

**Before the
Federal Communications Commission
Washington, DC 20554**

FCC 17M-28

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

**SUMMARY DECISION OF
CHIEF ADMINISTRATIVE LAW JUDGE
RICHARD L. SIPPEL**

Issued: August 10, 2017

Released: August 10, 2017

Appearances

William L. Zawila, Esq., on behalf of himself, Ford City Broadcasting, and Lindsay Broadcasting; Pamela L. Kane, Esq. and Michael Engel, Esq., on behalf of the Chief, Enforcement Bureau, Federal Communications Commission.

PRELIMINARY STATEMENT

1. This is a ruling on a Motion for Summary Decision (Motion) that was filed by the Enforcement Bureau (Bureau) on August 9, 2016, against William L. Zawila, an attorney who is appearing on behalf of himself (Zawila), the Estate of Linda Ware d/b/a Lindsay Broadcasting (LB), and the Estate of H.L. Charles d/b/a Ford City Broadcasting (FCB) (collectively, the Zawila Parties).

2. The Bureau's Motion and this Summary Decision address all issues set forth in the Commission's Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order (*HDO*).¹ The factual findings are based exclusively on the parties' defaults on the Bureau's Requests for Admission that were served on all the Zawila Parties on July 29, 2015, more than thirty days after the last stay was lifted. Requests to admit are governed by Commission Rules, which provide that unanswered requests are deemed admitted.²

3. On November 17, 1999, a third party filed an informal objection to Zawila's license application for KNGS (FM). The third party contended that Zawila had made material misrepresentations to the Commission regarding the construction and operation of the station.³ This contention prompted the Enforcement Bureau to investigate KNGS (FM) and four other facilities with which Zawila was involved as a principal, officer, and/or counsel.⁴ The investigation uncovered substantial adverse questions of fact regarding alleged disqualifying conduct at each station. The investigation also alleged character issues against Zawila.⁵ These issues were designated for hearing on July 16, 2003.⁶ At the request of the parties, on September 12, 2003⁷ and again on March 5, 2004,⁸ the proceeding was stayed indefinitely. The Presiding Judge lifted the stay on June 4, 2015 and ordered that discovery commence forthwith.⁹

4. The Bureau served its first set of interrogatories and its first set of document requests on the Zawila Parties, on July 28, 2015 and July 29, 2015.¹⁰ The Zawila Parties failed to provide a single substantive response to any of the Bureau's document requests or interrogatories. So the Presiding Judge granted the Bureau's motion to compel complete responses and ordered Zawila to "revisit all interrogatories and requests to produce documents that were served by the Enforcement Bureau . . . and provide positive and cooperative responses." On March 14 and 15,

¹ *In re Zawila*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 18 FCC Rcd 14938 (*HDO*), at 2 (July 16, 2003).

² 47 CFR § 1.246(a)(6).

³ See *HDO*.

⁴ *Id.* (According to Martindale-Hubble, Zawila is a member of the California bar in good standing.)

⁵ See generally *id.*

⁶ *Id.* at 2.

⁷ Order, FCC 03M-39 (ALJ, rel. Sept. 12, 2003).

⁸ Order, FCC 04M-09 (ALJ, rel. Mar. 5, 2004).

⁹ Order, FCC 15M-21, at 2 (ALJ, rel. June 4, 2015).

¹⁰ Enforcement Bureau's Motion for Summary Decision at 7 (filed Aug. 9, 2016).

2016, the Presiding Judge similarly ordered FCB¹¹ and LB¹² to provide complete responses. Neither Zawila, FCB, nor LB filed a status report.¹³ Nor did they provide additional responses to the Bureau's discovery requests, or to the Bureau's requests for admission.¹⁴

5. On March 29, 2016, a Status Conference was held at the call of the Presiding Judge to address discovery issues.¹⁵ Zawila did not attend.¹⁶ The Presiding Judge ruled that Zawila's, FCB's, and LB's March 28, 2016 responses to the Bureau's requests for admissions were late. Therefore, by operation of Section 1.246(b) of the Rules, the Bureau's requests for admissions served on Zawila, FCB, and LB were *deemed admitted*.¹⁷

6. On May 10, 2016, the Presiding Judge found that the Zawila Parties had failed to "provide timely and complete responses to [the Bureau's] pending discovery requests, despite repeated instructions and orders from the Presiding Judge to do so." Therefore, the Presiding Judge entered adverse findings of fact against the Zawila Parties.¹⁸ On July 25, 2016, in view of the then state of the record, the Presiding Judge invited the Bureau to consider filing a motion for summary decision.¹⁹

Unauthorized Appeal

7. On May 26, 2016, Zawila, FCB, and LB served by mail an unauthorized appeal of this *Order*, FCC 16M-18, directly to the Commission. *See* Appeal of Order (FCC 16M-18) to the Full Commission, served May 26, 2016. Section 1.301(a) of the Rules provides that there are five categories of orders that are authorized to be appealed directly to the Commission, none of which apply here. *See* 47 CFR § 1.301(a). Even if *Order*, FCC 16M-18, justified one of the five

¹¹ *Order*, FCC 16M-08 (ALJ, rel. Mar. 14, 2016).

¹² *Order*, FCC 16M-09 (ALJ, rel. Mar. 15, 2016).

¹³ Enforcement Bureau's Motion for Summary Decision at 8 (filed Aug. 9, 2016).

¹⁴ *See id.*

¹⁵ *Order*, FCC 15M-33, at 7 (December 23, 2015).

