

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of ) EB Docket No. 03-152
)
WILLIAM L. ZAWILA ) Facility ID No. 72672
)
Permittee of FM Station KNKS, )
Coaling, California )
)
AVENAL EDUCATIONAL SERVICES, INC. ) Facility ID No. 3365
)
Permittee of FM Station KAAX, )
Avenal, California )
)
CENTRAL VALLEY EDUCATIONAL ) Facility ID No. 9993
SERVICES, INC. )
)
Permittee of FM Station KYAF, )
Firebaugh, California )
)
H.L. CHARLES D.B.A FORD CITY ) Facility ID No. 22030
BROADCASTING )
)
Permittee of FM Station KZPE, )
Ford City, California )
)
LINDA WARE D/B/A LINDSAY ) Facility ID No. 37725
BROADCASTING )
)
Licensee of FM Station KZPO, )
Lindsay, California )

MEMORANDUM OPINION AND ORDER

Adopted: January 31, 2017

Released: February 1, 2017

By the Commission:

I. INTRODUCTION

1. By this memorandum opinion and order, we dismiss and deny the Appeal of Order (FCC 16M-23) to the Full Commission, filed by William L. Zawila (Zawila) on behalf of Avenal Educational Services (Avenal) and Central Valley Educational Services (Central Valley) on August 2, 2016.<sup>1</sup> This

<sup>1</sup> William Zawila, Appeal of Order (FCC 16M-23) to the Full Commission, EB Docket No. 03-152 (filed Aug. 2, 2016); William Zawila, Amended Appeal of Order (FCC 16M-23) to the Full Commission, EB Docket No. 03-152 (filed Aug. 8, 2016) (Amended Appeal).

pleading seeks review of a memorandum opinion and order by Chief Administrative Law Judge Richard L. Sippel (ALJ) dismissing Avenal and Central Valley as parties in the proceeding and finding that they were ineligible to hold their FM noncommercial educational (NCE) construction permits.<sup>2</sup> We dismiss Zawila's appeal as untimely. As separate and independent grounds, we conclude that Zawila's appeal fails to raise any substantial arguments that would justify disturbing the ALJ's ruling. We, therefore, deny Zawila's appeal.

## II. BACKGROUND

2. In 1999, a third party filed an informal objection against Zawila's application for KNKS (FM), contending that Zawila had made material misrepresentations to the Commission regarding the construction and operation of the station.<sup>3</sup> This led the Enforcement Bureau to investigate five other facilities with which Zawila was involved as a principal, officer, or counsel, including the stations for which Avenal and Central Valley hold construction permits.<sup>4</sup> The investigation raised questions as to whether Zawila, either individually or on behalf of Avenal and Central Valley, made misrepresentations to the Commission regarding their facilities and whether they engaged in assorted technical and other rule violations.<sup>5</sup> These issues were designated for hearing in 2003,<sup>6</sup> but in 2004 the proceeding was placed in indefinite stay.<sup>7</sup> The ALJ lifted the stay in June 2015.<sup>8</sup>

3. In preparation for resumption of the proceeding, the ALJ had directed submission of information to update the ownership and representation of the parties.<sup>9</sup> Two groups, one represented by Zawila, and the other<sup>10</sup> by attorney Michael Couzens, submitted conflicting information regarding the ownership and control of Avenal and Central Valley.<sup>11</sup> The ALJ found that the information submitted was insufficient to resolve the conflicting claims of the Zawila group and the Couzens group to control of Avenal and Central Valley.<sup>12</sup> The ALJ, therefore, added to the hearing the issue of what party properly owned and controlled Avenal and Central Valley.<sup>13</sup>

4. The ALJ also determined that the information submitted raised questions as to whether Avenal and/or Central Valley were eligible to hold permits for NCE stations at the time they submitted

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<sup>2</sup> *William L. Zawila et al.*, EB Docket No. 03-152, Memorandum Opinion and Order, FCC 16M-23 (rel. July 25, 2016) (*July 25 Order*). This order is based in part on factual findings made in an earlier order. *See William L. Zawila et al.*, EB Docket No. 03-152, Memorandum Opinion and Order, FCC 16M-01 (Jan. 12, 2016) (*January 12 Order*).

