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

MOTION TO STRIKE

Entravision Holdings, LLC ("Entravision"), the licensee of Station KDVA(FM), Buckeye, Arizona, by its attorneys, hereby moves to strike the impermissibly submitted Update to Report Regarding Progress of Negotiations and Preliminary Assessment of Legitimate and Prudent Expenses ("Update"), filed by Prescott Valley Broadcasting Co. Inc. ("PVBC"), the licensee of Station KPPV(FM), Prescott Valley, Arizona, on March 4, 2022. The Update was not entitled to be presented in this proceeding and PVBC was fully cognizant, before doing so, that it should not be taking such an action. Despite being aware that its Update would not be entertained, PVBC proceeded to do so, requiring Entravision to prepare this pleading and the Commission to consider it. The Commission has no choice but to strike the Update and to take such necessary action as it deems appropriate where a party violates specific directives it has issued.

On January 25, 2022, the Commission released its *Memorandum Opinion and Order* in this proceeding. *Entravision Holdings, LLC*, FCC 22-4, released January 25, 2022 (the "Decision"). The Ordering Clauses of the Decision directed that Entravision and PVBC were to seek, within the following 30 days, 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. In the event that they failed to do so, a joint report was to the delivered to the Commission advising as to the results of the negotiations and PVBC was to, simultaneously, 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.

On February 22, 2022, PVBC contacted the Chief of the Media Bureau and asked her to grant it an extension of time in which to file its separate report, since the parties were in disagreement as to the reasonable cost of the channel change and were so advising the Commission. Within hours of that filing, the Chief of the Audio Division responded with a definitive rejection of it.[1] He concluded:

> 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 (emphasis added).

Unsatisfied with this result, PVBC, acting one day later, undertook an emailed reconsideration request. It asked the Division Chief to opine as to the basis for his previous

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[1] Complete versions of the communications between PVBC's counsel and the Chiefs of the Media Bureau and Audio Division are appended hereto as Exhibit A.

email opinion and what procedure PVBC might follow in order to seek reconsideration or review of the denial of the extension request. The Division Chief once again promptly informed PVBC that it was not going to receive an extension and confirmed that the deadline was a binding one. He reasoned:

> 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 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 (emphasis added).

Considering these clear and unequivocal responses from the Division Chief, one would have expected that PVBC would have ended its quest to submit information and arguments as to its reasonable cost following the deadline. Instead, and for no good reason, it has submitted the Update, perhaps in the expectation that the third effort will be a charm and the Division Chief will relent. Entravision submits that the Commission should consider the third time to be a third strike, placing PVBC out of the filing game and sent not just to the dugout but to the dressing room.[2]

Finally, Entravision wishes to note that it is not addressing any of the substantive elements of the Update owing to the Division Chief's clear determination that a deadline is a deadline. However, if the Commission should decide to alter that result, Entravision requests the opportunity to have a similar chance to make a submission not otherwise permitted by the Decision and offer its response to the presentation contained in the Update.

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[2] PVBC also hints at some form of responsive pleading to the March 4, 2022 Response filed by Entravision in compliance with the directions contained in the Ordering Clauses. The Commission should preempt Entravision from having to file another Motion to Strike by informing PVBC that any further pleadings in response to the Decision will be treated as inappropriate and, perhaps, a strike pleading.

WHEREFORE, it is requested that the Update to Report Regarding Progress of Negotiations and Preliminary Assessment of Legitimate and Prudent Expenses be stricken.

Respectfully submitted,

ENTRAVISION HOLDINGS, LLC

By:_____

Barry A. Friedman
Thompson Hine LLP
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 331-8800

Dated: March 7, 2022

EXHIBIT A

Friedman, Barry

From: Albert Shuldiner <Albert.Shuldiner@fcc.gov>
Sent: Tuesday, February 22, 2022 11:20 AM
To: Mark Denbo
Cc: Friedman, Barry
Subject: FW: [EXTERNAL]: Station KDVA(FM) (FIN: 2750); File No. BPH-20190723AAN

CAUTION EXTERNAL EMAIL

Mark –

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.