¹⁶ Zawila, on behalf of himself, Avenal, Central Valley, FCB, and LB, requested to appear at the March 22, 2016 Status Conference by speakerphone in order to accommodate his scheduled obligations. *See* Request to Attend Status Conference by Speakerphone, filed Feb. 11, 2016. The Presiding Judge denied this request. *See Order*, FCC 16M-04 (ALJ, rel. Feb. 24, 2016). On March 24, 2016, Zawila, on behalf of himself, Avenal, Central Valley, FCB, and LB, served a pleading stating that neither he nor his clients could afford to attend the March 29, 2016 Status Conference. *See* Statement for Status Conference Set for March 29, 2016, served by mail on March 24, 2016. On March 28, 2016, Zawila sent responses to the Bureau's February 2016 requests for admissions on behalf of himself, Avenal, Central Valley, FCB, and LB. Zawila argued that prior requests for admission were served and properly responded to by the objecting parties and that the Presiding Officer issued prior orders which conflicted with the subject proposed order because the prior order contained no deadline for compliance. *See* Objection to Proposed Order Regarding Negative Findings of Fact Warranted by Discovery Violations at 2, sent by mail on April 7, 2016.

¹⁷ Tr. at 55:23-56:4 (March 29, 2016); *Order*, FCC 16M-18 at n. 21 (ALJ, rel. May 10, 2016) (citing Transcript of March 29, 2016 Status Conference at 55:23-56:12). *See also* 47 CFR § 1.246(b) ("Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof, or within such shorter or longer time as the presiding officer may allow on motion or notice, the party to whom the request is directed serves . . . a sworn statement specifically denying the matters of which is an admission is requested or . . . written objections . . .").

¹⁸ *Order*, FCC 16M-18 (ALJ, rel. May 10, 2016).

¹⁹ *Order*, FCC 16M-24, at 2 (ALJ, rel. July 25, 2016).

categories (terminate party status, privilege denied, ALJ disqualification, joint requests to dismiss, removal of counsel), the appeals of Zawila, FCB, and LB were filed out of time. 47 CFR § 1.301(c)(2). Such appeals must be filed no later than five (5) days after issuance of the order that is being appealed. The Commission does not consider this pleading as filed until the day it was received – May 31, 2016 – almost two weeks after the deadline for its filing. 47 CFR § 1.7 (documents are filed upon receipt of the FCC).

Summary Decision

8. Summary decision is appropriate only where it is shown that “there is no genuine issue as to any material fact and that a party is otherwise entitled to summary decision.” See 47 CFR § 1.251(d). The Commission’s rule is based on years of motions practice experience under FRCP Rule 52.²⁰ Therefore, the moving party “may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination at the hearing.” *Id.* at § 1.251(a)(1). Each of these prerequisites is met here, and the case is set for a summary decision.

9. On August 9, 2016, the Bureau filed its motion for summary decision. The Zawila Parties filed their opposition on August 16, 2016. See *Order*, FCC 16M-24 (rel. July 25, 2016). On August 30, 2016, the Bureau filed a motion for leave to file a reply to the Zawila Parties’ opposition, along with the proposed reply. The Presiding Judge granted the Bureau’s motion.²¹

10. It is concluded that there is no basis for any further delay in this case. For reasons stated below, summary decision is the appropriate course of action.

Zawila’s Dilatory Tactics

11. The Bureau has good reason to rely on adverse findings of fact to be made by the Presiding Judge. Here, Zawila failed to respond in good faith and/or in a timely manner to the Bureau’s reasonable interrogatory and document discovery requests. *Order*, FCC 16M-18 (rel. May 10, 2016) (granting Bureau’s request to recognize facts as admitted under 47 CFR § 1.323(d)). Zawila’s questionable “tactics” are presented below:

A. Unanswered Discovery Requests - 2015

12. On July 28 and 29, 2015, the Bureau served its first set of interrogatories and first set of document requests.²² Zawila objected without responding, but failed to provide or explain

²⁰ Cf. Ernest Gellhorn & Barry B. Boyer, *Administrative Law and Process* (2nd ed. 1981), at 279 (administrative summary judgment [decision] rules “are similar to Rule 56 of the Federal Rules of Civil procedure”). Cf. *id.* at 280 (discussing *Weinberger v. Hynson*, 412 U.S. 609 (1973), where Supreme Court upheld administrative summary decision noting the “common sense notion” that hearing is fruitless if non-moving party “had no chance of succeeding on the merits”).

²¹ See *Order*, FCC 16M-36 (ALJ, rel. Dec. 9, 2016) (considering the need for a full explanation of facts, the Bureau’s reply is given equal weight). So the primary purpose of summary decision is to “avoid a useless hearing.” See *In the Matter of Summary Decision Procedures*, Report and Order, 34 FCC 2d 485, 487, para. 6 (1972) (internal citations omitted).

