

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

In the Matter of)	
)	
Cesar Chavez Foundation)	
)	
Application for Renewal of License of)	File No. BRED-20130723ABI
Station KUFW(FM), Woodlake, California)	Facility ID No.: 21210

MEMORANDUM OPINION AND ORDER

Adopted: April 17, 2018

Released: April 18, 2018

By the Commission:

1. The Commission has before it an Application for Review (AFR) filed by David Hawe (Hawe)¹ on August 29, 2016.² Hawe challenges a Consent Decree entered into by the Media Bureau (Bureau) and Cesar Chavez Foundation (CCF), and adopted by the Bureau on July 27, 2016.³ The Consent Decree resolved the Bureau’s investigation into violations of the law and rules governing underwriting announcements⁴ at CCF’s noncommercial educational (NCE) radio station KUFW(FM), Woodlake, California (Station). These violations were brought to the Bureau’s attention in a Petition to Deny filed by Hawe against the above-captioned application to renew the Station’s license (Renewal

¹ The AFR and all of the pleadings referred to herein as filed by Hawe actually were filed jointly by Hawe and Gerawan Farming Inc (Gerawan). The Petition to Deny as well as the subsequent Reply to the Opposition to the AFR filed by Hawe and Gerawan indicate that Hawe is entitled to standing as a listener of the Station and resident of the Station’s service area. Petition to Deny at Exh. 4 (Oct. 31, 2013); Reply at Exh. 1 (Sept. 27, 2016). *See also Urban Radio I, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 6389, 6390 para. 2 (2014); *Chapin Enters., LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4252 para. 7 (2014). However, neither the Petition to Deny, the AFR, nor the Reply explain why Gerawan is entitled to standing. Accordingly, we find that Gerawan lacks standing to file the AFR and do not discuss it further herein and, in order to avoid confusion, refer to the AFR and all pleadings as filed by Hawe alone. *See Robert J. Maccini*, Memorandum Opinion and Order, 10 FCC Rcd 9376 (1995) (applicant for review lacked standing because he did not “identify himself as a resident of the stations’ service areas, as a listener, or as a competitor of the stations and ha[d] not demonstrated that he is aggrieved by the Bureau’s action granting” the application at issue).

² CCF filed an Opposition to Application for Review (Opposition) on September 12, 2016. Hawe filed a Reply on September 27, 2016, and later filed a Supplement (March 2017 Supplement) on March 21, 2017, which was accompanied by a motion to accept. In addition, the Commission received letters from Congressional offices regarding this proceeding. *See* Letter to Thomas E. Wheeler, Chairman, Federal Communications Commission from Congressman Devin Nunes and Congressman David G. Valadao (Sept. 26, 2016); Letter to Thomas E. Wheeler, Chairman, Federal Communications Commission from Congressman Devin Nunes and Congressman David G. Valadao (Oct. 13, 2016); Letter to Ajit Pai, Chairman, Federal Communications Commission from Congressman Devin Nunes and Congressman David G. Valadao (Mar. 15, 2017). These letters address the merits of this case, and therefore are *ex parte* presentations. *See* 47 CFR §§ 1.1202, 1.1208. While the letters themselves do not indicate if copies were served on CCF, CCF did obtain copies of each letter. Further, we have placed the letters in the record. Thus, any potential violation of the *ex parte* rules did not prejudice the parties. In any event, the substantive arguments made in these letters also are made by Hawe in the AFR and Reply.

³ *Cesar Chavez Foundation*, Order, 31 FCC Rcd 7578 (MB 2016) (*Order*).

⁴ 47 U.S.C. § 399b; 47 CFR § 73.503(d).

Application),⁵ which covered a license term from December 1, 2005, through grant of the Renewal Application on August 23, 2016.⁶ Hawe also challenges the Bureau's grant of that application on August 23, 2016.⁷ We address his challenges to each of the Bureau's actions below.

2. **Consent Decree.** Hawe acknowledges that “the Commission and the Bureau, pursuant to delegated authority, have broad discretion to settle cases in a manner they see fit.”⁸ He argues, however, that the Bureau abused its discretion in this particular case.⁹ In support of his claim, Hawe asserts that the Bureau's action “is wholly inadequate for the severity of CCF's rule violations,”¹⁰ ignores earlier findings that both the Station and another CCF station had violated the law and rules governing underwriting announcements,¹¹ and “involves application of policy that must be overturned.”¹² We address each of these arguments in turn below.