<sup>3</sup> A thorough recitation of the facts and allegations underlying this proceeding can be found in *William L. Zawila et al.*, EB Docket No. 03-152, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 18 FCC Rcd 14938 (July 16, 2003).

<sup>4</sup> *Id.* at 14939, para. 4.

<sup>5</sup> *Id.* at 14944-50, paras. 23-48.

<sup>6</sup> *See id.*

<sup>7</sup> *William L. Zawila et al.*, EB Docket No. 03-152, Order, FCC 04M-09 (rel. Mar. 5, 2004).

<sup>8</sup> *William L. Zawila et al.*, EB Docket No. 03-152, Order, FCC 15M-21 (rel. June 4, 2015).

<sup>9</sup> *William L. Zawila et al.*, EB Docket No. 03-152, Order, FCC 14M-33 (rel. Oct. 16, 2014).

<sup>10</sup> The leader of this group is an individual named Verne J. White.

<sup>11</sup> *William L. Zawila et al.*, EB Docket No. 03-152, Order, FCC 15M-11 (rel. Mar. 19, 2015).

<sup>12</sup> *January 12 Order* at 3, para. 6.

<sup>13</sup> *Id.* at 4, para. 9; *William L. Zawila et al.*, EB Docket No. 03-152, Order, FCC 16M-02, at 2, paras. 1-4 (Feb. 2, 2016) (*Amended Hearing Designation Order*).

their applications for stations KAAX(FM) and KYAF(FM).<sup>14</sup> Under section 73.503 of the Commission's rules, an NCE license may only be granted to a nonprofit educational organization.<sup>15</sup> Prior Commission decisions have interpreted the term "nonprofit educational organization" to mean that the applicant "must be a public agency or non-profit private foundation, corporation, or association that is *recognized by the laws of the state in which it proposes to operate at the time it submits its application.*"<sup>16</sup>

5. The record showed that while Avenal filed its application in 1989, it was not incorporated in California until 10 years later, on March 5, 1999.<sup>17</sup> Similarly, Central Valley filed its application in 1988, but it was not incorporated in California until, at the earliest, January 26, 2001.<sup>18</sup> Given this gap between the filing of their applications and their earliest corporate existence, the ALJ added to the hearing the issue of whether Avenal and Central Valley were properly organized when they filed their applications and therefore eligible to hold the permits in question under section 73.503.<sup>19</sup> Subsequently, the ALJ found that "Avenal and Central Valley were not . . . organized entities recognized by state or federal law – at the time of their respective applications."<sup>20</sup> The ALJ ruled that "Avenal and Central Valley's license applications are invalid, and should have been denied *ab initio.*"<sup>21</sup> As the ALJ concluded that Avenal and Central Valley were ineligible to have received authorizations for KAAX(FM) or KYAF(FM), he dismissed them as parties from the remainder of the proceeding.

6. Now before the Commission is Zawila's interlocutory appeal as of right filed on behalf of Avenal and Central Valley.<sup>22</sup> Zawila challenges the ALJ's ineligibility determination and the dismissal of Avenal and Central Valley from the proceeding on two grounds. First, he contends that the ALJ failed to consider evidence showing that Avenal and Central Valley were, in fact, properly incorporated at the time of their applications.<sup>23</sup> Zawila asserts that Avenal and Central Valley "were in full compliance with FCC requirements when they filed their initial applications."<sup>24</sup> In this regard, Zawila also contends that the evidence submitted by the parties to demonstrate who owned Avenal and Central Valley should not have

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<sup>14</sup> *William L. Zawila et al.*, EB Docket No. 03-152, Memorandum Opinion and Order, FCC 15M-01 (rel. Jan. 12, 2015).

<sup>15</sup> 47 C.F.R. § 73.503(a).

<sup>16</sup> *Hope Radio of Rolla, Inc.*, File No. BNPL-20010122AKZ, 28 FCC Rcd 7754, 7754 (May 14, 2013) (emphasis added); see also *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, File No. BNPL-20000608AEN et al., Memorandum Opinion and Order, 28 FCC Rcd 13390, 13393-94, para. 10 (Aug. 23, 2013).