²² *Order*, FCC 15M-33, at 2 (ALJ, rel. Dec. 23, 2015) (“[each of the 98 interrogatories] with the exception of one objection based on privilege, was refused because each was thought by Zawila to be vague, ambiguous, overbroad, not calculated to lead to discovery of admissible evidence, burdensome, oppressive, or unduly expensive.”).

even one example of an improper discovery request. Zawila repeated the same objection to each of the Bureau's ninety-eight interrogatories, stating that he considered the request "to be vague, ambiguous, not relevant, burdensome, oppressive, too expensive, and seeks privileged matters."²³ There was no analysis of each objection. The Bureau filed motions to compel full and complete responses because they had been denied discovery by the Zawila Parties' non-responses to the discovery requests.²⁴

13. On December 23, 2015, the Presiding Judge concluded that "Zawila's consistency in refusing to answer even obvious fact interrogatories shows his inclination to stonewall"²⁵ and granted the Bureau's motion to compel.²⁶ Zawila was ordered to "revisit all interrogatories and requests to produce documents that were served by the Enforcement Bureau, as well as all requests for admissions served in 2003, and . . . provide positive and cooperative responses."²⁷ The Presiding Judge further ordered Zawila to submit a Status Report with attached declarations describing production efforts.²⁸ The Enforcement Bureau was handicapped by the stalemate caused by Zawila, who did not even respond with any suggested modifications or negotiated answers to the requests. Zawila simply refused to comply with Commission discovery rules and made no effort to resolve discovery issues by negotiation.²⁹ So it becomes obvious that Zawila was stunningly "stonewalling" the Bureau.

B. Unanswered Discovery Requests - 2016

14. On February 2, 2016, the Bureau served requests for admission of fact on Zawila, FCB, and LB.³⁰ Zawila does not dispute that the Zawila Parties failed to respond to the Bureau's requests for admission by a February 18 deadline.³¹ Instead, two days after the deadline, on February 20, 2016, Zawila, on behalf of himself, FCB, and LB, moved to join a pending unrelated motion for protective order filed by Mr. Couzens, on behalf of Central Valley Educational Services, Inc. (Central Valley) and Avenal Educational Services, Inc. (Avenal).³² The Zawila Parties were not included or mentioned in Mr. Couzens' motion. Zawila's request to join was

²³ *Id.* at 5-6. For example, Zawila argued that "[i]t appears that the Enforcement Bureau lacks sufficient evidence to sustain its burden of proof on the allegations asserted in the subject HDO and is therefore attempting to re-shape this proceeding into a general inquiry into the entire almost 30 year history of each station subject to this proceeding." However, Zawila has no means of knowing the evidence which is in the sole possession of the Enforcement Bureau.

²⁴ *Id.* at 2.

²⁵ *Id.* at 3.

²⁶ *Id.* at 7.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See Enforcement Bureau's Interim Status Report, FCC 16M-01, at 3. See also Hr'g Tr. at 6 ("We've received no responses to our first set of interrogatories. We've received very limited responses throughout the whole discovery process.").

³⁰ Enforcement Bureau's Motion for Summary Decision at 9 (filed Aug. 9, 2016).

³¹ *Id.* at 9-10.

³² Motion for Protective Order (47 CFR § 1.313), filed Feb. 8, 2016. The Bureau opposed this motion. See Enforcement Bureau's Opposition to Joinder in Motion for Protective Order (47 CFR § 1.313), filed Feb. 26, 2016.

denied.³³ Zawila also failed to request time to respond to discovery before the time expired. The Zawila Parties did not respond to the Bureau's February 2016 requests for admission until March 28, 2016, multiple days beyond the deadline.

C. The March 29 Status Conference

15. As part of the *Order* granting the Bureau's motion to compel, the Presiding Judge scheduled a Status Conference for February 24, 2016 to address discovery issues.³⁴ The Presiding Judge rescheduled this Status Conference for March 22, 2016³⁵ and instructed Zawila to "use the time before March 22, 2016 to comply with the Enforcement Bureau's outstanding discovery requests."³⁶ Zawila's request to attend the Status Conference by telephone was denied.³⁷ The Presiding Judge directed Zawila to meet his discovery requirements.³⁸ Due to a scheduling conflict, the Presiding Judge reset this Status Conference to March 29, 2016.³⁹ Zawila did not attend the deferred conference. So the Presiding Judge ruled that Zawila's, FCB's, and LB's March 28, 2016 responses to the Bureau's requests for admissions were late and that, by operation of Section 1.246(b) of the Rules, the Bureau's requests for admissions served on Zawila, FCB, and LB were *deemed admitted*.⁴⁰

D. The Adverse Inference Order

16. On May 10, 2016, the Presiding Judge released a comprehensive *Order*, FCC 16M-18, containing findings of fact made against Zawila, FCB, and LB.⁴¹ The Presiding Judge found that the Zawila Parties had refused to "provide timely and complete responses to [the Bureau's] pending discovery requests despite repeated instructions and orders from the Presiding Judge to do so."⁴² The Presiding Judge concluded that negative inferences were warranted as to fifty-five (55) unanswered requests to admit under Section 1.246 (after 10 days unanswered document requests are deemed admitted).⁴³

³³ *Order*, FCC 16M-05 (ALJ, rel. Feb. 29, 2016) (the Presiding Judge denied the underlying motion for protective order on February 29, 2016, thus mooted this joinder request).

³⁴ *Order*, FCC 15M-33, at 7.

³⁵ *Order*, FCC 16M-03, at 2 (ALJ, rel. Feb. 18, 2016).

³⁶ *Id.*

³⁷ *Order*, FCC 16M-04.

³⁸ *Id.* at 2 and n.4 (ALJ, rel. Feb. 24, 2016).

³⁹ *Order*, FCC 16M-06, at 2 (ALJ, rel. Feb. 29, 2016).

⁴⁰ *Order*, FCC 16M-18, at n. 21, (ALJ, rel. May 10, 2016) (citing Transcript of March 29, 2016 Status Conference at 55:23-56:12, wherein the Presiding Judge made adverse findings as to fifty-two (52) Bureau requests to admit).

⁴¹ *Id.*

⁴² *Id.* at 2.

