presented by PVBC. Whether intended to “work the refs,” present new arguments, or allow PVBC to submit evidence on an impermissible basis, the Commission must reject this patent end run of its Decision and strike the six-page statement.

A review of these arguments evidences a clear failing on PVBC’s part. There is not a single reference to what most broadcasters would agree is the most effective method for informing listeners as to a channel change: announcements broadcast on the station itself. The Commission has recognized the value of such announcements. They were the principal means for informing viewers of changes in the output channels of television stations during the digital conversions and the recent reverse auction of television spectrum.¹ PVBC should be concentrating on its plan for listener announcements and not the various purchases of clothing, signs, etc.

Assuming, *arguendo*, that the Commission entertains the arguments made by PVBC, Entravision will address the principal ones *seriatim*.

First, PVBC repeats the argument that Entravision has been unwilling to reimburse PVBC for its legitimate and prudent costs. In this regard, PVBC makes reference to

¹ See 47 CFR 73.3700(c).

communications that PVBC sent to Entravision prior to the issuance of its construction permit in LMS No. 0000124846. The Commission addressed just this issue in the Decision and concluded that Entravision's obligation to negotiate did not even arise until the license modification is ordered by the Commission.² Decision at n. 81. As there was no obligation to negotiate until the license modification was ordered, what harm did Entravision commit?

Next, PVBC engages in an extensive discussion about its unique standing as a broadcast station licensee and why this somehow entitles it to extraordinary treatment in the handling of its channel change request. As a preliminary matter, this argument must be rejected as untimely as it has not been presented until this late date. An argument that is not presented at the initial stage of a proceeding cannot now be presented. The requirement for a timely raising of issues has been previously adjudicated in this proceeding and the Commission has recognized that PVBC has failed to comply with it in other respects. Decision at n. 82.

Even if the Commission does not strike the argument as untimely, there is no precedent for adding subjective considerations to the channel change reimbursement process. In fact, the Media Bureau, acting on PVBC's Petition for Reconsideration, determined that its case law does not support any reimbursement of expenses beyond what is reasonable. *Prescott Valley Broadcasting Co. Inc.*, Order (MB Oct. 21, 2020) (the "Reconsideration Decision").

Any examination of a party's reasonable cost entitlement has been and remains a purely objective one. While PVBC may wish for a subjective enhancement based on its alleged virtues as a broadcaster, should this also require that a party that has a poor record (whatever that might

² In fact, Entravision was in negotiations with PVBC's former counsel and presented him with a formal agreement seeking to resolve the dispute and carry out the channel change. Once the former counsel was no longer representing PVBC, that effort to reach a negotiated settlement was ended by PVBC. See PVBC Reply to Opposition to Application for Review, dated December 23, 2020 (at n. 10).

be) face a reimbursement reduction that would result in it not being able to cover its expenses because of having a poor record as a licensee? If the Commission wishes to consider PVBC's record, Entravision must be permitted to engage in discovery as to PVBC's financial history, its revenues, its ratings, its listenership, and its economic performance. That would allow for a full determination if PVBC's alleged performance is truly meritorious.

PVBC proceeds to argue that the digital environment demands an extensive marketing campaign for KPPV. There is no evidence presented beyond a mere allegation of that need. In the absence of some objective analysis, Entravision has little to respond to. But, if the Commission wishes to entertain unsupported allegations, it is equally likely that in today's radio broadcasting market, that any digital marketing campaign would make any material difference for Station KPPV, as there is no evidence of any crossover between digital users and radio listeners.

PVBC proceeds to make the argument that Entravision's failure to accept PVBC's proposed \$1.6 million reimbursement claim was evidence of the lack of good faith. In fact, Entravision's response is that the extraordinary amount sought by PVBC represents a lack of good faith on its part. One need only take into consideration the Reconsideration Decision, where the Media Bureau agreed that Entravision had expressed "legitimate concerns that PVBC's estimate of its expenses is not consistent with the expenses estimate---or incurred---by other accommodating parties" (footnote omitted). Reconsideration Decision at p. 5.³ More importantly, after reviewing all that has been argued in this proceeding, the Commission should now give due consideration to the Media Bureau's conclusion that "demanding reimbursement

³ The amount being sought by PVBC was then \$2.75 million. When compared to the expenses incurred, as noted in n. 31 of the Reconsideration Decision, the \$1.6 figure is not materially different.

that exceeds PVBC's reasonable and legitimate expenses, could be deemed a violation of section 316." Reconsideration Decision at n. 36.

