



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
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Entravision Holdings, LLC
c/o Barry A. Friedman, Esq.
Thompson Hine LLP
1920 N Street, NW, Suite 800
Washington, DC 20036
(Sent by email)

Prescott Valley Broadcasting Co. Inc.
c/o Mark B. Denbo, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW, Suite 301
Washington, DC 20016
(Sent by email)

In re: **Entravision Holdings, LLC**
 KDVA(FM), Buckeye, AZ
 Facility ID No. 2750
 File No. BPH-20190723AAN

Entravision Holdings, LLC
KVVA-FM, Apache Junction, AZ
Facility ID No. 1331
File No. BPH-20190723AAO

Prescott Valley Broadcasting Co. Inc.
KPPV(FM), Prescott Valley, AZ
Facility ID No. 53414
File No. BLH-19930204KB

Dear Counsel:

We have before us two applications (Applications) filed by Entravision Holdings, LLC (Entravision), to make minor changes to the licensed facilities of KVVA-FM, Apache Junction, Arizona, and KDVA(FM), Buckeye, Arizona. Also before us are pleadings jointly filed by Prescott Valley Broadcasting Co. Inc. (PVBC) and ITM, LLC (ITM) in relation to the Applications. In addition, we have before us PVBC's response to a Media Bureau (Bureau) letter directing it to show cause why the Commission should not modify the license of its station—KPPV(FM), Prescott Valley, Arizona—to accommodate Entravision's proposed changes to KVVA-FM and KDVA(FM)'s licensed facilities.

Finally, we have before us Entravision's request that we modify the coordinates of the vacant FM allotment of Channel 297C2 at Aguila, Arizona, to accommodate the proposed changes to KVVA-FM's licensed facilities. For the reasons discussed below, we grant the Applications, modify the license of KPPV(FM), and modify the coordinates associated with the FM allotment at Aguila, Arizona.

Background. Entravision proposes to upgrade KVVA-FM from a Class C3 to a Class C2 FM station, move the station's transmitter, and change its community of license to Sun Lakes.¹ To facilitate this, Entravision proposes to move KDVA(FM) from Channel 295 to Channel 294.² To accommodate this, Entravision requests that we modify KPPV(FM)'s license to specify Channel 295 instead of Channel 294.³ Finally, to allow for KPPV(FM)'s operation on Channel 295, Entravision requests modification of the coordinates for the vacant FM allotment of Channel 297C2 at Aguila, Arizona.⁴

As required by section 316(a) of the Communications Act of 1934, as amended (Act),⁵ we notified PVBC of Entravision's proposal to modify KPPV(FM)'s license to accommodate the changes proposed in the Applications, and our determination that this would result in public interest benefits.⁶ We ordered PVBC to show cause why KPPV(FM)'s license should not be modified.

PVBC responded, opposing modification of KPPV(FM)'s license.⁷ PVBC notes that the proposed changes also will impact K296GN, Prescott Valley, Arizona, which rebroadcasts the HD3 signal of KPPV(FM) and is licensed to ITM, a company owned by the same two individuals as PVBC.⁸ PVBC states that, together with ITM, it submitted an offer to Entravision related to the "extent of the proposed reimbursement."⁹ PVBC states that Entravision did not respond to the offer and argues Entravision "has not negotiated in good faith."¹⁰ PVBC indicates that the offer requested that agreed-upon amounts be deposited in an escrow account and states that "it cannot support grant of the Applications . . . unless Entravision agrees to deposit into an escrow account an estimate of the reasonable costs that PVBC and ITM would incur."¹¹

¹ File No. BPH-20190723AAO (KVVA Application).

² File No. BPH-20190723AAN (KDVA Application).

³ KVVA Application, Attach. 34 (Comprehensive Allocation Study), at 6; KDVA Application, Attach. 34 (Comprehensive Allocation Study), at 6.

⁴ KVVA Application, Attach. 34 (Comprehensive Allocation Study), at 7; KDVA Application, Attach. 34 (Comprehensive Allocation Study), at 7.