⁴³ *Id.*

ZAWILA'S OBJECTIONS

17. On or about April 11, 2016, Zawila filed an objection to the proposed order containing negative findings of fact against him.⁴⁴ The Presiding Judge finds Zawila's objections to be without merit.

18. First, Zawila opposes the Motion based on an unfounded unfair treatment argument. Rather than showing genuine fact issues, Zawila argued unfair treatment as constituting "material facts."⁴⁵ The prime function of summary decision is to "avoid a useless hearing" when there are no genuine issues of material fact to litigate.⁴⁶ Section 1.251(b) of the Commission's rules requires that an opposition to a motion for summary decision cannot rest on mere denials or allegations, but "must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is a genuine issue of material fact for determination at the hearing . . ." 47 CFR § 1.251(d). The Presiding Judge agrees with the Bureau that Zawila offered not much more than *ad hominem* quips while failing to provide a reasonable basis for disputing a single fact set forth in the Bureau's Motion.⁴⁷ Zawila's objection completely misses the mark. It does not dispute a single material fact. Nor does the objection provide any basis in law or fact for not proceeding to summary decision.

19. Second, Zawila objects to the Presiding Judge's entry of adverse findings of fact, which Zawila believes were "based on the [P]residing [J]udge's disregard of the parties' responses to requests for admissions served by the [E]nforcement [B]ureau."⁴⁸ Zawila objects to the Presiding Judge's characterization of his tardy responses as "tardy." He also argues that his responses were filed "in compliance with the [P]residing [J]udge's own prior orders."⁴⁹ However, the record reflects Zawila's history of continuous noncompliance, as well as a consistent failure to provide timely responses to discovery requests despite discovery orders from the Presiding Judge to do so. To illustrate, in *Order*, FCC 15M-33, the Presiding Judge directed Zawila to revisit and serve responses to the Bureau's 2003 requests for admission.⁵⁰ The Zawila Parties simply ignored the Presiding Judge's discovery directives.⁵¹

20. Third, Zawila objects to summary decision based on what he considers to be "a misstatement of fact . . . that the parties have not responded to requests for admissions served by

⁴⁴ See also *id.* at 4.

⁴⁵ Opposition to Enforcement Bureau's Motion for Summary Decision at 2, served by mail and received Aug. 19, 2016.

⁴⁶ *In the Matter of Summary Decision Procedures*, Report and Order, 34 FCC 2d 485, 487, para. 6 (1972) (internal citations omitted).

⁴⁷ See Enforcement Bureau's Reply to the Opposition to the Motion for Summary Decision at 4 (citing 47 CFR §1.251(b)) (filed Aug. 30, 2016).

⁴⁸ See Opposition to Enforcement Bureau's Motion for Summary Decision at 2.

⁴⁹ *Id.* at 2.

⁵⁰ *Order*, FCC 15M-33, at 7.

⁵¹ Enforcement Bureau's Reply to the Opposition to the Motion for Summary Decision at 5 (Aug. 30, 2016) ("No meaningful discovery responses were served, no status reports or declarations were submitted, no contact was made with the Bureau to negotiate responses, and . . . the Zawila Parties failed to appear at the March 29, 2016 status conference.")

the [E]nforcement [B]ureau [14 years ago] in 2003.”⁵² Zawila contends that “the parties did in fact respond in a timely manner to requests for admission in 2003.” Zawila’s contentions are unfounded. The Zawila Parties’ 2003 responses cannot serve as a basis for establishing material facts that are not reliable. From a review of the opposition, the responses are neither complete nor authentic and would be inadmissible. Also, Zawila fails to identify any specific fact that is in dispute that was contained in the responses.⁵³ However, the Presiding Judge’s entry of adverse findings of fact was based on much more than the Zawila Parties’ failure to provide their 2003 responses.⁵⁴ Here, adverse inferences are warranted by virtue of the totality of the Zawila Parties’ conduct in this case, including their utter failure to participate in good-faith discovery.”⁵⁵

21. Fourth, Zawila argues that discovery has been “vague, ambiguous, overbroad, burdensome, oppressive, and overly expensive to deal with.”⁵⁶ For example, Zawila contends that (1) discovery was “impossible to deal with” due to demised parties; (2) discovery was “unfair” because the FCC already had such information; and (3) discovery was a “burden,” having to respond to over 1,000 discovery demands. But, as previously pointed out, Zawila is “in an excellent position to provide answers” to the Bureau’s discovery requests regarding the various stations at issue, because “Zawila, as registrant and lawyer, [does], should, [or must] know the multiple background facts” which the Bureau is seeking to establish through Commission discovery procedures.⁵⁷ Yet Zawila offers no explanation as to why he, who is “very much alive,” and who is attorney for the Zawila Parties, has not provided any requested discovery.⁵⁸

22. Having considered and rejected all objections, the Bureau’s Motion for Summary Decision will now be considered in light of all the circumstances. It appears clear that time-honored Commission procedures for summary decision [Section 1.251] have been “stuffed” by Mr. Zawila, a licensed attorney in California who is an officer of the court, which includes the Commission’s hearing forum.

Conclusion

23. There are no genuine issues of material fact in this record that would preclude the following findings of fact.

I. STATION KNKS (FM)

24. The *HDO* directed Zawila to show cause why the permit for KNKS (FM), Coalinga, California, should not be revoked and all authority to operate the station terminated. The *HDO* specified the following issues against Zawila:

⁵² Opposition to Enforcement Bureau’s Motion for Summary Decision at 2.

⁵³ *Id.* at 5.

