



**Federal Communications Commission
Washington, D.C. 20554**

**DA 20-468
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In Reply Refer To:
1800B3-TSN

Avenal Educational Services, Inc.
Central Valley Educational Services, Inc.
c/o Michael Couzens, Esq.
6536 Telegraph Avenue
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Oakland, CA 94609

In re: KAAX(FM), Avenal, California
Facility ID No. 3365
File No. BLED-19990810KC
File No. BMPED-20161026AAP

KYAF(FM), Firebaugh, California
Facility ID No. 9993
File No. BLED-19990805KB
File No. BLED-20151223BUK
File No. BMPED-20161026AAV

**Dismissal of Applications/Revocation of
Program Authority/Deletion of Facilities**

Dear Counsel:

We have before us two applications (Modification Applications), filed by Avenal Educational Services, Inc. (Avenal) and Central Valley Educational Services, Inc. (Central Valley), requesting to modify the authorization of, respectively, broadcast station KAAX(FM), Avenal, California (KAAX), and broadcast station KYAF(FM), Firebaugh, California (KYAF) (collectively the Stations), from noncommercial educational (NCE) to commercial status.¹ Also before us are two applications for broadcast licenses for KAAX and KYAF.² However, based on the findings in the proceeding *William A. Zawila, et al.*, EB Docket No. 03-152 (Zawila Proceeding) that Avenal and Central Valley were not incorporated prior to filing for their station authorizations,³ we dismiss the Modification Applications and

¹ File Nos. BMPED-20161026AAP (KAAX) and BMPED-20161026AAV (KYAF) (Modification Applications).

² File Nos. BLED-19990810KC (KAAX) and BLED-19990805KB (KYAF) (License Applications). The License Applications were filed to cover construction permits granted under, respectively, File Nos. BMPED-19960826IA (KAAX) and BPED-19881017MD (KYAF).

³ *William L. Zawila, Avenal Educational Services, Inc., Central Valley Educational Services, Inc., H.L. Charles d/b/a Ford City Broadcasting, Linda Ware d/b/a Lindsay Broadcasting, and Western Pacific Broadcasting, Inc.*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, EB Docket No. 03-152, 18 FCC Rcd 14938 (2003) (HDO).

the above-listed license applications, revoke the operating authority of stations KAAX and KYAF, and delete the call signs KAAX and KYAF. In the alternative, we find that the construction permits for KAAX and KYAF were improperly granted, dismiss those applications as defective, and dismiss the license applications as moot.

Background. KAAX and KYAF (formerly KAJP(FM)) were two of six stations set forth in the Zawila Proceeding. The HDO raised questions about misrepresentation, failure to maintain a public file, and various technical rule violations against both Avenal and Central Valley, as well as their attorney and ostensible officer, William L. Zawila (Zawila).⁴ During the hearing proceeding, the Commission's Enforcement Bureau petitioned to expand the scope of the issues the hearing would examine to include a question as to whether either Avenal or Central Valley was a legally formed nonprofit entity qualified to be awarded a Commission construction permit for an NCE station.⁵ The Chief Administrative Law Judge (ALJ) accordingly added an issue as to "whether Avenal and Central Valley were qualified applicants at the time applications were filed by Zawila and White for NCE stations KYAF(FM) and KAAX(FM)."⁶ Central Valley and Avenal filed their applications for construction permits in 1988 and 1989, respectively,⁷ however, Avenal and Central were not incorporated until 1999 and 2001, respectively.⁸

In the *January MO&O*, the ALJ found, "Avenal could not have been recognized as a corporation organized under California law until January 22, 1999, at the earliest, although erroneously it represented to the Commission that it was a corporation in its application of 1989. White states under penalty of perjury that Avenal was not incorporated until March 5, 1999. If Avenal was not incorporated, or if it was otherwise organized in a form not recognized under California law at the time it filed its application for KAAX (FM), it was not a qualified applicant. If that was the case, Avenal should not have been granted its permit for KAAZ (FM) (sic)."⁹ The ALJ also held, "The same *scenario* applies to Central Valley's permit for NCE Station KYAF (FM). Zawila and White agree that Central Valley filed its application for NCE Station KYAF (FM) on October 17, 1998. Commission records confirm that Central Valley's application was received by the Commission on that date. Yet, the record also reflects that Central Valley was not recognized as a California corporation until 2001."¹⁰ After the parties further