⁵ 47 U.S.C. § 316(a).

⁶ *Prescott Valley Broad. Co. Inc.*, BLH-19930204KB, Letter Order (MB Oct. 10, 2019) (*Show Cause Order*).

⁷ Opposition to Order to Show Cause of Prescott Valley Broad. Co. Inc., File No. BPH-20190723AAN (rec'd Nov. 12, 2019).

⁸ *Id.* at 2, n. 2.

⁹ *Id.* at 3.

¹⁰ *Id.* at 2, 3.

¹¹ *Id.* at 3-4.

Prior to formally opposing the *Show Cause Order*, PVBC—together with ITM—filed Comments regarding the KVVA-FM Application¹² and a Statement for the Record in relation to the KDVA(FM) Application.¹³ Both pleadings note that the proposed changes will impact K296GN in addition to KPPV(FM), discuss the expenses that both KPPV(FM) and K296GN will incur as a result of the changes, and indicate that PVBC and ITM “have expressed to Entravision their willingness to cooperate.”¹⁴ The pleadings state that PVBC and Entravision have “exchanged correspondence regarding the extent of the reimbursement” but “Entravision has not yet agreed to provide sufficient reimbursement to cover PVBC[‘s] and ITM’s reasonable expected costs.”¹⁵ PVBC and ITM indicate they cannot support grant of the Applications unless Entravision “becomes willing to reimburse PVBC and ITM for the reasonable costs that they will have to undertake in order to accommodate Entravision.”¹⁶

Entravision opposed both the Comments and the Statement.¹⁷ It argues that both pleadings were unauthorized and should be stricken from the record.¹⁸ Entravision notes that PVBC and ITM do not dispute that the changes proposed by Entravision would benefit the public interest.¹⁹ It further asserts that it has complied with the Commission’s requirement that a party seeking an involuntary channel change of another station must state its willingness to reimburse the affected station licensee for the reasonable costs incurred in connection with carrying out the proposed channel change.²⁰ Entravision alleges that PVBC and ITM filed their pleadings to “extract unjustified relief” in the form of reimbursement of the costs related to relocation of K296GN and reimbursement of an amount related to KPPV(FM) that far exceeds the total costs cited in Commission precedents.²¹ Entravision alleges that PVBC and ITM thus have abused the Commission’s processes.²²

¹² Comments of Prescott Valley Broad. Co. Inc. and ITM, LLC, File No. BPH-20190723AAO (rec’d Oct. 28, 2019) (Comments).

¹³ Statement for the Record of Prescott Valley Broad. Co. Inc. and ITM, LLC, File No. BPH-20190723AAN (rec’d Oct. 28, 2019) (Statement).

¹⁴ Comments at 3; Statement at 3.

¹⁵ *Id.*

¹⁶ Comments at 4; Statement at 4.

¹⁷ Opposition of Entravision Holdings, LLC, File No. BPH-20190723AAO (rec’d Nov. 1, 2019) (Comments Opposition); Opposition of Entravision Holdings, LLC, File No. BPH-20190723AAN (rec’d Nov. 1, 2019) (Statement Opposition) (collectively, Oppositions).

¹⁸ Comments Opposition at 1-2; Statement Opposition at 1-2.

¹⁹ Comments Opposition at 2-3; Statement Opposition at 2 (incorporating by reference and attaching the KVVA Opposition).

²⁰ Comments Opposition at 3; Statement Opposition at 2 (incorporating by reference and attaching the KVVA Opposition).

²¹ Comments Opposition at 3-6; Statement Opposition at 2 (incorporating by reference and attaching the KVVA Opposition). Entravision submits a copy of a memo it received from PVBC, which estimates the “total amount subject to reimbursement” for both KPPV(FM) and K296GV to be “\$2.75 million.” Comments Opposition, Exh. A.

²² Comments Opposition at 6; Statement Opposition at 2 (incorporating by reference and attaching the KVVA Opposition).