<sup>17</sup> *January 12 Order* at 3, para. 6.

<sup>18</sup> *Id.* at 4, para. 7.

<sup>19</sup> *Id.* at 4, para. 9; *Amended Hearing Designation Order* at 2-3, paras. 5(d) & 5(g).

<sup>20</sup> *July 25 Order* at 7-8, para. 16.

<sup>21</sup> *Id.*

<sup>22</sup> See 47 C.F.R. § 1.301(a)(1) (appeal as of right where ruling denies or terminates a party's right to participate in the proceeding). Although Zawila purports to appeal on behalf of Avenal and Central Valley, the Couzens group filed an "informal objection" asserting that Zawila has no authority to represent Avenal and Central Valley. See Michael Couzens's Informal Objection to "Appeal of Order (FCC 16M-23) to the Full Commission," EB Docket No. 03-152 (filed Aug. 18, 2016). We need not reach the question of whether Zawila may properly represent Avenal and Central Valley inasmuch as we dismiss and deny his appeal on other grounds, as discussed below.

<sup>23</sup> *Amended Appeal* at 3-4.

<sup>24</sup> *Id.* at 4.

been used by the ALJ to make an entirely different determination, namely as to the eligibility of Avenal and Central Valley to hold NCE authorizations.<sup>25</sup>

7. Second, Zawila argues that the ALJ's ineligibility determination is untimely. According to Zawila, the Commission's *Character Policy Statement*<sup>26</sup> prohibits the ALJ from examining, more than ten years after the fact, whether or not Avenal and Central Valley were properly incorporated at the time of their applications.<sup>27</sup> Zawila claims that the *Character Policy Statement* bars consideration of any conduct bearing on an applicant's qualifications that happened more than ten years earlier. The applications for KAAX(FM) and KYAF(FM) were filed in 1988-89, well over ten years ago.

8. The Enforcement Bureau opposes Zawila's appeal.<sup>28</sup> The Bureau argues that Zawila presents no supporting evidence for his contention that Avenal and Central Valley were properly incorporated at the time the applications were filed.<sup>29</sup> The Bureau also asserts that the ALJ's decision does not involve any determination of character qualifications, and hence Zawila's reliance on the *Character Policy Statement* is misplaced.<sup>30</sup> The Bureau further states that even if the *Character Policy Statement* did apply to the determination of ineligibility, it "suggests only that, as a general matter, the Commission should impose a 10-year limitation when considering past conduct"; it does not, as Zawila suggests, impose a firm ban.<sup>31</sup>

### III. DISCUSSION

9. For the reasons discussed below, we dismiss Zawila's appeal as late filed and, as separate and independent grounds, deny Zawila's appeal on its merits.

10. As one separate and independent basis for rejecting Zawila's appeal, we find that Zawila's appeal should be dismissed as late filed. Under the Commission's rules, interlocutory appeals must be filed with the Commission's Secretary within five days after the ALJ's order is released.<sup>32</sup> Items are considered as filed upon their receipt at the location designated by the Commission.<sup>33</sup> The ALJ's order at issue was released on July 25, 2016. The deadline for receipt of an appeal was therefore, August 1, 2016.<sup>34</sup> As indicated by the date stamp on the filing, Zawila's appeal was not received by the Commission's mail room until August 2, 2016. Zawila's appeal was, therefore, filed one day late. While dismissal of an appeal when a deadline is missed by a brief time may seem harsh, both judicial and

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<sup>25</sup> *Id.* at 3. Further, Zawila argues that the ALJ erred by not making a formal determination as to what party properly represents Avenal and Central Valley. *Amended Appeal* at 3. The ALJ determined that the question of ownership (and representation) was mooted by the determination that Avenal and Central Valley were ineligible to hold the licenses in question. *July 25 Order* at 2, para. 2 n.2. We similarly find that the issues raised in the *Amended Appeal* can be adjudicated without reaching the question of who owns, controls, or represents Avenal and Central Valley.