3. We reject Hawe's claim that the Bureau abused its discretion and that the “penalty is wholly inadequate for the severity of CCF's rule violations.”¹³ While Hawe insists that the Bureau should have denied the Renewal Application or designated it for hearing, rather than entering into a Consent Decree, we are not aware of—and Hawe does not cite—any precedents where such sanctions were imposed for underwriting violations.¹⁴ Indeed, it has long been the case that an underwriting violation

⁵ In addition to the Petition to Deny, Hawe filed five supplements prior to the Bureau's release of the *Order*, each of which were accompanied by motions to accept. Hawe filed one supplement—accompanied by a motion to accept—on the day the *Order* was adopted. Like the previous five supplements, it alleges violations that pre-date the Bureau's adoption of the *Order*.

⁶ 47 U.S.C. §§ 307(c)(3) (requiring Commission to “continue such license in effect” pending “any administrative or judicial hearing and final decision on [an] application [to renew that license]”), 503(b)(6) (“A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending a decision on an application for renewal of the license.”).

⁷ *Broadcast Actions*, Public Notice, Report No. 48807 (Aug. 26, 2016).

⁸ AFR at 5. See, e.g., *Atlantic City Board of Education*, Memorandum Opinion and Order, 31 FCC Rcd 9380, 9382 para. 8 (2016) (*Atlantic City*); *University of San Francisco*, Memorandum Opinion and Order, 30 FCC Rcd 10530, 10535 para. 9 (2015) (*USF*); *U.S. Cellular Corp.*, Order, 24 FCC Rcd 8729, 8738 para. 26 (2009); *Viacom, Inc.*, Order on Reconsideration, 21 FCC Rcd 12223, 12226 para. 6 (2006). Indeed, the decision to enter into a consent decree is generally not even reviewable by the courts. *NTCH, Inc. v. FCC*, Case No. 15-1145 (D.C. Cir. Nov. 15, 2016), quoting *Drake v. FAA*, 291 F.3d 59, 70 (D.C. Cir. 2002) (“The Commission's decision not to initiate revocation proceedings ‘was equivalent to a decision not to commence an enforcement action’ and thus presumptively unreviewable.”); *New York State Dept. of Law v. FCC*, 984 F.2d 1209, 1211 (D.C. Cir. 1993) (finding “the FCC's decisions about the initial scope of the enforcement action and its decision to enter into [a] Consent Decree are committed to the agency's nonreviewable discretion”).

⁹ AFR at 5.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 2-5.

¹² *Id.* at 1.

¹³ *Id.* at 1-2.

¹⁴ *Id.* at 9-10. While Hawe does cite one case involving underwriting violations, *id.* at 9-10, citing *Enid Public Radio Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 9138 (MB 2010) (*Enid*), that case did not involve denial of the licensee's renewal application or designation of the application for hearing. Further, we note that Hawe appears to take contrary positions about this case, arguing in one paragraph that it is “analogous” and, in the very next, arguing that the underwriting violations here warrant more severe sanctions than those imposed in *Enid*. In any event, we find *Enid* distinguishable. In *Enid*, the Bureau's actions (short-term renewal for six years) and findings (pattern of abuse) were grounded in both underwriting and technical violations and in the licensee's refusal to respond to the allegations lodged against it. *Enid*, 25 FCC Rcd at 9144 para. 14.

“typically results in the imposition of a fine or admonishment.”¹⁵ We further note that the \$12,500 civil penalty specified in the Consent Decree is higher than the base forfeiture amount for underwriting violations,¹⁶ and is consistent with forfeitures imposed for similar violations.¹⁷ The “practical equivalence of relief” in this situation “counseled strongly in favor of settlement.”¹⁸

4. We concede that the Bureau did not discuss CCF’s past underwriting violations¹⁹ and found it unnecessary to address allegations that CCF’s underwriting violations continued during the license term at issue.²⁰ We need not consider whether it was error for the Bureau not to have addressed

¹⁵ *WQED Pittsburgh*, Memorandum Opinion and Order, 15 FCC Rcd 202, 209 para. 12 (1999) (*WQED*).