⁴ *HDO*, 18 FCC Rcd at 14962-63, 14964-67, paras. 96-98, 101-112. During the hearing proceeding, Avenal and Central Valley's president, Verne J. White (White) stated that, while the two companies originally hired Zawila as their attorney, White terminated Zawila on May 19, 2005. Declaration of Verne J. White, attached to Informal Objection to "Appeal of Order (FCC 16M-23) to the Full Commission," filed by Avenal and Central (Aug. 18, 2016) (Objection), second paragraph. White then asserted that Michael Couzens (Couzens) represented the companies, and Couzens entered appearances on their behalf. Despite this, Zawila maintained throughout the hearing proceeding that he also represented Avenal and Central Valley and continued to file pleadings on their behalf.

⁵ *William L. Zawila, et al.*, Memorandum Opinion and Order, EB Docket No. 03-152, FCC 16M-01, 2016 WL 166213, at 3, para. 5 (ALJ Jan. 12, 2016) (*January MO&O*).

⁶ *Id.* at 4, para. 9. White represents himself as a principal of both Avenal and Central, and his name and what he claims is his address in Clovis, California, appear on the KAAX construction permit, with the Clovis address also appearing on the KYAF construction permit. Declaration of Verne J. White attached to Objection, third paragraph and Attachments A and B.

⁷ Central Valley filed for a construction permit on October 17, 1988, File No. BPED-19881017MD. Avenal filed for a construction permit on March 20, 1989, File No. BPED-19890320MB.

⁸ *January MO&O* at 3-4, paras. 5-8.

⁹ *Id.* at 2, para. 6 (citations omitted).

¹⁰ *Id.* at 3, para. 7 (citations omitted).

briefed these issues, the ALJ dismissed Avenal and Central Valley from the Zawila Proceeding, holding that

[T]he Presiding Judge finds, as matters of law and fact, that Avenal and Central Valley were not unincorporated nonprofit associations—or otherwise organized entities recognized by state or federal law—at the time of filing their respective applications. Accordingly, Avenal and Central Valley were not eligible applicants for license at the time they filed their applications. They have not offered a scintilla of proof that they were unincorporated non-profits on the respective dates that they filed their applications. As a result, the Presiding Judge finds that Avenal and Central Valley’s license applications are invalid, and should have been denied *ab initio*, or not accepted for filing.¹¹

In the Objection filed by Couzens, Avenal and Central Valley confirmed they “did not appeal the [July MO&O].”¹² Separately, Avenal and Central Valley, also through Couzens, asserted that they were free to attempt to convert KAAX and KYAF to commercial stations merely by notifying the Commission of such conversion.¹³ Attached to the August Letter were, in fact, letters to the Media Bureau, also dated August 11, 2016, purporting to notify the Bureau of such conversion.

In a *Clarification Order* dated September 26, 2016,¹⁴ the Judge held that (1) Avenal and Central Valley were dismissed from the hearing proceeding without prejudice, meaning that the Commission could bring the same claims against Avenal and Central Valley, based on the same set of facts, in another proceeding;¹⁵ (2) even had Avenal and Central Valley been dismissed with prejudice, case law provided that the same character issues could still be raised in another proceeding;¹⁶ and finally (3) Avenal and Central Valley have not “erased all issues with their respective statuses simply by attempting to convert to commercial status.”¹⁷ Avenal and Central Valley did not seek reconsideration or review of the *Clarification Order*; however, following release of that order, Avenal and Central Valley filed the Modification Applications, seeking leave to convert KAAX and KYAF to commercial status.¹⁸

Zawila, also purporting to act on behalf of Avenal and Central Valley, filed an interlocutory appeal of the *July MO&O* on those parties’ behalf, which the Commission dismissed as untimely and, as a separate and independent ground, denied on the merits.¹⁹ In particular, Zawila challenged the ALJ’s

¹¹ *William L. Zawila, et al.*, Memorandum Opinion and Order, EB Docket No. 03-152, FCC 16M-23, 2016 WL 4061843, at 9, para. 20 (ALJ July 25, 2016) (*July MO&O*).

¹² Objection at 1. After dismissing Avenal and Central Valley from the Zawila proceeding, the Judge granted a summary decision against Zawila and three stations permitted to or represented by him: KNGS(FM), Coalinga, California; KZPE(FM), Ford City, California; and KZPO(FM), Lindsay, California. The Commission upheld the summary decision. *William L. Zawila, et al.*, Memorandum Opinion and Order, 34 FCC Rcd 13036 (2019).