<sup>26</sup> *Policy Regarding Character Qualifications in Broadcast Licensing*, Order and Policy Statement, 102 FCC 2d 1179, 1229 (1986) (*Character Policy Statement*).

<sup>27</sup> *Amended Appeal* at 4-5.

<sup>28</sup> Enforcement Bureau's Opposition to Appeal of Order (FCC 16M-23) to the Full Commission, EB Docket No. 03-152 (filed Aug. 9, 2016).

<sup>29</sup> *Id.* at 3.

<sup>30</sup> *Id.* at 5.

<sup>31</sup> *Id.* (emphasis original).

<sup>32</sup> 47 C.F.R. § 1.301(c)(2), (c)(4).

<sup>33</sup> 47 C.F.R. § 1.7.

<sup>34</sup> Five days after July 25, 2016, is July 30, 2016. However, because the filing period is less than seven days, the intermediate Saturday and Sunday (July 30-31) are not counted in the filing period. 47 C.F.R. § 1.4(g). Therefore, the due date falls on Monday, August 1, 2016.

Commission precedent emphasize the need to strictly enforce deadlines,<sup>35</sup> and the Commission has dismissed appeals in other contexts for failing to meet the filing deadline by even a single day.<sup>36</sup> Furthermore, Zawila gives no explanation for the late filing, and we find no public interest to be served by relaxing the deadline. Therefore, Zawila's appeal is dismissed as untimely.

11. Even if we did not dismiss Zawila's appeal as untimely, we would, as a separate and independent matter, deny the appeal on its merits. We find that Zawila has failed to present any convincing arguments or evidence that Avenal and Central Valley were, in fact, incorporated at the time of their applications. We also conclude that the *Character Policy Statement* is inapplicable to this case.

12. While Zawila states that Avenal and Central Valley "were in full compliance with FCC requirements when they filed their initial applications,"<sup>37</sup> he cites no evidence or detailed explanation to support this conclusory assertion. As the ALJ noted, the earliest evidence of the parties' corporate existence consists of articles of incorporation dated, respectively January 22, 1999 (for Avenal) and January 26, 2001 (for Central Valley).<sup>38</sup> Similarly, the earliest corporate registration appearing in the online California Business Portal is March 5, 1999 (for Avenal) and January 29, 2001 (for Central Valley).<sup>39</sup> This is long after the parties filed their applications on March 20, 1989 (Avenal) and October 17, 1988 (Central Valley).<sup>40</sup> Moreover, a sworn statement by Verne J. White, the head of the Couzens group, affirms the 1999 incorporation of Avenal and the 2001 incorporation of Central Valley.<sup>41</sup> Zawila presents no evidence of the parties' earlier corporate existence or an explanation for the multi-year gap between the filing of the applications and the earliest corporate documents.

13. Zawila instead argues that the ALJ should not have relied on this evidence. First, he contends that the articles of incorporation were submitted solely for the purpose of settling the question of ownership of Avenal and Central Valley.<sup>42</sup> Instead, the ALJ "used the evidence submitted . . . for a totally improper purpose, to wit, to challenge the right of [Avenal] and [Central Valley] to file their initial applications."<sup>43</sup> We reject this argument. We are aware of no legal principle, and Zawila has offered no such precedent, that stands for the proposition that a piece of evidence can only be relied on for the specific purpose for which it was submitted. To the extent Zawila suggests that he did not have notice that he would have to prove the parties' corporate existence at the time of the applications, he gives no indication that he could make such a showing, and the *Amended Hearing Designation Order* clearly gives notice that the matter of Avenal and Central Valley's eligibility was at issue in the hearing.<sup>44</sup>

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<sup>35</sup> *United States v. Locke*, 471 U.S. 84, 101 (1985) ("Filing deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced . . . . A filing deadline cannot be complied with, substantially or otherwise, by filing late – even by one day.")

<sup>36</sup> See *Michael C. Olson*, 13 FCC Rcd 20593, 20593, para. 1 (1998) (dismissing an application for review of a fee waiver determination on a Freedom of Information Act request that was filed one day late).