⁵⁴ *Id.* at 4.

⁵⁵ *Order*, FCC 16M-18, at 4-5.

⁵⁶ Opposition to Enforcement Bureau’s Motion for Summary Decision at 4.

⁵⁷ *Order*, FCC 16M-18, at 4 (ALJ, rel. May 10, 2016).

⁵⁸ *See* Enforcement Bureau’s Reply to the Opposition to the Motion for Summary Decision at 4-8.

Misrepresentation/Lack of Candor - § 312(a)(1) and § 73.1125 (False Statements)

25. The first issue is whether Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), misrepresented or lacked candor with respect to material facts before the Commission.⁵⁹

26. Zawila did not have a right-of-way to operate a radio station from the KNGS (FM) site.⁶⁰ Thus, Zawila misrepresented to the Commission that he did have a right-of-way to operate a radio station from the KNGS (FM) site.⁶¹

27. The antenna for Station KNGS (FM) was not constructed in compliance with the construction permit.⁶² Thus, Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), misrepresented to the Commission in November 2000 that Station KNGS (FM) was constructed as authorized in its construction permit.⁶³

28. The antenna for Station KNGS (FM) was not constructed on a 91-meter tower.⁶⁴ Thus, Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), misrepresented to the Commission that the antenna for Station KNGS (FM) was constructed on a 91-meter tower.⁶⁵

29. There was no main studio at the 'North Dome Ridge' site in Kettleman Hills, as specified in the construction permit for Station KNGS (FM),⁶⁶ and Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), failed to maintain a properly staffed main studio for Station KNGS (FM).⁶⁷ Thus, Zawila misrepresented to the Commission that the KNGS main studio complied with Section 73.1125 (main studio location).⁶⁸

30. The tower for Station KNGS (FM) was not destroyed by vandalism.⁶⁹ Thus, Zawila misrepresented to the Commission that the 91-meter KNGS tower was erected and subsequently destroyed by vandalism.⁷⁰

31. Kunec Engineering did not erect a 91-meter tower for Station KNGS (FM).⁷¹ Thus, William L. Zawila, individually and/or as an officer of the permittee of Station KNGS (FM),

⁵⁹ See *HDO* at 25.

⁶⁰ *Order*, FCC 16M-18, at 8.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 7.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 8.

⁷⁰ *Id.*

⁷¹ *Id.*

misrepresented to the Commission that Kunec Engineering erected a 91-meter tower for Station KNGS (FM).⁷²

32. The above findings of fact and conclusions of law show that Zawila is in violation of Section 312(a)(1) of the Communications Act of 1934 and Section 73.105 of the Commission's rules (Rules) by misrepresenting facts to the Commission and/or by a lack of candor with respect to Station KNGS (FM).⁷³

Movement of Antenna - § 73.1690 (Modification of Transmit System)

33. The second issue is whether Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), willfully or repeatedly violated Section 73.1690(b)(2) of the Rules by moving the antenna of KNGS (FM) to a different tower without a construction permit.⁷⁴ To the contrary, it is found that Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), moved the antenna for Station KNGS (FM) to a tower that was different than the one described in the construction permit obtained for Station KNGS (FM).⁷⁵ Thus, Zawila violated Section 73.1690(b)(2) of the Rules by moving the antenna of KNGS without a permit⁷⁶ and misrepresented to the Commission that the description of the construction permit was in accord with Section 73.1690 of the Rules.

Main Studio - § 73.1125 (Main Studio)

34. The third issue is whether Zawila willfully or repeatedly violated Section 73.1125 of the Rules, by failing to maintain a properly staffed main studio for KNGS (FM), and by failing to have a local telephone number in the communities of license for KNGS (FM), or a toll-free telephone number for the station.⁷⁷ It is found that Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), failed to maintain a properly staffed main studio for Station KNGS (FM),⁷⁸ failed to maintain a "local telephone number" for Station KNGS (FM),⁷⁹ and failed to maintain a "toll-free telephone number" for Station KNGS (FM).⁸⁰ Thus, it is found that Zawila violated Section 73.1125 of the Rules.

Public Files - § 73.3526 (Public Inspection File)

35. The fourth issue is whether Zawila willfully or repeatedly violated Section 73.3526 of the Rules, by failing to maintain proper public inspection files for KNGS (FM).⁸¹ It is found that Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), failed to

⁷² *Id.*

⁷³ *Id.* at 7-8.

⁷⁴ *HDO* at para. 113(b).

⁷⁵ *Order*, FCC 16M-18, at 7.

⁷⁶ *Id.*

⁷⁷ *HDO* at para. 113(c).

⁷⁸ *Order*, FCC 16M-18, at 7.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *HDO* at para. 113(d).

maintain proper public inspection files for Station KNGS (FM).⁸² Thus, Zawila violated Section 73.3526 of the Rules.

Construction Tower - § 17.57 (Notice of Tower Completion)

36. The fifth issue is whether Zawila willfully or repeatedly violated Section 17.57 of the Rules, by failing to notify the Commission within 24 hours of completion of the construction tower for which an Antenna Registration Number had been assigned, or of changes in the structure's height for the tower on which the antenna of KNGS (FM) was to have been mounted."⁸³ It is found that Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), failed to file an FCC Form 854 with the Commission's Wireless Telecommunications Bureau certifying that the tower for Station KNGS (FM) had been completed,⁸⁴ failed to notify the Commission within 24 hours of completion of construction of the tower for Station KNGS (FM) for which an Antenna Registration Number had been assigned,⁸⁵ and failed to immediately notify the Commission of changes in the structure's height for the tower on which the antenna of Station KNGS (FM) was to have been mounted.⁸⁶ Thus, Zawila violated Section 17.57 of the Rules.