Recognizing the economic disparity between what a channel change should cost and the amount claimed by PVBC⁴, Entravision made PVBC a \$125 thousand offer. That offer was approximately 25% greater than the highest reimbursement amount contained in any reported case involving channel change reimbursement. More importantly, that amount did not require PVBC to provide documentary support or even expend the full amount. Entravision submits that a 25% bonus on top of the highest reimbursement price on record represents a good faith action on its part. PVBC did not even respond with a counteroffer.

Next, PVBC asks for the right to supplement its expense showing with additional information that it gathers on a piecemeal basis. However, this type of showing was rejected by the Chief of the Audio Division and should not, therefore, be permitted. Division Chief Shuldiner, responding to a request for a postponement of the filing date presented by PVBC stated in his two emails to PVBC's counsel:

Email of February 22, 2022:

Holly forwarded your email to me and asked me to respond to your extension request. Unfortunately, we cannot grant an extension of the deadline contained in the Commission's Order in this matter. I am sorry that we cannot accommodate your request, and we understand this may cause some difficulties for you in light of the fact that you are currently out of the office. However, it is our expectation that the parties will adhere to the deadlines set out in the Order. If you have other questions, please do not hesitate to let me know.

Email of February 24, 2022:

Mark – I am not prepared to get into an analysis of the Media Bureau's authority right now. The Commission has established deadlines for the submissions by the parties. In

⁴ Entravision has previously been a benefiting party and its mutually agreed to payment to the accommodating party was within the range of payments described in the Reconsideration Decision (at n. 31).

this case, the Bureau is not going to act to change those. With regard to directing a request to the full Commission, I think it is unlikely that the Commission would consider this type of request before the deadline for your client to file.

Considering the conclusions reached by the Division Chief, PVBC's showing must be deemed fixed and finalized as of February 24, 2022 and no further information from it can be entertained.

Finally, PVBC presents an argument dealing with whether it will be reimbursed by Entravision for the costs it will now incur. Did PVBC not read the Decision? The Commission has made clear that its policies governing channel change reimbursement have long worked and that there is no evidence that they will not work in this instance. All Entravision has to say is that PVBC can test Entravision by immediately undertaking the channel change and providing its paid invoices for reasonable costs incurred. It will then find out that Entravision is a company that lives up to its commitments.

Turning to the reasonable cost showing, the starting point is the allocation of burdens between the accommodating and benefiting parties. The Commission has clearly delineated the allocation of these burdens (Decision at n. 113):

An accommodating party, in this case PVBC, bears the burden of proof with respect to whether an item and/or amount is legitimate and prudent. Once an accommodating party provides such justification and documentation that the item and amount are legitimate and prudent, a benefiting party, in this case Entravision, may come forward with evidence challenging the accommodating party's showing.

PVBC has failed to meet the initial burden imposed upon it. There are no justifications provided for nearly all of the expense items described and the few that are offered are to be found in footnotes to the expense listing. As for documentation, it is entirely deficient. As even PVBC is forced to admit, its showing is, at best, a "preliminary assessment" and, in many of the categories provided for, PVBC offers only its own internally generated estimates or receipts from prior purchases, some of which are nearly three years old. Having failed to meet its burden of

going forward with a comprehensive and understandable justification and documentation presentation, PVBC's submission must be rejected out of hand.⁵

Even assuming, *arguendo*, that the Commission wishes to consider some or all of PVBC's deficient showing, there remains a further hurdle that PVBC has not overcome. PVBC is now proposing a reimbursement package that has a "preliminary" cost of \$1,475,955.24.⁶ During the negotiation period, the reimbursement amount was presented to Entravision as \$1,690,310.00. This is clearly a moving target and Entravision should not be required to have to respond to moving targets.⁷