¹⁶ 47 CFR 1.80, Note to para. (b)(8).

¹⁷ See, e.g.; *Minority Television Project, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 16923 (EB 2005) (*Minority Television*) (affirming \$10,000 forfeiture related to broadcast of 18 advertisements a total of 1911 times during a 26 month period, noting that forfeiture amount was increased above the base due to the large number of advertisements broadcast and the lengthy period of time, and finding, despite this, that no other type of sanction was “necessary or justified”); *Caguas Educational TV, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 6093 (EB 2005) (*Caguas*) (\$10,000 forfeiture for airing of two advertisements a total of 1671 times six month period). *Minority Television* and *Caguas* involved numerous advertisements aired hundreds, even thousands, of times, over an extended period of time (*i.e.*, violations that could be characterized as more egregious than those documented by *Hawe*). *Hawe* is correct in noting that *The Syner Foundation, Inc.*, 30 FCC Rcd 1780 (EB 2015) (*Syner*), involved a larger civil penalty amount. However, in that decision, the Enforcement Bureau did not offer any detail regarding the underwriting violations at issue. Thus, it is impossible to draw any comparison between the violations at issue here and those addressed in *Syner*. Further, while *Hawe* makes much of the fact that *Syner* included a compliance plan, unlike here, the licensee in that case continues to operate the NCE station at which the violations occurred. See, *infra*, n. 32. In any event, CCF subsequently entered into a consent decree with the Enforcement Bureau that includes a compliance plan. See *infra* n.20.

¹⁸ *New York Telephone Co.*, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 3303, 3305 para. 15 (1991). It is worth noting that consent decrees often specify a lower amount than forfeiture orders addressing similar behavior because consent decrees “take[] into account many additional factors not present in a forfeiture proceeding.” *Christian Voice of Central Ohio, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 15943, 15946-47 para. 10 (2008).

¹⁹ AFR at 5-6, 8. Specifically, *Hawe* asserts that the Bureau ignored three Enforcement Bureau letters from the 1990s, two of which admonished another station for underwriting violations and one of which admonished the Station for an underwriting violation, and a 2012 Forfeiture Order issued for underwriting violations at the Station. AFR at 2-4, 5, citing *Farmworker Communications, Inc.*, Letter Order (MMB April 21, 1992) (admonishment for underwriting violations at Station); *National Farm Workers Service Center, Inc.*, Letter Order (MMB Dec. 29, 1992) (admonishment for underwriting violations at KNAI(FM)); *National Farm Workers Service Center, Inc.*, Letter Order. 9 FCC Rcd 6855 (MMB 1994) (*NFWSC*) (admonishment for underwriting violations at KNAI(FM)); *Cesar Chavez Foundation*, Forfeiture Order, 27 FCC Rcd 5252 (EB 2012) (*2012 Forfeiture Order*) (\$12,500 forfeiture for underwriting violations at KUFW(FM)). The Station’s license previously was held by Farmworker Communications, Inc., an affiliate of National Farm Workers Service Center, Inc. (which today goes by the name Cesar Chavez Foundation).

²⁰ *Order*, 31 FCC Rcd at 7578 n. 1. To the extent that *Hawe* alleges for the first time in the AFR that underwriting violations occurred at another station licensed to CCF on August 25, 2016, AFR at 6-8 and Exh. 2; Reply at 5-8 and Exh. 3, Appx. 2, we dismiss these allegations as procedurally defective. 47 CFR § 1.115(c) (“No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.”). In addition, in the Reply and a late-filed March 2017 Supplement, *Hawe* alleges underwriting violations occurring at the Station after the Renewal Application was granted. See *infra* n.43 (Bureau’s grant of the Renewal Application commenced a new license term). We dismiss these allegations as moot because they were recently addressed by the Enforcement Bureau, which entered into a consent decree, *Cesar Chavez Foundation*, Order, DA 18-74 (EB rel. Feb. 1, 2018), resolving the investigation into complaints filed by *Hawe* and Gerawan that related to the same alleged violations. Letter from Scott Woodworth, Edinger Associates PLLC, Counsel to Gerawan Farming, Inc., and David *Hawe*, to Investigations and Hearings Division, Enforcement Bureau, FCC (filed Oct. 17, 2016) (On file in EB-IHD-16-0023074) (alleging violations occurred at CCF’s other