Al

From: Mark Denbo <mdenbo@fccworld.com>
Sent: Tuesday, February 22, 2022 10:45 AM
To: Holly Saurer <Holly.Saurer@fcc.gov>; James Bradshaw <James.Bradshaw@fcc.gov>; Nazifa Sawez <Nazifa.Sawez@fcc.gov>; Rodolfo Bonacci <Rodolfo.Bonacci@fcc.gov>
Cc: Friedman, Barry <Barry.Friedman@thompsonhine.com>
Subject: [EXTERNAL]: Station KDVA(FM) (FIN: 2750); File No. BPH-20190723AAN

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Good morning everyone. I hope you all had a great long weekend.

Pursuant to the attached Order, the deadline by which Prescott Valley Broadcasting Co., LLC ("PVBC") is to submit a Report to the Media Bureau in this matter is Thursday, February 24. On behalf of PVBC, I would like to request a one-week extension of that deadline, until Thursday, March 3. PVBC has been assiduously collecting estimates and invoices from third parties vendors, but it has not yet received all of them in paper or e-mail form. In addition, I am currently out of town, not returning to the office until later this week.

Counsel to Entravision (Barry Friedman, cc'd here) has indicated that he has no objection to this request for an extension of time.

Please call with any questions regarding this matter. Thanks in advance!

- Mark

Mark B. Denbo
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W., Suite 301

Washington, DC 20016
(202) 350-9656 *office*
(202) 365-8070 *mobile*
mdenbo@fccworld.com
www.fccworld.com

Friedman, Barry

From: Albert Shuldiner <Albert.Shuldiner@fcc.gov>
Sent: Wednesday, February 23, 2022 5:37 PM
To: Mark Denbo
Cc: Friedman, Barry
Subject: RE: [EXTERNAL]: Station KDVA(FM) (FIN: 2750); File No. BPH-20190723AAN

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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 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. With regard to your second question, any submission in a docketed proceeding is publicly available. Of course, you can request confidential treatment of the information you submit if it falls within the Commission's rules and precedent for confidential treatment. However, I believe there are previous cases where there have been disputes over what is a legitimate and prudent expense, and those cases have include a public discussion of the estimated or actual expenses. For example, you may have seen our recent letter concerning the reimbursement expenses in response to a Petition for Reconsideration filed by DKHTZ(FM) (DA22-144). If I recall correctly, that included detailed information about expenses.

Al

From: Mark Denbo <mdenbo@fccworld.com>
Sent: Wednesday, February 23, 2022 4:52 PM
To: Albert Shuldiner <Albert.Shuldiner@fcc.gov>
Cc: Friedman, Barry <Barry.Friedman@thompsonhine.com>
Subject: RE: [EXTERNAL]: Station KDVA(FM) (FIN: 2750); File No. BPH-20190723AAN

Good afternoon Al. Two follow-up questions:

1. Are you unable to grant an extension of time because the Order came from the full Commission and therefore the staff lacks the authority to grant an extension request? That is, should any extension request be directed to the OGC/full FCC?

2. Assuming Prescott Valley Broadcasting Co. Inc. submits a report that includes estimates and invoices to justify the legitimate and prudent expenses that are reimbursable, will such a report be made public?

Thanks in advance. Talk to you soon!

- Mark

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- Mark

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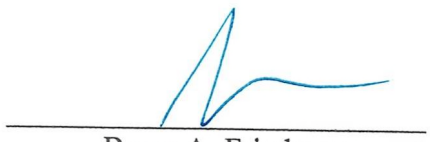
CERTIFICATE OF SERVICE

I, Barry A. Friedman, hereby certify that I have served on this 7th day of March, 2022, a copy of the foregoing **Motion to Strike** 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