PVBC and ITM replied.²³ They maintain that both the Comments and the Statement for the Record were appropriately filed.²⁴ They also argue that Entravision has failed to negotiate in good faith because it has not responded to PVBC's correspondence regarding its anticipated expenses, that the amount set forth in the estimate represents the expenses that PVBC and ITM expect to incur.²⁵ PVBC and ITM also reiterate their desire for the "agreed-upon amounts to be deposited—at the outset—into an escrow account."²⁶ They argue that use of an escrow account would both ensure that the expenses incurred by PVBC and ITM are reasonable and that PVBC and ITM actually receive the reimbursement to which they are entitled.²⁷

Discussion. Procedural Issue. At the outset, we decline to—as Entravision requests—strike the Comments and Statement for the Record filed by PVBC and ITM. Section 73.3587 permits the filing of informal objections to any application for an instrument of authorization.²⁸ While not captioned as such, the pleadings submitted by PVBC and ITM qualify as informal objections to the Applications. To the extent that Entravision cites to sections 1.41, 1.45 and 1.419 of the Commission's rules,²⁹ we note that these rule provisions are inapposite.³⁰ Accordingly, we consider the Comments and Statement for the Record below.

Substantive Issues. Section 316(a) of Act permits the Commission to modify "any station license or construction permit . . . if in the judgment of the Commission such action will promote the public interest, convenience, and necessity." We find Entravision's proposal to upgrade, move and change the community of license for KVVA-FM satisfies the requirements for a station to change its community of license,³¹ and furthers the public interest. Specifically, KVVA-FM's proposed use of Channel 296C2 at Sun Lakes is mutually exclusive with its current use of Channel 296C3 at Apache Junction. In addition, the reallocation of KVVA-FM to Sun Lakes will

²³ Reply to Opposition to Comments of Prescott Valley Broad. Co. and ITM, LLC, File No. BPH-20190723AAO (rec'd Nov. 13, 2019) (Comments Reply); Reply to Opposition to Statement for the Record of Prescott Valley Broad. Co. and ITM, LLC, File No. BPH-20190723AAN (rec'd Nov. 13, 2019) (Statement Reply).

²⁴ Comments Reply at 1-2; Statement Reply at 1-2.

²⁵ Comments Reply at 2-4.

²⁶ *Id.* at 4-5.

²⁷ *Id.*

²⁸ 47 CFR § 73.3587.

²⁹ Comments Opposition at 1-2; Statement Opposition at 1-2.

³⁰ Section 1.41 relates to informal requests for Commission action, while section 1.419 relates to the filing of comments in rulemaking proceedings. Neither apply to pleadings opposing grant of applications for broadcast authorizations. Further, while Section 1.45 does generally apply to such pleadings, section 73.3587 specifically states that "[t]he limitation on pleadings and time for filing pleadings provided for in § 1.45 of the rules shall not be applicable to any objections duly filed under this section."

³¹ A station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's FM allotment priorities. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recons. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

not deprive Apache Junction of its sole local service. Finally, the reallocation of KVVA-FM to Sun Lakes will result in a preferred arrangement of allotments.³²

Having reached this conclusion, we find grant of the KDVA Application, which will facilitate KVVA-FM's improved service to the Phoenix-Mesa Urbanized Area, to be in the public interest. We further find that PVBC has not raised a substantial and material question of fact that would warrant a hearing on modification of the KPPV(FM) license to specify operation on Channel 295C2 in lieu of Channel 294C2 at Prescott Valley. As we have previously stated, "[i]t is well settled that the substitution of an existing station's channel serves the public interest where the substitution permits the provision of new or expanded service at another community."³³ We have also found that the public interest benefit of this new service outweighs any temporary disruption to the listeners of the station changing channels.³⁴ In this instance, the proposed channel substitution and license modification for KPPV(FM) is in the public interest and, therefore, permissible under Section 316(a),³⁵ because it will allow KVVA-FM to provide service to a greater area and greater population within the Phoenix-Mesa Urbanized Area than it currently does.