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the past and continuing violations in the context of reaching this Consent Decree, since we conclude that addressing them would not lead to a different result. Thus, the Bureau's failure to do so was harmless and does not warrant grant of the AFR. In other cases involving repeat underwriting offenders and no history of other rule violations, the most severe penalty imposed remained monetary.²¹ This has been the case even where underwriting violations continued to amass during an investigation of earlier such violations.²² Indeed, the penalty adopted here is consistent with or greater than penalties imposed in other cases involving prior underwriting violations.²³ Further, the Consent Decree requires CCF to divest the Station. In light of the foregoing, as well as Commission precedent in the license renewal context,²⁴ the public interest does not warrant further consideration of Hawe's supplemental allegations.

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station on August 25, 2016); Letter from Scott Woodworth, Edinger Associates PLLC, Counsel to Gerawan Farming, Inc., and David Hawe, to Investigations and Hearings Division, Enforcement Bureau, FCC (filed Oct. 27, 2016) (On file in EB-IHD-16-00023149) (alleging violations occurred at the Station on September 12 and 13, 2016); Letter from Scott Woodworth, Edinger Associates PLLC, Counsel to Gerawan Farming, Inc., and David Hawe, to Investigations and Hearings Division, Enforcement Bureau, FCC (filed Mar. 23, 2017) (On file in EB-IHD-16-00023149) (alleging violations occurred at the Station on March 7, 2017).

²¹ *WQED*, 15 FCC Rcd at 209 para. 12 (“While we do not condone violations of our enhanced underwriting requirements by noncommercial stations, an adjudicated violation of Section 399B typically results in the imposition of a fine or admonishment.”). See also *Educational Community Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 5283 (EB 2013) (proposing \$3000 forfeiture for underwriting violations but stating “this matter does not disqualify [the licensee] from a renewal of its license”); *Minority Television Project, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 15646 (EB 2002) (proposing \$10,000 forfeiture related to broadcast of 18 advertisements a total of 1911 times during a 26 month period, noting that forfeiture amount was increased above the base due to the large number of advertisements broadcast and the lengthy period of time, and finding, despite this, that no other type of sanction was “necessary or justified”).

²² *J.C. Maxwell Broadcasting Group, Inc.*, Letter Order, 7 FCC Rcd 3218 (MMB 1992) (\$7,500 forfeiture for underwriting violations, adjusted upward from base amount due to fact that the violations were “repeated on numerous occasions” over almost two years and the violations continued even after licensee received letters of inquiry from the Bureau); *NWSC*, 9 FCC Rcd at 6855 (noting 1992 admonishment letters regarding underwriting violations at Station and KNAI(FM) and admonishing for additional underwriting violations).

²³ *Minority Television Project, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 2403 (EB 2005) (\$7,500 proposed forfeiture, despite earlier forfeiture for underwriting violations at same station, *Minority Television Project, Inc.*, Forfeiture Order, 18 FCC Rcd 26611 (EB 2003), *aff'd* 19 FCC Rcd 25116 (2004), *recon. denied* 20 FCC Rcd 16923 (2005)); *Southern Rhode Island Public Radio Broadcasting, Inc.*, Order, 23 FCC Rcd 3769 (EB 2008) (\$7,500 voluntary contribution as part of consent decree, despite prior forfeiture for underwriting violations at same station, *Southern Rhode Island Public Radio Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 8115 (EB 2000)); *Family Life Educational Foundation*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 16317 (EB 2002) (\$2,000 forfeiture for broadcast of advertisements 120 times over three months and finding that, despite earlier warning, “no adjustment upward or downward is warranted”); *Tri-State Inspirational Broadcasting Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 16800 (EB 2001) (admonishment for underwriting violations despite earlier forfeiture for underwriting violations at same station, *Tri-State Inspirational Broadcasting Corp.*, Memorandum Opinion and Order, 8 FCC Rcd 6294 (MMB 1993)); *Penfold Communications, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 13 FCC Rcd 23731 (MMB 1998) (\$4,000 forfeiture, adjusted upward from base amount due to “the repeated nature of the violation, the carelessness with which [licensee] responded to the Bureau’s first letter of inquiry, and [licensee’s] history of past rule violations”); *Agape Broadcasting Foundation*, Letter Order, 13 FCC Rcd 13154 (MMB 1998) (\$5,000 forfeiture for underwriting violations, despite earlier forfeiture for underwriting violations at same station, *Agape Broadcasting Foundation, Inc.* Letter Order, 7 FCC Rcd 1710 (MMB 1992)).

²⁴ See, *infra*, paras. 9-10.

5. We further find Hawe has failed to identify the specific policy that he seeks to overturn.²⁵ In addition, we conclude that the policy-oriented arguments set forth by Hawe lack merit. For instance, we find that Hawe mischaracterizes the *Order* as establishing a “dangerous precedent” that “prior behavior can be ignored if a NCE entity flips to a commercial enterprise.”²⁶ In describing the *Order* in this way, Hawe ignores the civil penalty imposed by the Bureau. In addition, these claims do not reflect the subsequent Enforcement Bureau Consent Decree, which imposed a substantial penalty. We also disagree with Hawe’s claim that the *Order* “sends the message . . . that [NCE licensees] can violate the rules with impunity for years and will only suffer minimal penalties if they admit their violations and settle with the Bureau.”²⁷ As we noted above, the civil penalty is consistent with precedent and higher than the base forfeiture amount for underwriting violations.²⁸ We also dismiss Hawe’s unsupported and speculative argument that the decision “sends the message that if you are politically well connected enough, the rules do not apply to you except in token ways.”²⁹ Hawe alleges no specific facts that could support his inference of impropriety. Finally, we reject Hawe’s suggestion that the sole rationale for the consent decree was “administrative convenience.”³⁰ In fact, the Bureau considered CCF’s commitment to divest the Station or otherwise cease operating an NCE station in the area, in addition to the public and private resources conserved by entering into the Consent Decree.³¹

6. As the Commission has stated before, “[a]lthough a third party may prefer a different outcome than the terms the Bureau negotiated in the Consent Decree, the only relevant issue is whether the Bureau’s settlement terms are lawful.”³² Under the Consent Decree, CCF agreed to pay a civil penalty and committed to cease operating an NCE radio station in the Woodlake, California area.³³ As the only law or rule violations committed by the Station relate to underwriting announcements³⁴ and there is no prospect of CCF repeating those violations at the Station once it divests the station, we find that the

²⁵ AFR at 1 and 5. As CCF notes, Opposition at 3, “[t]he Commission need not sift pleadings and documents to identify arguments that are not stated with clarity by a petitioner.” *Fibertower Spectrum Holdings, LLC v. FCC*, 782 F.3d 692, 696 (D.C. Cir. 2015), citing *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 279 (D.C. Cir. 1997) and 47 CFR § 1.115(b)(1).

²⁶ AFR at 5.

²⁷ *Id.* at 2; Reply at 3.

²⁸ See *supra*, para.3.

²⁹ AFR at 2.

³⁰ *Id.* at 5-6.

³¹ *Order*, 31 FCC Rcd at 7578 n. 3; Consent Decree at para. 13.

³² *Atlantic City*, 31 FCC Rcd at 9382 para. 8.

³³ *Order*, 31 FCC Rcd at 7578 n. 3; Consent Decree at para. 13. On July 12, 2016, CCF entered into an Asset Exchange Agreement with Educational Media Foundation (EMF). That agreement provides for an exchange of the Station for one of EMF’s stations, KVPW(FM), Kingsburg, California, which CCF states that it will operate on a commercial basis. See *Order*, 31 FCC Rcd at 7578 n.3. CCF and EMF filed assignment applications related to this swap on August 16, 2016. See File Nos. BALED-20160815ABK, BALED-20160815ABJ; *Broadcast Applications*, Public Notice, Report No. 28801 (MB Aug. 18, 2016). Those applications are pending in the Media Bureau.

³⁴ Indeed, the Bureau rejected the allegation that CCF had violated Section 73.3580 of the Rules, by failing to air an announcement regarding the Renewal Application on October 1, 2013. *Order*, 31 FCC Rcd at 7578 n. 2. We note that Hawe does allege that CCF made misrepresentations to the Commission. AFR at 3-4. However, Hawe offered no support for his claim. Accordingly, we dismiss it. See 47 CFR § 1.115(b)(2).