Conclusion

37. In light of the evidence adduced under the foregoing issues, William L. Zawila does not possess the requisite qualifications to be or remain a permittee of Station KNGS (FM).

II. STATION KZPE (FM)⁸⁷

38. The *HDO* directed Zawila to show cause why the construction permit for KZPE (FM), Ford City, California, should not be revoked and all authority to operate the station terminated. The *HDO* specified the following issues against Ford City Broadcasting (FCB):

Main Studio - § 73.1125 (Main Studio)

39. The first issue is whether Zawila, individually and/or as an officer of, or on behalf of FCB, misrepresented facts to and/or lacked candor with the Commission in his statements regarding the construction and/or operation of the facilities of KZPE (FM), and in his statements in response to official Commission inquiries regarding the operation of said station, in violation of Section 312(a)(1) of the Communications Act of 1934, and/or Section 73.1015 of the Rules.⁸⁸ Zawila represented to the Commission that KZPE (FM) had a main studio located at its transmitter

⁸² *Order*, FCC 16M-18, at 7.

⁸³ *HDO* at para. 113(e).

⁸⁴ *Order*, FCC 16M-18, at 7.

⁸⁵ *Id.*

⁸⁶ *Id.* at 8.

⁸⁷ The designated issues concerning FCB are also designated against Avenal and Central Valley. *See HDO* at para. 113. As discussed above, Avenal and Central Valley have been dismissed from the case. *See Memorandum Opinion & Order*, FCC 16M-25 (July 25, 2016) (dismissing *without prejudice* Avenal Educational Services, Inc. and Central Valley Educational Services, Inc. as parties after finding they "did not qualify as entities entitled to apply for NCE [noncommercial educational] stations on the date that [they filed] applications . . . with the Commission").

⁸⁸ *HDO* at para. 113(a).

site in compliance with Section 73.1125 of the Rules.⁸⁹ It is found that Station KZPE (FM) was built without a main studio.⁹⁰ Therefore, neither Zawila nor FCB complied with Section 73.1125 of the Rules, requiring broadcast stations to “maintain a main studio.” Zawila and FCB violated Section 312(a)(1) by knowingly making false statements to the Commission, concerning a fictitious main studio.

Movement of Antenna - § 73.1690 (Movement of Antenna)

40. The second issue is whether Zawila, individually and/or as an officer of, or on behalf of FCB, willfully or repeatedly violated Section 73.1690(b)(2) of the Rules by moving the antenna of KZPE (FM) to a different tower without a construction permit.⁹¹ It is found that Zawila, individually or on behalf of FCB, moved the antenna for Station KZPE (FM) to a tower that was different from the tower described in the construction permit.⁹² In this way, Zawila and FCB violated Section 73.1690(b)(2) of the Rules by misrepresenting to the Commission the location and identification of the antenna tower.

Main Studio - § 73.1125 (Main Studio)

41. The third issue is whether Zawila and/or FCB willfully or repeatedly violated Section 73.1125 of the Rules, by failing to maintain a properly staffed main studio for KZPE (FM).⁹³ It is found that Zawila, individually or on behalf of FCB, failed to maintain a properly staffed main studio for Station KZPE (FM).⁹⁴ Thus, Zawila and FCB have violated Section 73.1125 of the Rules.

Public Files - § 73.3526 (Public Inspection Files)

42. The fourth issue is whether Zawila willfully or repeatedly violated Section 73.3526 of the Rules, by failing to maintain proper public inspection files for KZPE (FM).⁹⁵ It is found that Zawila, individually, or on behalf of FCB, failed to maintain proper public inspection files for Station KZPE (FM).⁹⁶ Thus, Zawila and FCB have violated Section 73.3526 of the Rules by failing to maintain proper inspection files.

Unauthorized Control - § 73.3540(a) (Unauthorized Control)

43. The fifth issue is whether Zawila was an undisclosed real party in interest in FCB’s application for license, or whether Zawila and/or FCB willfully or repeatedly violated Section 310(d) of the Communications Act of 1934, as amended, and/or Section 73.3540(a) of the Rules, by Zawila’s assuming control of KZPE (FM) without prior Commission authorization.⁹⁷ It is

⁸⁹ *Id.* at para. 97(j).

⁹⁰ *Order*, FCC 16M-18, at 9.

⁹¹ *HDO* at para. 113(b).

⁹² *Order*, FCC 16M-18, at 9.

⁹³ *HDO* at para. 113(c).

⁹⁴ *Order*, FCC 16M-18, at 9.

⁹⁵ *HDO* at para. 113(d).

⁹⁶ *Order*, FCC 16M-18, at 9.

⁹⁷ *HDO* at para. 113(f).

found that Zawila was an undisclosed real party in interest in FCB's application for license,⁹⁸ that FCB transferred control of Station KZPE (FM) to Zawila without prior Commission authorization,⁹⁹ and that Zawila assumed control of Station KZPE (FM) without prior Commission authorization.¹⁰⁰ Thus, Zawila and FCB have violated Section 73.3540(a) of the Rules by failing to obtain Commission consent before assigning or transferring control of KZPE (FM).

Conclusion

44. In light of the evidence adduced under the foregoing issues, neither William L. Zawila nor FCB possess the requisite qualifications to be or remain permittees of Station KZPE (FM).