As previously noted, the Media Bureau has recognized that Entravision has "legitimate concerns" as to the amounts being requested and that the expenses sought by PVBC are not consistent with those of other accommodating parties. Reconsideration Decision at p. 5. In this regard, Entravision commends to the Commission the discussion in the Reconsideration Decision (n. 31), where the greatest reimbursement amount is shown as \$101,112.00, an amount that PVBC's claim exceeds by a multiple of 14.597. Further, the Media Bureau has, within recent days, awarded an accommodating party the sum of \$96,566.58. *Letter to Bob Silverman, Esq.*, DA 22-144, released February 11, 2022. In that the reasonable costs historically ratified by the

⁵ Entravision has never questioned that PVBC was not entitled to reimbursement of its reasonable cost incurred. It urges the Commission to grant PVBC such reasonable cost. In order to enable the Commission to do so, Entravision is providing (at Exhibit A), the reasonable cost showing provided by the accommodating party in the *Appaloosa Broadcasting Company, Inc.* case that PVBC has relied upon. This showing can be used as the starting point for the award of a reasonable cost reimbursement to PVBC.

⁶ Entravision has determined that the population served by KPPV is 147,000 people. On a per person basis, this represents approximately \$10.04 per person in the service area. Applying this ratio to a 1 million population service area, a benefiting party would be obligated to pay in excess of \$10 million. This alone evidences the excessive nature of PVBC's request.

⁷ Entravision remains cognizant of the Media Bureau's conclusion that a demand by PVBC for reimbursement that exceeds its reasonable cost "could be deemed a violation of section 316." *Reconsideration Decision* at n. 36.

Commission are all in the vicinity, or less, than the award in the *Bob Silverman* case, Entravision urges the Commission to treat PVBC's request for a \$1.4 million reimbursement amount as excessive and unacceptable and reject it.

As for the elements of PVBC's reasonable cost claim, Entravision proposes to use the remainder of this Response in which to address each of the categories presented and to offer its specific comments as to them.

Engineering Technical/Attachment 1

Cost Requested: \$14,300.00

Response: Entravision questions the proposed expenses for a new antenna and transmitter for its backup site and a booster site. In its determination reached in the Initial Decision (at p. 6), the Media Bureau rejected reimbursement for equipment for secondary services, such as FM translators. Entravision submits that this conclusion is equally applicable to booster and auxiliary stations. In addition, in the *Bob Silverman* case, the Commission determined that replacement equipment represented a reasonable cost only where the existing equipment was old or could not be used to meet the requirements of the modified license. PVBC has not proffered any evidence as to the age or state of the equipment involved and, accordingly, even if booster and auxiliary equipment is a covered expense, its request must be rejected.

Engineering/Consulting Fees/Attachment 2

Amount: \$2,006.00

Response: No comments.

Legal/Attachment 3

Amount: \$42,410.00

Response: The Commission has held that ordinary and necessary legal expenses incurred in order to secure a construction permit for the channel change and to submit pleadings to the Commission in a related proceeding are customarily acceptable. In *Bob Silverman* (at p. 11-12 and n. 65), the Media Bureau, however, set out certain exceptions. These exceptions are legal expenses incurred prior to the issuance of the order requiring the involuntary channel change and for *ex parte* communications. Likewise, in *KBEX(FM), Dalhart, Texas, 28 FCC Rcd 3234, 3248 n. 23* (MB 2013), the Media Bureau held that legal fees related to the questioning of the benefiting party's financial qualifications were only a reasonable cost where those financial qualifications were necessarily in issue. In this proceeding, Entravision's financial qualifications have never really been in question, given that it is a large publicly held company, and so legal expenses raising that issue are neither reasonable nor subject to reimbursement. *Decision* at Para. 18. Entravision submits that it is reasonable not to require it to reimburse PVBC for legal arguments that PVBC presented where there was no reasonable basis in fact or Commission precedent for those arguments, such as the ones involving Entravision's intent or ability to reimburse it or enter into an escrow account, an arrangement consistently rejected by the Commission except where a benefiting party had financial difficulties.