Bureau's adoption of the Consent Decree represented a valid and appropriate exercise of the Commission's authority to settle enforcement actions, and we affirm that action.³⁵

7. **Renewal Application.** Section 309(k) of the Communications Act of 1934, as amended (Act), governs evaluation of renewal applications.³⁶ It provides for grant of a renewal application if, upon consideration of the application and the pleadings, the Commission—or the Bureau acting on delegated authority—“finds, with respect to that station, during the preceding term of its license,” the station has served the public interest, convenience, and necessity; there have been no serious violations of this Act or the Commission's rules (Rules); and there have been no other violations that, taken together, would constitute a pattern of abuse.³⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application, after notice and opportunity for a hearing under Section 309(d) of the Act, or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”³⁸ In this case, the Bureau granted renewal under terms and conditions it deemed appropriate, as set forth in the Consent Decree.³⁹

8. We note that, in the renewal context, the scope of behavior under consideration is limited. For instance, we are prohibited from considering underwriting violations committed by other stations licensed to CCF.⁴⁰ Likewise, we may not consider underwriting violations committed by the Station if they occurred prior to the license term at issue.⁴¹ Thus, in deliberating upon the Renewal Application, the Bureau was—and we are—limited to consideration of the *2012 Forfeiture Order*, which relates to the Station and involves violations during the most recent license term,⁴² and the underwriting violations alleged by Hawe, which also satisfy these same requirements.⁴³

³⁵ Hawe's argument that the Media Bureau should have required CCF to enter into a compliance plan is moot in light of the compliance plan required under the subsequent consent decree CCF entered into with the Enforcement Bureau. *See supra* n.20. *See also* AFR at 1, 5, 9.

³⁶ 47 U.S.C. § 309(k).

³⁷ 47 U.S.C. § 309(k)(1).

³⁸ 47 U.S.C. § 309(k)(2), (k)(3).

³⁹ Consent Decree at paras. 12 and 13.

⁴⁰ 47 U.S.C. § 309(k)(1) (“If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, *with respect to that station*, during the preceding term of its license-(A) the station has served the public interest, convenience, and necessity; (B) there have been no serious violations by the licensee of this chapter or the rules and regulations of the Commission; and (C) there have been no other violations by the licensee of this chapter or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.”) (emphasis added). *See also Sagittarius Broadcasting Corp.*, Memorandum Order & Opinion, 18 FCC Rcd 22551, 22555 para. 8 (2003) (“Congress, however, has expressly limited the scope of the license renewal inquiry to matters occurring at the particular station for which license renewal is sought.”).

⁴¹ 47 U.S.C. § 309(k)(1) (“If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, *during the preceding term of its license*-(A) the station has served the public interest, convenience, and necessity; (B) there have been no serious violations by the licensee of this chapter or the rules and regulations of the Commission; and (C) there have been no other violations by the licensee of this chapter or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.”) (emphasis added).

⁴² The license term ran from December 1, 2005, through grant of the Renewal Application. *See, supra*, para. 1 and n. 5.

⁴³ We note that we do not consider violations that Hawe alleges occurred at the Station after release of the *Order* and grant of the Renewal Application. The Bureau's grant of the Renewal Application commenced a new license term. The violations alleged to have occurred after grant of the Renewal Application occurred during the new license term, not during the license term under review by the Bureau in this case. Despite the filing of the AFR of the

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9. We note that, while the Order found “nothing in the record ... creates a substantial or material question of fact whether CCF possesses the basic qualifications to be a Commission licensee” and that grant of the Renewal Application would serve the public interest,⁴⁴ it did not discuss the *2012 Forfeiture Order* or the additional evidence of underwriting violations submitted to the Commission. This was in error.⁴⁵ However, even considering those additional adjudicated and alleged underwriting violations,⁴⁶ we find the Bureau’s renewal of the Station’s license was consistent with established Commission procedures and precedent. As noted above, Howe fails to cite any case in which the Commission has denied a station’s license renewal application, designated the station’s license for hearing, or renewed the station’s license for a term of less than eight years due *solely* to a finding of underwriting violations—or, even, multiple findings of such violations—during the preceding license term.⁴⁷