III. STATION KZPO (FM)

45. The *HDO* directed Zawila and Linda Ware d/b/a Lindsay Broadcasting to show cause why the license for KZPO (FM), Lindsay, California, should not be revoked and all authority to operate said station terminated. The *HDO* specified the following issues against Lindsay Broadcasting (LB):

Misrepresentation/Lack of Candor - § 312(a)(1) and § 73.1125 (False Statements)

46. The first issue is whether Zawila, individually and/or on behalf of LB, misrepresented facts to and/or lacked candor with the Commission in his statements regarding the construction and operation of the facilities of KZPO (FM), and in his statements in response to official Commission inquiries regarding the operation of the station, in violation of Section 312(a)(1) of the Communications Act of 1934, as amended, and/or Section 73.1015 of the Rules.¹⁰¹ Zawila did represent to the Commission that KZPO (FM) had a main studio located at its transmitter site in compliance with Section 73.1125 of the Rules.¹⁰² It is found that Station KZPO (FM) did not have a main studio as of the time LB filed its covering license application for Station KZPO (FM) with the Commission.¹⁰³ Therefore, neither Zawila nor LB complied with Section 73.1125 of the Rules, which requires broadcast stations to "maintain a main studio," and each violated Section 312(a)(1) of the Communications Act and Section 73.1125 of the Rules by knowingly making false statements to the Commission.

Transfer of Control - § 310(d) and § 73.3540(a) (Unapproved Control)

47. The second issue is whether Zawila and/or LB willfully or repeatedly violated Section 310(d) of the Communications Act of 1934, and/or Section 73.3540(a) of the Rules, by Zawila's assuming control of KZPO (FM) without prior Commission authorization.¹⁰⁴ It is found

⁹⁸ *Order*, FCC 16M-18, at 9.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *HDO* at para. 114(a).

¹⁰² *Id.* at para. 97(k).

¹⁰³ *Order*, FCC 16M-18, at 11.

¹⁰⁴ *HDO* at para. 114(b).

that Zawila assumed control of Station KZPO (FM) without prior Commission authorization¹⁰⁵ and that LB transferred control of Station KZPO (FM) to Zawila without prior Commission authorization.¹⁰⁶ Thus, Zawila and LB have violated Section 310(d) of the Act and Section 73.3540(a) of the Rules by failing to obtain Commission consent before assigning or transferring control of KZPE (FM).

EAS (Emergency Alert System) - §§ 73.1800, 73.1225, and 73.3540

48. The third issue is whether Zawila and/or LB willfully or repeatedly violated Sections 11.15, 11.35(a), 11.35(c), and 11.52(d) of the Rules, by failing to maintain proper Emergency Alert System (EAS) equipment and proper EAS logs.¹⁰⁷ It is found that Zawila did fail to maintain proper EAS equipment for Station KZPO (FM),¹⁰⁸ that LB did fail to maintain proper EAS equipment for Station KZPO (FM),¹⁰⁹ that Zawila did fail to maintain proper EAS logs for Station KZPO (FM),¹¹⁰ and that LB failed to maintain proper EAS logs for Station KZPO (FM).¹¹¹ Thus, Zawila and LB have violated Sections 11.15, 11.35(a), 11.35(c), and 11.52(d) of the Rules (operating manuals; operational readiness; EAS signal monitoring) by failing to maintain proper EAS equipment and EAS logs.

49. The fourth issue is whether Zawila and/or LB willfully or repeatedly violated Section 73.1125 of the Rules by failing to maintain a properly staffed main studio for KZPO (FM).¹¹² It is found that Zawila failed to maintain a properly staffed main studio for KZPO (FM)¹¹³ and that LB failed to maintain a properly staffed main studio for KZPO (FM).¹¹⁴ Thus, Zawila and LB have violated Section 73.1125 of the Rules.

50. The fifth issue is whether Zawila and/or LB willfully or repeatedly violated Sections 73.1800(a), 73.1225(a), 73.1225(c)(5), and 73.1226(a) of the Rules, by failing to maintain station logs and to make station logs and facilities available on request for inspection by the Commission.¹¹⁵ It is found that Zawila failed to maintain station logs, and to make available station logs and facilities for inspection by the Commission,¹¹⁶ and that LB failed to maintain station logs and to make station logs and facilities available for inspection by the Commission.¹¹⁷ Thus, Zawila

¹⁰⁵ *Order*, FCC 16M-18, at 10.

¹⁰⁶ *Id.*

¹⁰⁷ *HDO* at para. 114(c).

¹⁰⁸ *Order*, FCC 16M-18, at 10.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *HDO* at para. 114(d).

¹¹³ *Order*, FCC 16M-18, at 10.

¹¹⁴ *Id.* at 11.

¹¹⁵ *HDO* at para. 114(e).

¹¹⁶ *Order*, FCC 16M-18, at 11.

¹¹⁷ *Id.*

and LB have violated Sections 73.1800(a) (station logs), 73.1225(a) (equipment protocols), 73.1225(c)(5) (station logs), and 73.1226(a) (station records) of the Rules.

51. The sixth issue is whether Zawila and/or LB willfully or repeatedly violated Section 73.1560(b) of the Rules, by operating station KZPO (FM) at a transmitter output power greater than 105% of authorized power.¹¹⁸ It is found that Zawila did operate Station KZPO (FM) at a transmitter output power greater than 105% of authorized power¹¹⁹ and that LB operated Station KZPO (FM) at a transmitter output power greater than 105% of authorized power.¹²⁰ Thus, Zawila and LB have violated Section 73.1560(b) (operating power) of the Rules.