¹³ Letter from Michael Couzens, Esq., to Hon. Richard L. Sippel, Aug. 11, 2016 (August Letter) at 1 and Attachments A and B.

¹⁴ *William L. Zawila, et al.*, Clarification of Memorandum Order & Opinion, FCC 16M-23, EB Docket No. 03-152, FCC 16M-26 (ALJ Sept. 26, 2016) (*Clarification Order*).

¹⁵ *Id.* at 2, 4.

¹⁶ *Id.* at 2-4 (citing *In re Allegan Cnty. Broad., Inc.*, Memorandum Opinion and Order, 83 F.C.C.2d 371 (1980)).

¹⁷ *Clarification Order* at 3-4.

¹⁸ See *supra* note 1.

¹⁹ *William L. Zawila, et al.*, Memorandum Opinion and Order, 32 FCC Rcd 1592 (2017) (*2017 MO&O*).

finding that Avenal and Central Valley were unqualified to apply for the construction permits in question. In the 2017 MO&O, the Commission rejected Zawila's contentions, pointing out that Zawila had introduced no evidence or legal argument indicating that either Avenal or Central Valley was a legally recognized non-profit corporation or other organization at the time it filed its applications.²⁰ This was bolstered by the sworn statement of White, certifying that neither Avenal nor Central Valley had been incorporated prior to, respectively, 1999 and 2001.²¹ Based on the lack of evidence or argument that Avenal and Central Valley were qualified to apply as NCE stations, the Commission concluded:

We are unpersuaded by Zawila's claim. The articles of incorporation in the record show that Avenal and Central Valley were incorporated many years after they filed their applications. If there is other evidence showing incorporation of Avenal and Central Valley on an earlier date, Zawila has not presented it or indicated that it exists. We have no reason to believe that the ALJ ignored or mischaracterized the evidence. Absent evidence of earlier incorporation, we have no basis to find that Avenal and Central Valley qualified as nonprofit educational organizations, as required by section 73.503, at the time they filed their applications.²²

Based on the inclusion of this language in the 2017 MO&O, Avenal and Central Valley, through Couzens, filed a petition for reconsideration,²³ seeking to remove from that order any references to the timeliness of Avenal and Central Valley's incorporation.²⁴ The Commission dismissed the 2017 Petition, finding that it had not been properly served on all parties,²⁵ and that petitioners raised new arguments that were or should have been known to them prior to their last opportunity to present them, in violation of section 1.106(c) of the rules.²⁶ Neither Avenal nor Central Valley has sought review or appeal of the 2019 MO&O.

Discussion. Avenal's and Central Valley's initial applications for construction permits were flawed because neither applicant was incorporated at the time of filing. Neither can retroactively cure this legal infirmity by simply applying to convert from NCE to commercial status. In fact, the ALJ could not have been clearer with regard to the status of these stations. "[T]he Presiding Judge finds that Avenal and Central Valley's license applications are invalid, and should have been denied *ab initio*, or not accepted for filing."²⁷ Lest there be any confusion regarding the Stations' status, the ALJ further clarified the reason why he declined to press further as to the character issues alleged against Avenal and Central Valley in the HDO:

The Commission will consider all acts of misconduct which are relevant to character, but "only where there has been an adjudication." (cite) And even if there is an adverse adjudication under added issues, the Commission most likely will not impose sanctions *where offending applicants suffer the loss of a station or a construction permit, as is the*

²⁰ *Id.* at 1596, para. 12.

²¹ *Id.*

²² *Id.* at 1597, para. 14.

²³ Petition for Reconsideration by Avenal Educational Services, Inc., and Central Valley Educational Services, Inc., filed Mar. 3, 2017 (2017 Petition).

²⁴ *Id.* at 2, 11-12.

²⁵ *William L. Zawila, Permittee of FM Station KNGS, Coalinga, California, et al.*, Memorandum Opinion and Order, 34 FCC Rcd 13049, 13051, paras. 6-7 (2019) (2019 MO&O).

²⁶ *Id.* at 3-5, paras. 8-13.

