

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

REPLY TO OPPOSITION TO “SECOND MOTION TO STRIKE”

Entravision Holdings, LLC (“Entravision”), the licensee of Station KDVA(FM), Buckeye, Arizona, by its attorneys, hereby replies to the Opposition to “Second Motion to Strike” (“Opposition”), filed by Prescott Valley Broadcasting Co. Inc. (“PVBC”), the licensee of Station KPPV(FM), Prescott Valley, Arizona, on April 18, 2022. In support thereof, Entravision states as follows.

Once again, PVBC has submitted a pleading that is unauthorized and impermissible and in opposing a motion to strike that pleading has presented arguments that are squarely at odds with the applicable facts and law. The analysis of whether or not to entertain PVBC’s Reply to Response, filed on April 1, 2022, requires one to start with the full Commission decision rendered in *Entravision Holdings, LLC*, FCC 22-4, released January 25, 2022 (the “Decision”). In the Decision, the Commission set out the procedures to follow in response to the determinations set out in the Decision. The parties were given a set of procedural dates in order

to resolve their channel change reimbursement dispute. Three pleading dates were provided: a submission on the 30th day, February 24, 2022, as to whether the parties had resolved their dispute, and, if not, a PVBC showing, 30 days later, as to its legitimate and prudent expenses, followed by Entravision's response to PVBC's expense showing, to be submitted 14 days later. No more was requested from the parties and Entravision has abided by that requirement. PVBC has not leading to the motions to strike its unauthorized pleadings.

PVBC should not be permitted to ignore the directives contained in the Decision. It has, on March 4, 2022, submitted an Update to Report Regarding Progress of Negotiations and Preliminary Assessment of Legitimate and Prudent Expenses, which Entravision has previously filed a Motion to Strike against. Now, PVBC has filed a Reply to Response, on April 1, 2022, containing PVBC's arguments objecting to the Response that Entravision presented to PVBC's claimed legitimate and prudent expenses. The Second Motion to Strike seeks to have this pleading rejected as well.

This is not a complicated matter. The Commission rendered a Decision and told the parties what they should submit in order to enable the Commission to reach a conclusion as to what PVBC's legitimate and prudent expenses were. No more was needed nor desired. In fact, the Chief of the Audio Division, in emails to PVBC's counsel, said much the same thing. The Division Chief denied a request for an extension of the filing date and an effort to seek review of that action. It was evident that the requests were denied because the Division Chief believed that the Commission has set out strict procedural deadlines not to be altered.

As PVBC has evidenced throughout this proceeding, rules and policies are to be ignored and not honored. The reasoning for that is set out in the Opposition. PVBC contends that so

long as it is not told in an order as to what pleadings it can't file, it will file such a pleading. This claim is wide of the mark.

There is no basis for the argument that there must be a specific prohibition before any pleading becomes an unauthorized one. That would require a wholesale rewriting of the Commission's rules and open the floodgates for the endless rounds of pleadings that PVBC has unleashed in this case. Entravision submits that the correct policy is that a party can file a pleading only where there is a procedural rule allowing for it or where the Commission has authorized it, either directly or in response to a request that accompanies the unauthorized pleading. In fact, if one looks at the Commission's rules, they speak to what is permitted, not what is impermissible. Thus, the Commission should reject PVBC's claims and conclude that a party must determine if its pleading is permitted or authorized, not whether there is a prohibition on what it intends to accomplish.¹ *Discussion Radio, Incorporated*, 19 FCC Rcd 7433 (2004). In sum, the rules do not provide for the acts taken by PVBC and its unauthorized pleadings must be stricken.

¹ Interestingly, PVBC fails to provide any precedent for its argument. Entravision has relied on *WWOR, Inc.*, 4 FCC Rcd 8127, 8129 n. 1 (Rev. Bd. 1989). PVBC seeks to distinguish *WWOR* on the basis that *WWOR* involved the application of a Commission rule and there is no Commission rule involved in this proceeding. Of course, there is no rule as the Commission was soliciting submissions in order to enable it to resolve a pending matter. There is no reason whatsoever to differentiate a Commission directive from a rule. They both set out how parties are to comply with their obligations as participants in Commission proceedings.

WHEREFORE, it is requested that the Reply to Response 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: April 19, 2022

CERTIFICATE OF SERVICE

I, Barry A. Friedman, hereby certify that I have served on this 19th day of April, 2022, a copy of the foregoing **Reply to Oppoisiton to "Second 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