Consequently, the following billing items must be removed from consideration as reasonable costs: (1) all bills rendered prior to July 21, 2020, when the Media Bureau issue its Order granting the involuntary channel change for KPPV, (2) the work undertaken on January 15, 2021, involving an *ex parte* communication with the FCC staff, and (3) the PVBC response to the Order to Show Cause, the Petition for Reconsideration, and the Application for Review, as

they all involved PVBC questioning whether Entravision would provide a reimbursement and urging that the Commission require an escrow account to be created. As the *Dalhart* case teaches us, only an accommodating party that legitimately challenges the financial viability of whether the benefiting party will be able to pay the required legal reimbursement is incurring a reasonable cost and that issue has never, except in PVBC's erroneous view, a material issue in this proceeding. On the contrary, PVBC's attempt to raise that issue, along with the request for the establishment of escrow fund, has been a continuing farce and neither the Media Bureau nor the Commission have found it even to be credible in any respect.

FCC Application Processing Fee/Attachment 4

Amount: \$1,110.00

Response: No comments.

Business Cards (30 Boxes): Attachment 5

Amount: \$1,800.00

Response: Does PVBC have 30 employees who carry business cards? Why does each employee need two sets of business cards? Do the outstanding business cards even have the output frequency position on them? Finally, one is not even sure what amount and pricing, other than guessing, is involved, as PVBC offers a 2020 statement for the purchase of business cards for the sum of \$60.00. Entravision submits that \$60.00 is a reasonable cost reimbursement for business cards, subject to a reduction to reflect the number of cards remaining in PVBC's stationery inventory that need to be replaced.

New Company Letterhead and Cardstock/Attachment 6

Amount: \$1,300.00

Response: The Commission should ask how many letters go out per month in today's environment where most communications are electronic and in digital form. As for announcements and invitations, PVBC has not provided any evidence that it has 1,000 parties that it needs to inform of the output frequency change. Finally, Entravision takes note that the document lacks both a sender name and date. Any reimbursement should be limited to the cost needed to replace these items bearing the output frequency that remain in PVBC's stationery inventory.

Window Envelopes/Attachment 7

Amount: \$1,170.00

Response: Once again, the question is why does PVBC require so many envelopes in a digital world? Interestingly, it appears that the last order for envelopes was nearly two years ago and the supply has probably not been used up as of this date as there is more recent order provided by PVBC. The Commission should find that the \$195.00 paid in 2020 is a reasonable cost, provided that it is reduced to reflect the actual number of envelopes remaining in PVBC's current stationery inventory.

Envelopes/Attachment 8

Amount: \$510.00

Response: The last order was placed nearly three years ago and appears not to have been used up as of this date. The order referred to deals with envelopes having windows or without windows. The Commission should allow the without windows cost of \$85.00 as a reasonable cost, subject to a reduction to reflect the actual number of envelopes remaining in PVBC's stationery inventory.

NCR 3-Part Forms/Attachment 9

Amount: \$194.00

Response: Entravision continues to question the need for such forms in a digital world. Even assuming that PVBC operates in an analog environment, why does it matter what output frequency is contained on an internal intake form? If these intake forms can be deemed to be related to client service, the reasonable cost should be limited to replacing current inventory. In this regard, one notes that the last order was placed in 2020 and appears not to have been refilled since then.

Production for Station ID with New Frequency/Attachment 10

Amount: \$2,346.79

Response: A review of the document proffered does not permit much of an analysis to occur. There are charges for Station Imaging and Station Makeover. Most stations retain a station voice over professional to provide the Station ID and if that is the case with PVBC, the voice over professional, as part of her services, can make the change if the output frequency is even included in the Station's ID.⁸ One cannot be certain as to what these efforts entail. In the absence of what it would cost to change the Station's ID with the new output frequency, there is no basis for the amount requested to be considered a reasonable cost.⁹

Rate Cards and Agency Rate Cards

Amount: \$5,000.00

Response: As has previously been noted, we are now in a digital world in which advertisers and sales are done electronically and there is no need for rate cards and agency rate

⁸ The Commission's station ID rules, contained in Section 73.1201, do not require the use of the output frequency in the station's ID announcements.

⁹ Exhibit A shows a \$255.00 charge for Radio Imaging. That appears to be a reasonable cost for such work.

cards. Even so, are rate cards considered by advertisers except for the rates described on them? This claim should be discarded. Moreover, there is no documentation provided in support of the claim.