<sup>37</sup> *Amended Appeal* at 4.

<sup>38</sup> January 12 Order at 3-4, paras. 6-7.

<sup>39</sup> Business Search, California Secretary of State, <http://kepler.sos.ca.gov/> (last visited Sept. 15, 2016).

<sup>40</sup> *January 12 Order* at 3-4, paras. 6-7.

<sup>41</sup> *Id.* Couzens argued before the ALJ that Avenal and Central Valley should be recognized as having been legitimate *unincorporated* associations under California law at the time the applications were filed. The ALJ, however, found that Couzens had not demonstrated entitlement to this status. *July 25 Order* at 7, para. 14.

<sup>42</sup> *Amended Appeal* at 3.

<sup>43</sup> *Id.*

<sup>44</sup> *Amended Hearing Designation Order* at 3, paras. 5(d) & 5(g) (adding issues to the hearing "[t]o determine whether Avenal Educational Services, Inc. was a qualified applicant pursuant to Section 73.503(a)" and "[t]o

(continued....)

14. Second, Zawila argues that the ALJ “erroneously treated the subject evidence as though it represented a complete 30 year history of [Avenal] and [Central Valley] from the time when their initial applications were filed through the current date.”<sup>45</sup> Zawila claims that “the evidence was only an excerpt from the 30 year history of [Avenal] and [Central Valley] and was narrowly tailored to deal only with the specific narrow points” related to the ownership of Avenal and Central Valley. Zawila goes on to state, “Mr. Zawila and his clients say this [incorporation] requirement was met by [Avenal] and [Central Valley]” and the ALJ “completely ignores the position put forth by Mr. Zawila.”<sup>46</sup> 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.

15. Zawila also argues that the ALJ contravened the Commission’s *Character Policy Statement* by finding more than ten years after the fact that Avenal and Central Valley were not eligible to apply for NCE authorizations.<sup>47</sup> Zawila claims that the ALJ violated the *Character Policy Statement* by basing the *July 25 Order* “on alleged misrepresentations by [Avenal] and [Central Valley] regarding their legal status in the State of California almost 30 years ago when they initially applied for their respective stations.”<sup>48</sup> Zawila asserts that “[t]he FCC’s said Character Policy Statement bars inquiry into character violation allegations regarding matters that occurred more than 10 years ago.”<sup>49</sup> However, the *Character Policy Statement* is inapplicable here. The determination that Avenal and Central Valley were not qualified to apply for NCE facilities stems from their failure to comply with the requirements of section 73.503 of the Commission’s rules that they be nonprofit educational organizations at the time of their applications. The *July 25 Order* made no determinations regarding whether Avenal or Central Valley had made any misrepresentations or otherwise violated the Commission’s character requirements. Indeed, in the *July 25 Order*, the ALJ explicitly states that he is forgoing making a determination on any character issues because the costs of such a proceeding “offset any public interest to be gained . . . from litigating the added character issues.”<sup>50</sup> We, therefore, reject Zawila’s argument that the *July 25 Order* violates the Commission’s *Character Policy Statement*.<sup>51</sup>

#### IV. ORDERING CLAUSE

16. Accordingly, IT IS ORDERED that the Appeal of Order (FCC 16M-23) to the Full Commission, filed August 2, 2016, as amended, IS DISMISSED as untimely.

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determine whether Central Valley Educational Services, Inc. was a qualified applicant pursuant to Section 73.503(a)).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 4.

<sup>47</sup> *Id.* at 4-5.

<sup>48</sup> *Id.* at 5.

<sup>49</sup> *Id.*

<sup>50</sup> *July 25 Order* at 9, para. 20.

<sup>51</sup> As we determine that the *Character Policy Statement* is inapplicable, we do not reach the question of whether the *Character Policy Statement* imposes a firm ban on considering conduct that occurred more than a decade earlier.

17. IT IS FURTHER ORDERED that, as separate and independent grounds, that the Appeal of Order (FCC 16M-23) to the Full Commission, filed August 2, 2016, as amended, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary