



Federal Communications Commission
Washington, D.C. 20554

October 21, 2020

In Reply Refer to:
1800B3-HOD

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

Dear Counsel:

We have before us a Petition for Reconsideration (Petition) filed by Prescott Valley Broadcasting Co. Inc. (PVBC), licensee of KPPV(FM), Prescott Valley, Arizona (Station).¹ PVBC seeks reconsideration of a letter decision (*Letter Order*) that (1) authorized Entravision Holdings, LLC (Entravision) to make minor changes to the licensed facilities of KVVA-FM, Apache Junction, Arizona, and KDVA(FM), Buckeye, Arizona, and (2) modified the Station's license to specify a different operating frequency in order to accommodate those changes.² PVBC requests that we require Entravision "to deposit funds into an escrow account before PVBC incurs any expenses" related to its modified license. As detailed below, we affirm our decision not to require escrow. Accordingly, we deny the Petition.

Background. Section 316(a) of the Communications Act of 1934, as amended (Act), provides that the Commission may modify "any station license . . . if in the judgment of the Commission such

¹ Petition for Reconsideration of Prescott Valley Broad. Co. Inc., File No. BPH-20190723AAN (filed Aug. 19, 2020) (Petition).

² *Entravision Holdings, LLC*, Letter Order (MB July 21, 2020) (*Letter Order*)

action will promote the public interest, convenience, and necessity.”³ Where a station’s license is modified—pursuant to section 316(a)—to specify a different operating frequency in order to accommodate construction of a new station or modification of another existing station, the Commission requires the party benefitting from the license modification (benefiting party) to reimburse the party whose license was modified (accommodating party) for the reasonable costs associated with the channel change.⁴ The timing, manner and extent of this reimbursement are left to the good faith negotiation of the parties involved.⁵ The parties are expected to reach a reasonable and equitable agreement in an expeditious manner.⁶ The Commission does not mediate, at the outset, claims to establish the amount of reimbursement.⁷ The Commission does so only as a last resort.⁸

As noted above, in the *Letter Order*, we modified the Station’s license to specify a different operating frequency. We also ordered Entravision to reimburse PVBC for the reasonable costs of changing the Station’s channel but declined to require that the parties use an escrow account. We noted that the Commission generally does not require escrow accounts, and stated there was no reason to impose an escrow requirement on Entravision because “the record

³ 47 USC § 316(a).

⁴ *Lake City, Mullins, Conway, and Kingstree, S.C., and Fayetteville and Fairmont, N.C.*, Report and Order, 47 FCC 2d 1067, 1078, para. 26 (1964) (*Lake City*) (noting that “it is now well-settled Commission policy . . . to allow and provide for reimbursement for the reasonable costs of the channel change . . . from the party or parties ultimately benefitting from the new or changed assignments thereby permitted”). See also *Colonial Heights, Tennessee*, Memorandum Opinion and Order, 11 FCC Rcd 18079, 18082, para. 11 (MMB 1996) (“It has been our consistent policy . . . that a party . . . , which would benefit from the change of frequency of another station, is required to reimburse that station for the reasonable costs associated with its channel change.”).

⁵ *Irvington, Kentucky, and French Lick, Indiana*, Report and Order, 25 FCC Rcd 1147, 1149, para. 7 (MB 2010) (*Irvington*) (noting that the timing of reimbursement is a matter that can be negotiated by the parties); *Cheyenne, Wyoming, and Gering, Nebraska*, Report and Order, 15 FCC Rcd 7528, 7531-32, para. 8 (MMB 2000) (*Cheyenne*) (stating “we will leave matters such as the time and manner of reimbursement to the good faith negotiations of the parties” and “what constitutes legitimate and prudent expenses for reimbursement is left to the good faith negotiation of the parties”); *Camas, Washington, and Seaside, Oregon*, Report and Order, 8 FCC Rcd 1796, 1797, para. 5 (MMB 1993) (*Camas*) (“Reimbursement of costs incurred by the affected station, both technical and promotional, is left to the good faith negotiation of the parties involved.”); *Castle Rock, Colorado Springs, Frisco, and Salida, Colorado; Raton, New Mexico*, Report and Order, 7 FCC Rcd 7688, 7670, para. 9 (MMB 1992) (*Castle Rock*) (noting that time and manner of reimbursement are matters left to the good faith negotiations of the parties).

⁶ *KPVO(FM), Fountain Green, Utah*, Letter Order, 31 FCC Rcd 8916, 8921 (MB 2016) (*KPVO*) (“Under *Circleville* and subsequent cases, determination of what constitutes legitimate and prudent expenses for reimbursement is left to the expeditious good faith negotiation of the parties . . .”); *Camas*, 8 FCC Rcd at 1796, para. 5 (“Parties are expected to reach a reasonable and equitable agreement in an expeditious manner.”). While negotiations may begin earlier, they must begin immediately following modification of the accommodating party’s license. See *Berlin, De Forest, Markesan and Wautoma, Wisconsin*, Report and Order, 10 FCC Rcd 7733, 7734, para. 10 (MMB 1995) (*Berlin*) (stating that, “[o]nce a permit has been granted, we expect parties to negotiate in good faith”). See also *Ada, Newcastle, and Watonga, Oklahoma*, Report and Order, 11 FCC Rcd 16896, 16901, para. 19 (MMB 1996) (declining to require that accommodating party and benefitting party “reach agreement on the reimbursement amount prior to the modification” of the accommodating party’s license).

⁷ See *Camas*, 8 FCC Rcd at 1797, para. 5; *Milan, Metter, Swainsboro, and Wrens, Georgia*, Opinion, 6 FCC Rcd 5793, 5794, para. 6 (MMB 1991).

⁸ See *id.*

contain[ed] no evidence calling into question Entravision's financial ability to reimburse PVBC."⁹

PVBC timely filed the Petition, which challenges solely our decision not to require Entravision "to deposit funds into an escrow account before PVBC incurs any expenses."¹⁰ Entravision opposed the Petition,¹¹ and PVBC replied.¹² We consider these pleadings below.

Discussion. We reject PVBC's arguments for imposition of an escrow requirement. Accordingly, we affirm our decision not to require an escrow account in this case, and deny the Petition.

At the outset, we find no merit to PVBC's claim that the *Letter Order* "does not set forth adequate reasoning for rejecting [its] suggestion to establish an escrow account."¹³ In fact, the *Letter Order* explained that we generally do not require advance payment or escrow accounts,¹⁴ and stated there was no reason to require an escrow account here because the record contained "no evidence calling into question Entravision's financial ability to reimburse PVBC."¹⁵ In support of this finding, the *Letter Order* cited *Dickson, Tennessee*.¹⁶ In that case, the Mass Media Bureau denied an accommodating party's request for an escrow arrangement on the ground that there was no factual basis for questioning the benefitting party's ability to reimburse.¹⁷ As we have noted previously, while an escrow arrangement "might provide a reasonable means for discharging the reimbursement obligation," "there may well be other means for doing so

⁹ *Letter Order* at 6.

¹⁰ PVBC also filed a Request for Stay. Request for Stay of Prescott Valley Broad. Co. Inc., File No. BPH-20190723AAN (filed Aug. 19, 2020). Entravision opposed the Request for Stay. Opposition to Request for Stay of Entravision Holdings, LLC, File No. BPH-20190723AAN (filed Aug. 24, 2020). Because we herein address the merits of the Petition and uphold the *Letter Order*, these pleadings are rendered moot and are dismissed.

¹¹ Opposition to Petition for Reconsideration of Entravision Holdings, LLC, File No. BPH-20190723AAN (filed Aug. 24, 2020).

¹² Reply to Opposition to Petition for Reconsideration of Certain Substantive Issues of Prescott Valley Broad. Co. Inc., File No. BPH-20190723AAN (filed Sept. 11, 2020) (Reply). In response to the Reply, Entravision submitted a Statement for the Record. Statement for the Record of Entravision Holdings, LLC, File No. BPH-20190723AAN (filed Sept. 21, 2020). PVBC then submitted a Counterstatement for the Record. Counterstatement for the Record of Prescott Valley Broad. Co. Inc., File No. BPH-20190723AAN (filed Sept. 25, 2020) (Counterstatement). Entravision then filed a Motion to Strike the Counterstatement. Motion to Strike of Entravision Holdings, LLC, File No. BPH-20190723AAN (filed Sept. 29, 2020). PVBC opposed the motion, and Entravision replied. Opposition of Prescott Valley Broad. Inc., File No. BPH-20190623AAN (filed Oct. 9, 2020); Reply of Entravision Holdings, LLC, File No. BPH-20190623AAN (filed Oct. 13, 2020). All of these pleadings are unauthorized and are dismissed. See 47 CFR § 1.106(f), (g), (h) (authorizing only the filing of petitions for reconsideration, supplements to such petitions, oppositions to them, and replies to any oppositions).

¹³ Petition at 3.

¹⁴ *Letter Order* at 6, citing *Othello, East Wenatchee and Cashmere, Washington, and Wallace, Idaho*, Report and Order, 6 FCC Rcd 6476, 6478, para. 10 (MMB 1991).

¹⁵ *Letter Order* at 6. Indeed, in the Petition, PVBC acknowledges that Entravision "has the financial ability to reimburse PVBC for its costs." Petition at 4.

¹⁶ *Letter Order* at 6, citing *Dickson, Tennessee*, Report and Order, 4 FCC Rcd 8707 (MMB 1989) (*Dickson*).

¹⁷ *Dickson*, 4 FCC Rcd at 8707, para. 5.

consistent with the legitimate interests of the parties and the public.”¹⁸ We affirm that, “[a]bsent a factual basis for questioning a party’s financial ability to reimburse,” “matters such as the time and manner of reimbursement” are left “to the good faith negotiations of the parties.”¹⁹

We also are unpersuaded by PVBC’s assertion that equitable considerations support an escrow requirement. PVBC asserts that (1) “[i]t would be grossly unfair . . . to require PVBC . . . to shoulder the entire burden of a channel change in the mere hopes that Entravision . . . will provide reimbursement,”²⁰ (2) undertaking a channel change during a global pandemic without a guarantee of full reimbursement could lead to economic ruin for an accommodating licensee such as PVBC,²¹ and (3) an escrow account is needed to “level the playing field.”²² While PVBC suggests that there is an imbalance of bargaining power here, we disagree. It is Commission policy to “condition construction permits which are dependent upon the change of channel by an existing station on the issuance of program test authority to that station.”²³ This policy prevents a benefitting party from going “on the air with [its] new or improved services until such time as the [accommodating party is] ready to begin operation on [its] new channel[].”²⁴ We note that the construction permit issued for KDVA(FM) includes just such a condition.²⁵

¹⁸ *Id.*

¹⁹ *Id.* See also *Irvington*, 25 FCC Rcd at 1149-50, para. 7 (stating the Bureau would not depart from its standard reimbursement procedures because accommodating party had not, among other things, provided documentation to support its claim that it could not afford to “front” the costs of moving its station to a new channel); *Cheyenne*, 15 FCC Rcd at 7531-32, para. 8 (declining to require advance payment “because no showing ha[d] been made as to [benefitting party’s] inability to reimburse”); *Castle Rock*, 7 FCC Rcd at 7670, para. 9 (same).

²⁰ Petition at 4-5.

²¹ *Id.* at 4.

²² *Id.* at 5.

²³ *Canovanas, Culebra, Las Piedras, Mayaguez, Quebradillas, San Juan, and Vieques, Puerto Rico, and Christiansted and Frederiksted, Virgin Islands*, Report and Order, 10 FCC Rcd 6673, 6677, para. 19 (MMB 1995) (*Canovanas*). See also *Emmis Austin Radio Broad., L.P.*, Letter Order, 35 FCC Rcd 556, 565 (MB 2020) (ordering that program tests on the benefitting station’s new channel will not commence until the accommodating station commences program tests on its new channel, and that a license will not be granted for operation of the benefitting station on the new channel until a license is granted to the accommodating station for operation on its new channel); *KPVO*, 31 FCC Rcd at 8920-21 (noting that “channel substitutions often contain a special operating condition that prohibits operation on the new channel until the incumbent has vacated”).

²⁴ *Canovanas*, 10 FCC Rcd at 6677, para. 19.

²⁵ Permit File No. BPH-20190723AAN (“Program tests for KDVA(FM) . . . will not commence on channel 294A with the facilities specified herein until program tests for KPPV(FM) . . . commence on channel 295C2 and a license will not be granted for KDVA(FM) on channel 294A with the facilities specified herein until a license is granted for KPPV on channel 295C2.”). The condition is included in the KDVA(FM) construction permit because it is KDVA(FM) that is moving to the channel on which the Station currently operates. We note that the authorization issued to KVVA-FM, contains a similar condition. However, because KVVA-FM’s upgrade and move require KDVA(FM) to change its operating frequency, the condition relates to KDVA(FM), not the Station. Permit File No. BPH-20190723AAO (“Program tests for KVVA-FM . . . will not commence on channel 296C2 with the facilities specified herein until program tests for KDVA . . . commence on channel 294A with the facilities specified in BPH-20190723AAN and a license will not be granted for KVVA-FM on channel 296C2 with the facilities specified herein until a license is granted for KDVA on channel 294A with the facilities specified in BPH-20190723AAN.”).

We disagree with PVBC's assertion that "it is time for the Commission to revisit its stance regarding the establishment of escrow accounts."²⁶ PVBC maintains that there are a "litany of cases demonstrating the unwillingness of the [benefitting party] to reimburse the accommodating [party]," and argues "creation of an escrow account would avoid the very common situations . . . where the accommodating licensee . . . expends significant funds to accommodate the [benefitting] licensee but the [benefitting] licensee never reimburses the accommodating licensee."²⁷ However, it cites just two proceedings to support its claim.²⁸ These two proceedings—*Roy E. Henderson*, and *Appaloosa Broadcasting Company, Inc.* (*Appaloosa*)—do not constitute a litany of cases. In any event, contrary to PVBC's assertion, the benefitting party in *Appaloosa* ultimately did reimburse the accommodating party.²⁹ Moreover, *Henderson*—which is an ongoing proceeding—is distinguishable. It involves a benefitting party who claims it lacks the funds needed to reimburse the accommodating party.³⁰ Finally, we note that, in terms of this proceeding, Entravision has expressed legitimate concerns that PVBC's estimate of its expenses is not consistent with the expenses estimated—or incurred—by other accommodating parties.³¹

We further find no merit to Entravision's allegation that the Petition is a strike pleading.³² A strike pleading is a pleading filed in bad faith for the primary purpose of blocking, impeding, or

²⁶ Petition at 3.

²⁷ Petition at 2.

²⁸ Petition at 3, citing *Roy E. Henderson*, File No. BRH-20130328ADT, Letter Order (MB Sept. 12, 2019) (*Henderson*), and *Appaloosa Broad. Co., Inc.*, File No. BLH-20160217AAB, Letter Order (Aug. 23, 2017) (*Appaloosa*).

²⁹ See Letter from Lee G. Petro, Counsel for Christian Media, Inc., to Marlene H. Dortch, Secretary, FCC, File No. BLH-20160217AAP (rec'd Sept. 8, 2017). We also note that, because PVBC discusses *Appaloosa* for the first time in the Petition, that portion of the Petition is procedurally defective. 47 CFR § 1.106(c) (providing that a petitioner for reconsideration may rely on new facts or arguments only if (1) the facts or arguments relate to events which occurred or circumstances which changed since the last opportunity to present such matters to the Commission, (2) the facts or arguments were unknown to the petitioner until after his last opportunity to present them to the Commission, and petitioner could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity, or (3) the Commission or the designated authority determines that consideration of the facts or arguments is required in the public interest).

³⁰ See File No. BELSTA-20191121AAG, Exh. 39 (indicating that benefitting party needed "additional time to secure the money it stated it would pay . . . to VRW").