Prescott Valley Chamber of Commerce Ad/Attachment 11

Amount: \$465.00

Response: The documentation provided makes reference to an Arizona Hometown Radio Group and involves an invoice issued on September 28, 2021. What does this have to do with the output frequency change? Is PVBC expecting to be reimbursed for advertising already undertaken?

Prescott Valley Chamber of Commerce Inserts/Attachment 12

Amount: \$1,200.00

Response: Entravision considers three months of inserts, amounting to \$300.00, to be a reasonable cost to reimburse.

Billboards/Attachment 13

Amount: \$377,453.43

Response: PVBC has failed to evidence that it has ever leased billboard space, that any of its competitors lease billboard space, or that leasing billboards is customary in the radio broadcast industry in its community of license. Moreover, while the Commission has spoken to “advertising promotion” as a reasonable cost, there has not been any reported decision that the use of single or multiple billboards, let alone on a one-year basis, qualifies as a reasonable cost.¹⁰

Bumper Stickers, Vinyl on Office Walls, Tablecloths/Attachment 14

¹⁰ *Letter to Bob Silverman, supra* at p. 7-8. In Exhibit A, the accommodating party received a \$1,275.00 reimbursement for two months of a single billboard. Entravision submits that a \$1,275.00 reimbursement to PVBC is reasonable.

Amount: \$11,300.13

Response: Entravision submits that vinyl on office walls and tablecloths do not fall within any reasonable definition of a legitimate and prudent expense under the advertising promotion or miscellaneous categories. Bumper stickers, which are rarely used as a promotional tool other than for political candidates, may have some advertising promotional use if the output frequency change is referenced. However, there is no justification for the purchase of 10,000 of them.

Box Truck Wrap/Attachment 15

Amount: \$7,121.30

Response: Entravision submits that re-wrapping PVBC's truck is not a legitimate and prudent advertising expense. There is simply no justification provided that the box truck has a material effect on the listenership of KPPV.

Vinyl for Scoreboard at Local Stadium/Attachment 16

Amount: \$794.83

Response: There is no mention of what stadium would be used for the placement of the vinyl wrap. Likewise, there is no indication that the stadium will even be in use when the output frequency change occurs. As with other of PVBC's proposed advertising promotions, one is hard pressed to find any precedent in Commission decisions for such reimbursement.

Interior Directional Signage with New Logos

Amount: \$3,000.00

Response: There is neither justification nor documentation for this expense. Entravision is at a loss to comprehend how replacing office interior signage relates to the legitimate and prudent reimbursement criteria of *Circleville* and its progeny. Perhaps, it has some value for

PVBC in how its offices might look like for employees to see, but none in order to induce listeners to adjust their listening habits.

Mortimer Painting/Attachment 17

Amount: \$740.00

Response: Entravision remains at a loss to comprehend how the repainting of an interior conference room relates to the legitimate and prudent reimbursement criteria of *Circleville* and its progeny. There is absolutely no relationship between the two.

Additional Signage for Remotes, Etc./Attachment 18

Amount: \$760.00

Response: There is no evidence that PVBC holds remotes for KPPV and how many it might hold when the output frequency change occurs and why it needs signs other than what is in its current inventory. As with other advertising promotions, there does not appear to be a direct relationship between what is being sought and the reimbursement criteria contained in *Circleville* and its progeny.

Advertising in Newspapers

Amount: \$338,000.00

Response: We are presented with no information as to the circulation of the four newspapers referenced by PVBC and why in a time period where newspapers are in a significant decline and read by few that a major package is needed as an advertising promotion. Moreover, there is no justification for full-page advertisements, when a smaller ad would suffice. Entravision would agree that a quarter-page advertisement in the largest circulation publication serving Prescott Valley is acceptable, provided the advertising purchased is for no more than one month.

Television Advertising/Attachment 19

Amount: \$168,240.00

Response: There is no indication that the Commission has ever determined that television advertising is a reasonable cost in a channel change proceeding. Entravision submits that there is no justification for television advertising, especially since the attachment speaks to the targeted audience being located in Prescott, Verde Valley and Flagstaff, not Prescott Valley, without any documentation as to how many KPPV listeners or potential listeners would be reached. Further, Entravision challenges whether television advertising is needed considering that few, if any, radio stations utilize expensive television advertising for promotional purposes. The final unacceptable element is the provision for one year of television advertising. There is absolutely no need for one year of advertising in order to alert listeners to a change in output frequency.

