

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

**SECOND MOTION TO STRIKE**

Entravision Holdings, LLC ("Entravision"), the licensee of Station KDVA(FM), Buckeye, Arizona, by its attorneys, hereby moves, for a second time, to strike an unauthorized pleading filed by Prescott Valley Broadcasting Co. Inc. ("PVBC"), the licensee of Station KPPV(FM), Prescott Valley, Arizona. This time, the Motion to Strike ("Motion") is against the Reply to Response ("Reply") submitted by PVBC on April 1, 2022. Much like an earlier pleading submitted by PVBC,<sup>1</sup> the Reply is 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 pleading was unacceptable and would not be entertained, PVBC proceeded to do so, requiring Entravision to prepare, once again, this Motion requesting that the Reply be stricken. The Commission has no choice but to strike the Reply and to take such necessary action

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<sup>1</sup> On March 4, 2022, PVBC submitted Update to Report Regarding Progress of Negotiations and Preliminary Assessment of Legitimate and Prudent Expenses ("Update"). Entravision has pending a well-reasoned Motion to Strike, filed on March 7, 2022.

as it deems appropriate where a party violates specific directives it has issued and which were affirmed by Commission officials in direct communications with counsel for PVBC.

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 be 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. The Commission did not request the submission of any additional pleadings and none were expected to be filed or should have been presented without clear Commission direction to do so.

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. 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 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 acceded to the advice given. On the contrary, PVBC has now twice ignored the Decision and the guidance from the Division Chief and filed unauthorized pleadings. However, this goes against the well-established policy of the Commission that where a pleading is not invited, it should not be filed and the recourse will be to strike it. *WWOR, Inc.*, 4 FCC Rcd 8127, 8129 n.1 (Rev. Bod 1989). That policy cannot be ignored in this matter.<sup>2</sup>

Finally, Entravision wishes to note that it is not addressing any of the substantive elements of the Reply owing to it being an unauthorized pleading. Should the Commission determine to accept this unauthorized pleading, Entravision requests the opportunity to have a

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<sup>2</sup> While the Commission has rejected Entravision's contention that PVBC has been engaged in the filing of strike pleadings, on the basis that no evidence of such an intent was present, Entravision submits that that such intent can be inferred from the filing of two unauthorized pleadings. An unauthorized pleading has all the indicia of an effort to delay action on a pending matter. Entravision asks the Commission to give due consideration to whether PVBC has crossed the line into the filing of strike pleadings.

similar chance to make a submission not otherwise permitted by the Decision and offer its response to the presentation contained in the Reply.

WHEREFORE, it is requested that the unauthorized Reply to Response be stricken.

Respectfully submitted,

**ENTRAVISION HOLDINGS, LLC**

**By:** /s/ Barry A. Friedman  
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Dated: April 4, 2022

**CERTIFICATE OF SERVICE**

I, Barry A. Friedman, hereby certify that I have served on this 4th day of April, 2022, a copy of the foregoing **Second Motion to Strike** on the following party by first-class mail, postage prepaid:

Mark Denbo, Esq.  
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/s/ Barry A. Friedman  
Barry A. Friedman