³¹ Opposition at 2. PVBC estimated its expenses at \$2.75 million but, to date, does not appear to have provided Entravision an itemized list of those expenses, which appear to far exceed the expenses of other accommodating parties. See *Ehrenberg, First Mesa, Kachina Village, Munds Park, Wickenburg, and Williams, Arizona*, Memorandum Opinion and Order, 28 FCC Rcd 16492, 16494, para. 4 and n.14 (MB 2013) (noting the benefitting party and the accommodating party had estimated the expenses to be reimbursed at \$101,112); *KBEX(FM), Dalhart, Texas*, Letter Order, 28 FCC Rcd 3234 (MB 2013) (ordering benefitting party to reimburse accommodating party for expenses totaling \$75,553.73). Indeed, even the two cases cited by PVBC involved disputes regarding much smaller expense totals. See *Henderson* at 2 (accommodating party claimed expenses of \$98,179.08); Informal Objection of Christian Media, Inc., File No. BLH-20160217AAB, at 6 (filed Feb. 29, 2016) (accommodating party estimated expenses "likely to exceed \$30,000"). We caution PVBC that our case law does not support reimbursement of expenses beyond what is "legitimate and prudent" and "reasonable." See notes 4 and 8, *supra*.

³² Opposition at 6.

delaying the grant of an application.³³ A party alleging a strike petition must make a strong showing that delay is the primary and substantial purpose behind the pleading.³⁴ 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.³⁵ Entravision has submitted no extrinsic evidence that delay was a “primary and substantial purpose” behind filing of the Petition. Accordingly, we decline to strike the Petition, or otherwise sanction PVBC.

Finally, given the contentious nature of this proceeding to date, we take this opportunity to emphasize that *both* parties must *expeditiously* and *in good faith* negotiate regarding the time, manner and extent of reimbursement. Furthermore, as there appears to be some confusion regarding which party must provide cost estimates, we clarify that PVBC is responsible for determining the steps it must take to accomplish the channel change and the costs associated with those steps. This is so because, as the licensee of the station being required to change its operating frequency, PVBC is in the best position to identify the reasonable costs associated with the channel change. We strongly encourage PVBC to “thoroughly document with invoices and statements from the professionals involved” its reasonable expenses, and share that documentation with Entravision as part of the reimbursement negotiations.³⁶

Conclusion/Ordering Clauses. ACCORDINGLY, IT IS ORDERED that the Petition for Reconsideration filed by Prescott Valley Broadcasting Co. Inc. on August 19, 2020, IS DENIED, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, and section 1.115(g) of the Commission’s Rules.³⁷

³³ *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).

³⁴ *Radio Carrollton*, 69 FCC 2d at 1150, para. 25.

³⁵ *Id.* at 1150, para. 26.

³⁶ *See, e.g., KBEX(FM), Dalhart, Texas*, Letter Order, 28 FCC Rcd 3234, 3237-38 (MB 2013) (noting that all of the accommodating party’s engineering, equipment, printing, and promotional expenses were documented by statements and invoices, and ordering benefitting party to reimburse those expenses in the amounts requested by the accommodating party); *Peter Wayne Lechman*, 8 FCC Rcd 3058, 3059-60, paras. 10-11 (MMB 1993) (noting that the accommodating party’s legal, engineering, equipment, printing, and promotional/advertising expenses were thoroughly documented with invoices and statements, and finding those expenses were reasonable and reimbursable, but finding reimbursement was not required for an expense that the accommodating party had not demonstrated was reasonable and prudent and connected with the channel change, or for an expense that was not adequately supported or documented). We caution PVBC that delaying or frustrating a channel change required by our order pursuant to section 316 of the Act, by demanding reimbursement that exceeds PVBC’s reasonable and legitimate expenses, could be deemed a violation of section 316. Any such violation would be a factor that would be weighed in connection with our review of the Station’s license renewal application pursuant to section 309(k) of the Act. *See* 47 U.S.C. §§ 309(k), 316; *Lake City*, 47 FCC 2d at 1079, para. 28 (reimbursement is a matter of private equity, not a public interest matter).

³⁷ 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(g).

IT IS FURTHER ORDERED that the Motion for Stay filed by Prescott Valley Broadcasting Co. Inc. on August 19, 2020, IS DISMISSED.

Sincerely,

Albert Shuldiner

Albert Shuldiner
Chief, Audio Division
Media Bureau