10. Unlike other cases in which the Commission has refused to grant full-term renewal based on violations of the Commission’s rules or the Communications Act, we do not find here that the Station’s operation “was conducted in an exceedingly careless, inept and negligent manner.”⁴⁸ Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the Station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.”⁴⁹ Thus, the facts at issue here are readily distinguishable from those of the one case involving underwriting violations in which the Commission has determined that full-term renewal is not warranted. Specifically, in *Enid*, the short-term renewal was grounded in both underwriting and technical violations and in the licensee’s refusal to address the allegations lodged against it, in addition to the repeated nature of the violations.⁵⁰ Even considering the past findings of

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Bureau’s decision to grant the renewal application, Section 307(c)(3) did not operate to “continue [the license under review] in effect” once the Renewal Application was granted and the new license term took effect. *See* 47 U.S.C. § 307(c)(3) (applying pending any “hearing and final decision” on a renewal application). As noted, *supra* n. 20, Howe and Gerawan filed complaints related to these alleged violations with the Enforcement Bureau, which were resolved as part of a consent decree entered into between the Enforcement Bureau and CCF.

⁴⁴ *Order*, 31 FCC Rcd at 7578 para. 3.

⁴⁵ *See* 47 U.S.C. §309(k)(1). The violations addressed in the *2012 Forfeiture Order* as well as the alleged new violations occurred during the preceding license term, which began on December 1, 2005, and continued through grant of the Renewal Application. *See, supra*, para. 1 and n. 6.

⁴⁶ Howe characterizes the *2012 Forfeiture Order* as finding CCF “has engaged in a repeated pattern of abuse of the Commission’s rules.” AFR at 3 n.9, *citing 2012 Forfeiture Order*, 27 FCC Rcd at 5256 n. 39. While that order did note that CCF had been admonished for similar violations in the past, as discussed, those earlier decisions cannot be considered in evaluating the Renewal Application. *See, supra*, para. 8 and nn. 40 and 41.

⁴⁷ Howe also cites no case law supporting his claim that the underwriting violations are “serious” violations for purposes of the renewal standard. *See* AFR at 9-10; Reply at 9-10. Nor does he otherwise explain the basis for this allegation.

⁴⁸ *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971) (denying renewal due to willful and repeated technical violations, including “faulty tower lighting deficiencies, operation below authorized power, spurious emission [near an air traffic control frequency], [faulty] maintenance logs, and such serious deficiencies in the quality of picture transmission that they were virtually unviewable”).

⁴⁹ *Id.* at 200. The cases in which the Commission has designated a renewal application for hearing are readily distinguishable. *See also Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991) (designating renewal application for hearing based on “inept operation” and numerous technical violations over more than a decade, unauthorized periods of silence, misrepresentations and possible unauthorized transfer of control); *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992) (designating renewal application for hearing based on numerous technical violations and misrepresentations).

⁵⁰ *Enid*, 25 FCC Rcd at 9144 para. 14.

underwriting violations and all of the underwriting violations alleged by Howe prior to action on the Renewal Application, we conclude that the record does not present a substantial and material question of fact warranting designation of the renewal application for hearing.⁵¹ For the reasons set forth above, we affirm the Bureau's decision to grant renewal subject to the conditions set forth in the Consent Decree. As a result, we need not determine whether CCF committed "serious violations" of our rules or violations that constituted a "pattern of abuse" for purposes of Section 309(k)(1).⁵²

11. ACCORDINGLY, IT IS ORDERED that the Application for Review filed by Gerawan Farming Inc. and David Howe on August 29, 2016, IS DISMISSED IN PART⁵³ and OTHERWISE DENIED pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(b), (c), and (g) of the Commission's rules.⁵⁴

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵¹ AFR at 9-10.

⁵² See *Shareholders of Univision Communications Inc. et al.*, Memorandum Opinion and Order, 22 FCC Rcd 5842, 5859, n.113 (2007) ("Given our finding that the grant of the renewal application is warranted under Section 309(k)(2) of the Act because the consent decree contains appropriate terms and conditions, we need not determine whether Univision committed 'serious violations' of our rules or violations that constituted 'a pattern of abuse' for purposes of Section 309(k)(1).").

⁵³ See *supra*, para. 5 and n. 20.

⁵⁴ 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(b), (c) and (g).