T-Shirts and Caps/Attachment 20

Amount: \$310,453.33

Response: The estimate is for 30,000 t-shirts and 20,000 caps, a sum that Entravision submits no broadcast station has ever purchased. These represent a large portion of the entire population of the service area. PVBC provides information sourced to an entity named Marketplace Insights (Attachment 21) that claims that 26% of the local population are KPPV listeners. What it doesn't say is how many listeners have a KPPV t-shirt or cap and regularly make use of one or the other and whether those items even contain the Station's output frequency.

This is far more than is necessary or proper and bears no relationship to any decision arising from *Circleville* and its progeny. Entravision submits, at best, that PVBC be compensated

for the replacement of any t-shirts or caps in its possession as of this date that contain KPPV's output frequency on them.¹¹

8 Large A-Frame Signs/Attachment 22

Amount: \$920.00

Response: Assuming that PVBC purchased this sign and it bears KPPV's output frequency on it, Entravision is not opposed to replacing it as a reasonable cost.

Lip Balms, Pens and Keychains/Attachment 23

Amount: \$5,095.00

Response: Entravision submits that there is no basis for claiming any of these small items as advertising promotions. They are not reasonable cost items and serve no purpose to convince a listener to find KPPV on another output frequency.

Car Shades/Attachment 24

Amount: \$2,251.40

Response: As with lip balms, etc., there is no basis for claiming any of these items as advertising promotions. They are not reasonable cost items

Note Pads/Attachment 25

Amount: \$11,250.00

Response: Entravision accepts that if PVBC has in its possession any remaining note pads from the 2019 purchase and those note pads contain a reference to the output frequency, the cost of reimbursing for the outstanding stock of note pads is a reasonable cost.

Pint Glasses/Attachment 26

Amount: \$1,702.05

¹¹ In Exhibit A, the accommodating party received the sum of \$305.00 as reimbursement for caps. Entravision submits that this is a reasonable amount for PVBC to receive.

Response: What can be said here? How do drinking glasses fit in with advertising promotions for a station's output frequency change?

Clothing/Attachments 27-29 and 30

Amount: \$6,414.98

Response: As with prior items, Entravision submits that clothing items bear no relationship to the *Circleville* reimbursement criteria. One has to wonder why PVBC stopped with the items selected and did not seek entire wardrobes to make use of. There is absolutely no reason for Entravision to pay for the purchase by PVBC of clothing items that PVBC may well then resell rather than give away. The Commission has never found a clothing item to be a reasonable cost in a channel change proceeding and this is not the time for it to do so.

Banners

Amount: \$900.00

Response: If PVBC has any banners in stock that contain its output frequency, Entravision accepts that their replacement would be a reasonable cost.

Repairing Websites

Amount: \$1,250.00

Response: Entravision is at a loss to understand what repairing a website involves and there is neither justification nor documentation to assist in this effort.¹² If it means to substitute references and a logo on a website, a statement from an IT consultant as to the time and expenses needed to do so would have been acceptable. In the absence of such information, this item is unacceptable.

¹² Exhibit A shows a reimbursement of \$41.25 for such website change. That is a reasonable sum for PVBC to receive.

Valpak Inserts, Zion Marketing and Valle Verde Advertising Mailings/Attachments

30 and 31

Amount: \$21,000.00

Response: It is well accepted in today's marketing world that junk mail, such as these advertising packets, are never examined by frustrated recipients. On the contrary, they are the first items that are relegated to the trash bin. Moreover, one year of such advertising packets, even if they reach any KPPV listeners, is unreasonable in connection with an output frequency change.

Live Remote Broadcasts

Amount: \$5,000.00

Response: Entravision submits that there is little or no direct or indirect expense attendant to setting up a broadcast from a site remote from the main studio. This is hardly the type of expense that *Circleville* and its progeny have ever authorized to be covered and the Commission should not do so here.