Consistent with Commission precedent, Entravision must reimburse PVBC for its reasonable and prudent costs associated with the involuntary channel change at Prescott Valley.³⁶ Entravision has committed to do so.³⁷ We note that determination of what constitutes legitimate and prudent expenses for reimbursement is left to the expeditious good faith negotiation of the

³² Both Apache Junction, and Sun Lakes are part of the Phoenix-Mesa Urbanized Area. Thus, KVVA-FM's move is an intra-Urbanized Area move and no *Tuck* showing demonstrating Sun Lakes' independence from the Phoenix-Mesa Urbanized Area is required. See *Gearhart, Madras, Manzanita, and Seaside, Oregon*, Report and Order, 26 FCC Rcd 10259, 10262-63 (MB 2011) ("[T]here is no need for a *Tuck* showing where both the station's current and proposed communities of license are located within an Urbanized Area because such intra-urbanized area moves do not present the same concerns as rural to urban moves."). Further, as an intra-Urbanized Area move, we examine the proposed change in KVVA-FM's community of license under FM Allotment Priority 4, "other public interest matters." *Id.* Specifically, we determine from which community the station would be better able to serve the Urbanized Area. Entravision has demonstrated that KVVA-FM will provide service to a greater area and greater population within the Phoenix-Mesa Urbanized Area from Sun Lakes than it currently does from Apache Junction. KVVA Application, Attach. 36 (Section 307(b) Engineering) (indicating KVVA-FM's 60 dBμ service to the Urbanized Area would improve by 919,158 persons and 648 square kilometers, and that there would be a net gain of 60 dBμ service to 1,166,599 persons). In addition, a staff engineering analysis determined that the proposed change of community of license would result in a net gain and would serve the public interest.

³³ *Americus and Emporia, Kansas*, Report and Order, 21 FCC Rcd 7258, 7259 (MB 2006) (ordering an involuntary channel substitution for an existing station to accommodate a first local service at another community). See also *Ava, Branson, and Mountain Grove, Missouri*, Report and Order, 10 FCC Rcd 13035, 13036 (MMB 1995) (requiring involuntary channel substitutions for two stations to accommodate an upgrade in channel class and expanded service for a station at another community).

³⁴ See *Circleville, Ohio, Second Report and Order*, 8 FCC 2d 159, 162, para. 7 (1967) (*Circleville*); *Connersville, Madison, and Richmond, Indiana*, Report and Order, 20 FCC Rcd 18871, 18876 (MB 2005).

³⁵ 47 U.S.C. § 316(a) (permitting the modification of a station's license or construction permit to promote the public interest).

³⁶ See *Circleville*, 8 FCC 2d at 163, para. 11.

³⁷ KVVA Application, Attach. 34 (Comprehensive Allocation Study), at 6; KDVA Application, Attach. 34 (Comprehensive Allocation Study), at 6.

parties, subject to Commission adjudication if the parties are unable to reach agreement or to enter into binding arbitration.³⁸ We also note that the Commission generally does not require advance payment or escrow accounts.³⁹ We see no reason to do so here, where the record contains no evidence calling into question Entravision's financial ability to reimburse PVBC.⁴⁰

In addition, to the extent that PVBC (and ITM) assert that Entravision must reimburse ITM expenses incurred with respect to K296GN, we reject their claim. FM translators, like K296GN, are authorized on a secondary basis and are subject to displacement by full-service FM stations.⁴¹ In constructing K296GN, ITM necessarily "recognize[d] and accept[ed] the "inherent risk that its station is always subject to displacement by a full service station," like KVVA-FM.⁴²

Finally, we find no merit to Entravision's allegation that the Comments and the Statement are strike pleadings.⁴³ A strike pleading is a pleading filed in bad faith for the primary purpose of blocking, impeding, or delaying the grant of an application.⁴⁴ A party alleging a strike petition must make a strong showing that delay is the primary and substantial purpose behind the pleading.⁴⁵ The Commission will not "infer a 'strike' motive from the mere filing" of an objection, even if the objecting party may have gained some benefit from normal processing delays.⁴⁶ Entravision has submitted no extrinsic evidence that delay was a "primary and substantial purpose" behind filing of the Comments or the Statement. Accordingly, we decline to strike the Comments or the Statement, or otherwise sanction PVBC and ITM.