52. The seventh issue is whether Zawila and/or LB willfully or repeatedly violated Sections 73.1225(c)(2), 73.1226(c)(4), 73.1870(b)(3), and 73.1870(c)(3) of the Rules, by failing to maintain and make available for inspection records pertaining to the chief operator of station KZPO (FM), to post the written designation of chief operator, to maintain in the public inspection file agreements with the chief operator, and to have the chief operator review and sign station records and logs.¹²¹ It is found that Zawila failed to maintain and make available for inspection records pertaining to the chief operator and to post the written designation of chief operator. It is further found that Zawila failed to maintain the public inspection agreements with the chief operator. Also, it is found that Zawila failed to have the chief operator review and sign station records and logs.¹²² Further, LB failed to maintain and make available for inspection records pertaining to the chief operator of station KZPO (FM), to post the written designation of chief operator, to maintain in the public inspection file agreements with the chief operator, and to have the chief operator review and sign station records and logs.¹²³ Thus, Zawila and LB have violated Sections 73.1225(c)(2) (chief operator), 73.1226(c)(4) (chief operator contracts), 73.1870(b)(3) (chief operator posted), and 73.1870(c)(3) (station records) of the Rules.

53. The eighth issue is whether Zawila and/or LB willfully or repeatedly violated Section 73.1350(a) of the Rules, by failing to maintain and operate KZPO (FM) in a manner that complies with the technical rules set forth in our Rules, and in accordance with its station authorization.¹²⁴ It is found that Zawila failed to maintain and operate KZPO (FM) in a manner that complies with the technical requirements set forth in Section 73.1350(a) of the Rules, and in accordance with its station authorization.¹²⁵ It is also found that LB failed to maintain and operate KZPO (FM) in a manner that complies with the technical requirements set forth in Section 73.1350(a) of the Commission's Rules, and in accordance with its station authorization.¹²⁶ Thus, Zawila and LB have violated Section 73.1350(a) (compliance with technical rules) of the Rules by

¹¹⁸ *HDO* at para. 114(f).

¹¹⁹ *Order*, FCC 16M-18, at 11.

¹²⁰ *Id.*

¹²¹ *HDO* at para. 114(g).

¹²² *Order*, FCC 16M-18, at 11.

¹²³ *Id.*

¹²⁴ *HDO* at para. 114(h).

¹²⁵ *Order*, FCC 16M-18, at 11.

¹²⁶ *Id.* at 12.

failing to maintain and operate Station KZPO (FM) in a manner that complies with the technical Rules, and in accordance with the terms of its station authorization.

Conclusion

54. In light of the evidence adduced in this proceeding, it is concluded that neither William L. Zawila nor Lindsey Broadcasting possess the requisite qualifications to be or remain permittees of Station KZPO (FM).

RULINGS

Accordingly, based on the foregoing findings and conclusions, **IT IS ORDERED** that the Motion for Summary Decision filed by the Enforcement Bureau on August 9, 2016, meets the standards of Section 1.251 of the Commission's Rules, there are no material issues of fact to try, and therefore **SUMMARY DECISION IS GRANTED**.

It is **FURTHER ORDERED** that this ruling shall not apply to Avenal Educational Services, Inc. and Central Valley Educational Services, Inc., both of which have been dismissed from this case without prejudice by virtue of and in accordance with *Memorandum Opinion & Order*, FCC 16M-25 (June 25, 2016).¹²⁷

IT IS FURTHER ORDERED that all current licenses and related authorizations at issue in this proceeding that were represented as being held by William L. Zawila, on behalf of himself, The Estate of Linda Ware d/b/a Lindsay Broadcasting, and The Estate of H.L. Charles d/b/a Ford City Broadcasting **ARE HEREBY REVOKED**.¹²⁸

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¹²⁷ Avenal and Central Valley were dismissed without prejudice. *Cf.* Fed. R. Civ. Pro. 41(a)(2); *Premiere Network Servs., Inc.*, 18 FCC Rcd 11474, 11475 (2003) (“Although the Commission does not have a specific rule relating to the dismissal of formal complaints . . . Rule 41(a)(2) of the Federal Rules of Civil Procedure . . . is instructive.”) (footnotes omitted). Black’s Law Dictionary (10th ed. 2014) defines “dismissed without prejudice” as “removed from the court’s docket in such a way that the plaintiff may refile the same suit on the same claim.” Thus, the FCC may bring the same claims against Avenal and Central Valley based on the same set of facts found herein. *See also Clarification of Memorandum Order & Opinion, FCC 16M-23, 16M-26* (ALJ, rel. Sept. 26, 2016), at 2. It would be unfair and inappropriate to resolve such issues here where counsel has not participated in summary decision briefing due to the dismissal of their client parties Avenal and Central Valley.

¹²⁸ Specifically, this revocation order applies to FM station KNGS (FM) (Zawila), KZPO (FM) (LB), and KZPE (FM) (FCB).

IT IS FURTHER ORDERED that this proceeding **IS TERMINATED**, and is now **CERTIFIED** to the Commission in accordance with 47 CFR § 1.92.

FEDERAL COMMUNICATIONS COMMISSION¹²⁹

A handwritten signature in black ink that reads "Richard L. Sippel". The signature is written in a cursive style with a large, prominent initial 'R'.

Richard L. Sippel
Chief Administrative Law Judge

¹²⁹ Courtesy copies of this Order will be sent on issuance by email to all counsel, including Mr. Couzens, and by First Class Mail to Mr. Zawila as counsel and party.