²⁷ *July MO&O* at 9, para. 20.

case here. Suffering the loss of a broadcasting license or permit will likely serve to deter “all but the most unrepentant from serious future misconduct.” (cites)²⁸

In short, the ALJ in his orders held stations KAAX and KYAF to be void *ab initio*, by virtue of the applicants’ lack of qualification as nonprofit educational organizations at the time the initial construction permit applications were filed. Having so held, the ALJ then stated that losing the Stations was punishment enough, and that pursuing Avenal and Central Valley on character issues would be excessively punitive. The ALJ’s statements cannot be squared with Avenal and Central Valley’s position, that they may “correct” their initial errors by attempting a conversion to commercial status. Finally, we note that as of the date of this decision, neither Avenal nor Central Valley is a valid California corporation. The Avenal Educational Services, Inc., that was incorporated in 1999 has been dissolved; the versions of that corporation incorporated in 2003 (by White) and 2015 (by Zawila) are currently suspended.²⁹ Similarly, the Central Valley Educational Services, Inc., that was incorporated by White in 2001, and the version incorporated by Zawila in 2015, are suspended.³⁰

Conclusion. The then-Chief Administrative Law Judge made an unambiguous finding that “Avenal and Central Valley’s license applications are invalid, and should have been denied *ab initio*, or not accepted for filing.”³¹ This finding has been challenged by Avenal and Central Valley, and those challenges have been dismissed and/or denied. As neither party has pursued further challenges to the Commission’s rulings, they are final and binding on the Media Bureau.

As an alternative and independent basis for our decision, we also find that Avenal and Central Valley, neither of which was incorporated or otherwise organized under California law as a nonprofit educational organization, violated section 73.503(a) of the Commission’s rules when they applied for NCE FM construction permits and licenses.³² As a result, the construction permits granted for KAAX and KYAF are void, and thus any program test authority under those permits, and subsequent applications filed to cover the permits for those facilities, are now moot.

Accordingly, pursuant to Sections 0.61, 0.111, 0.283, 0.311, and 1.92 of the Commission’s rules,³³ the application of Avenal Educational Services, Inc. for a license to cover the construction permit for KAAX(FM), Avenal, California, File No. BLED-19990810KC, IS DISMISSED; all program test authority IS REVOKED; the application to modify the facility from noncommercial educational to

²⁸ *Id.* (emphasis added) (citing *Policy Regarding Character Qualifications In Broadcast Licensing; Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*, Report, Order and Policy Statement, 102 F.C.C.2d 1180 (1986); also citing *A.S.D. Answer Service, Inc. et al.*, Memorandum Opinion and Order, 1 FCC Rcd 753, 754 (1986)).

²⁹ See California Secretary of State Business Search portal, <https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=&SearchType=CORP&SearchCriteria=Avenal+Educational&SearchSubType=Keyword> (accessed Apr. 30, 2020).

³⁰ See California Secretary of State Business Search portal, <https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=&SearchType=CORP&SearchCriteria=Central+Valley+Educational+Services&SearchSubType=Keyword> (accessed Apr. 30, 2020).

³¹ *July MO&O* at 9, para. 20.

³² 47 CFR § 73.503(a) (“A noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program.”).

³³ 47 CFR §§ 0.61, 0.111, 0.283, 0.311, 1.92.

commercial status, File No. BMPED-20161026AAP, IS DISMISSED; and the call sign KAAX(FM) IS DELETED. The applications of Central Valley Educational Services, Inc., for a license to cover the construction permit for KYAF(FM), Firebaugh, California, File Nos. BLED-19990805KB and BLED-20151223BUK, ARE DISMISSED; all program test authority IS REVOKED; the application to modify the facility from noncommercial educational to commercial status, File No. BMPED-20161026AAV, IS DISMISSED; and the call sign KYAF(FM) IS DELETED.

Stations KAAX(FM) and KYAF(FM) MUST CEASE BROADCAST OPERATIONS IMMEDIATELY. We caution that it is imperative to the safety of air navigation that any prescribed painting and illumination of the stations' towers be maintained until the towers are dismantled. Accordingly, the owner(s) of the tower(s) where KAAX(FM)'s and KYAF(FM)'s transmitting antennas are located are required, pursuant to section 303(q) of the Communications Act of 1934, as amended,³⁴ to maintain the towers in the manner prescribed by our rules and the terms of the KAAX(FM) and KYAF(FM) construction permits.³⁵

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: William L. Zawila, Esq.
Lark Hadley, Director, Region Three, Enforcement Bureau

³⁴ 47 U.S.C. § 303(q).

³⁵ See 47 CFR §§ 17.1, *et seq.*, and 73.1213. See also *Report and Order* in MM Docket 95-5, 11 FCC Rcd 4272 (1996).