³⁸ See, e.g., *KPVO, Fountain Green, Utah*, Letter Order, 31 FCC Rcd 8916, 8921 (MB 2016), citing *Peter Wayne Lechman*, Memorandum Opinion and Order, 8 FCC Rcd 3058, 3058 (MMB 1993). To the extent that PVBC and ITM assert Entravision has not negotiated in good faith, we find their claim to be premature. The obligation to negotiate begins not when a license modification pursuant to section 316 of the Act is proposed, but when it is ordered. See *Pike Road, Alabama*, Report and Order, 29 FCC Rcd 13947, 13950, para. 9 (MB 2014) (stating "it is not necessary to delay our decision pending the development 'of a workable [reimbursement] plan'" because "the parties are responsible for negotiating the details and logistics of reimbursement"). Further, we do not agree that a licensee proposing a channel change is required to put funds into escrow for the reimbursement of the costs that an affected licensee will incur. See *infra* note 40.

³⁹ *Othello, East Wenatchee and Cashmere, Washington, and Wallace, Idaho*, Report and Order, 6 FCC Rcd 6476, 6478 para. 10 (MMB 1991) (explaining the Commission normally does not "require advance payment or escrow accounts").

⁴⁰ See, e.g., *Dickson, Tennessee*, Report and Order, 4 FCC Rcd 8707, 8707, para. 5 (MMB 1989) (denying a request for an escrow arrangement because lack of a factual basis questioning a party's ability to reimburse).

⁴¹ *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7224, para. 86 (1990).

⁴² *FCC Adopts Limit for NCE FM New Station Applications in October 12 – October 19, 2007 Window*, Public Notice, 22 FCC Rcd 18699, 18702 (2007).

⁴³ KVVA Opposition at 2, n.1; KDVA Opposition at 2.

⁴⁴ *Radio Carrollton*, Decision, 69 FCC 2d 1139, 1150, para. 24 (1978) (*Radio Carrollton*), clarified, 69 FCC 2d 424 (1978), recon. denied, 72 FCC 2d 264 (1979), *aff'd mem. sub nom. Faulkner Radio, Inc. v. FCC*, No. 79-1749 (D.C. Cir. Oct. 15, 1980), cert. denied, 450 U.S. 1041 (1981).

⁴⁵ *Id.* at 1150, para. 25.

⁴⁶ *Id.* at 1150, para. 26.

Conclusion/Ordering Clauses. In view of the above, we conclude that the public interest is served by grant of the Applications, modification of the license for KPPV(FM), and modification of the reference coordinates for the FM allotment at Aguila, Arizona. Accordingly, IT IS ORDERED, that, the Applications filed by Entravision Holdings, LLC, on July 23, 2019, to make minor changes to the licensed facilities of Station KVVA-FM, Apache Junction, Arizona (BPH-20190723AAO), and Station KDVA(FM), Buckeye, Arizona (BPH-20190723AAN), ARE GRANTED.

IT IS FURTHER ORDERED, that pursuant to Section 316 of the Communications Act of 1934, as amended,⁴⁷ the license for Station KPPV(FM), Prescott Valley, Arizona, IS MODIFIED to specify operation on Channel 295C2 in lieu of Channel 294C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee of Station KPPV(FM) shall submit to the Commission a minor change application for construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620;

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

IT IS FURTHER ORDERED, that Entravision Holdings, LLC, SHALL REIMBURSE the licensee of Station KPPV(FM) for the reasonable costs of implementing the channel change specified herein.

Finally, IT IS ORDERED, that, effective July 21, 2020, the reference coordinates for the FM allotment of Channel 297C2 at Aguila, Arizona, SHALL BE 33-56-32 NL, and 113-15-39 WL.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁴⁷ 47 U.S.C. § 316(a).