Seeking and Correcting Online Services

Amount: \$10,000.00

Response: As before, with these unsubstantiated expenses, one is left to wonder what the expense is all about. Assuming that there are online services that need to be corrected, Entravision is sure that PVBC's 30 employees could undertake the necessary efforts without materially affecting the time they have for their principal duties.

In sum, this is not the first instance in which Entravision has been required in this proceeding to chase after arguments that bear no relationship whatsoever to long established Commission precedent. The Commission's Decision is filled with the dismissal or denial of

PVBC's arguments that were wide of the mark. In this matter, PVBC has not only ignored Commission directions in preparing its Response, PVBC has compounded that failure by asking for reimbursement for items and services that bear no relationship whatsoever to the precedent to be found in the *Circleville* decision and the various cases dealing with *Circleville* that are described in each of the three Bureau and Commission decisions in this proceeding. Entravision commends the Commission for its tolerance of frivolous arguments, but there must come a time when the Commission has to take action against a party that has wasted the time of the Commission and of a licensee that is seeking to serve the public interest by improving its broadcast service. Now is the time for the Commission to do so.

Under the circumstances, Entravision urges the Commission to conclude that PVBC has failed to meet its evidentiary burden and deny its showing as to PVBC's legitimate and prudent expenses. Only as a matter of equity, Entravision urges to award to PVBC an expense reimbursement consistent with the channel change cases that have been adjudicated by it. Further, the Commission should direct PVBC to carry out its channel change within 30 days and, if not, to terminate its implied STA.

Respectfully submitted,

ENTRAVISION HOLDINGS, LLC

By: 

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Dated: March 4, 2022

EXHIBIT A

KCMI FREQUENCY CHANGE EXPENSES

Promotions

Magnets - Premier Advertisting Resources \$399.00
Logo Design, Table Cloth - Marketing Consultants \$335.00
Web Site Changes - Web Design with Class \$41.25
Building Signage - Cozy, Inc.\$630.00
Hats - Marketing Consultants \$305.00
Radio Imaging - Monumental Studios \$255.00

Office Supplies

Envelopes - Nebraska Print Works \$312.50
Business Cards - Nebraska Print Works \$69.78
Post Cards - Nebraska Print Works \$94.09
Postage - USPS \$97.78

Technical

Engineering Study - Review of Order to Show Cause and Prepare Report (Inv. No. 10067)
\$380.00
Engineering Report for Response to Order to Show Cause (Inv. No. 10087) \$285.00
Engineering Study - Review of Appaloosa Proposal - Chl 246 vs. Chl 282 (Inv No 10148)
\$427.50
Engineering Study - Review of Appaloosa May 2009 Settlement Offer (Inv. No. 10228)
\$380.00
Engineering Study - Review after Aaron Ishmael Discussion - Chl 246 vs Chl 282 (Inv No
10520) \$807.50
Minor Change Application (FCC Form 301) - Sterling Communications (Inv. No. 12464)
\$1,950.00
Exciter Modifications - J Squared Technical Service, Inc. \$111.53
Engineering Work at Transmitter Location - GatesAir, Inc. \$4,433.65

Advertising

Newspaper - Star-Herald, Torrington, Alliance, Garden County \$880.83

Billboard - Lamar - 2 Months \$1,275.00

Radio Promotion \$50.00

Application Filing Fees

FCC Filing Fee - Minor Change Application - fee included in DBR Invoice 14880677

FCC Filing Fee - License to Cover Application - Not included in DBR Invoices \$215.00

Legal Fees

Drinker Biddle & Reath, LLP -

Submission of FCC Applications for KCMI and Filings to Obtain Circleville Reimbursement
\$26,196.50

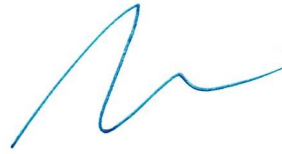
(incorporating fees and expenses in Invoices 14874390, 14880677, 14968080, 14979290,
14993573, 15001674, 1500861, 15027745, 15085450)

Total Circleville Reimbursement Costs = \$39,931.91

CERTIFICATE OF SERVICE

I, Barry A. Friedman, hereby certify that I have served on this 4th day of March, 2022, a copy of the foregoing **Response** 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