

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

In the Matter of)	EB Docket No. 03-152
)	
William L. Zawila, Permittee of FM Station KNGS, Coalinga, California)	File No. BLH-19990804KJ Facility ID No. 72672
)	
Avenal Educational Services, Inc., Permittee of FM Station KAAX, Avenal, California)	File No. BLED-19990810KC Facility ID No. 3365
)	
Central Valley Educational Services, Inc., Permittee of FM Station KYAF, Firebaugh, California)	File No. BLED-19990805KB Facility ID No. 9993
)	
H.L. Charles d/b/a Ford City Broadcasting, Permittee of FM Station KZPE, Ford City, California)	File No. BLH-19990804KG Facility ID No. 22030
)	
Linda Ware d/b/a Lindsay Broadcasting, Licensee of FM Station KZPO, Lindsay, California)	File No. BLH-19980206KB Facility ID No. 37725

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 2019

Released: December 23, 2019

By the Commission: Commissioners Rosenworcel and Starks issuing separate statements.

I. INTRODUCTION

1. By this memorandum opinion and order, we affirm a summary decision by Chief Administrative Law Judge Richard L. Sippel (the Judge), which revoked the above-captioned construction permits and license for Stations KNGS, KZPE, and KZPO.¹ We dismiss as untimely the exceptions to the Summary Decision² submitted by the Estate of Linda Ware, Cynthia Ramage, Executor; the Estate of H.L. Charles, Robert Willing, Executor; and William L. Zawila (collectively Zawila).³ As an independent and alternative basis, we deny the Exceptions on their merits. Additionally, we dismiss an unauthorized interlocutory appeal.

¹ Summary Decision of Chief Administrative Law Judge Richard L. Sippel, FCC 17M-28 (Aug. 10, 2017), *reported at* 2017 WL 3499740 (Summary Decision).

² Exceptions to the Summary Decision of Chief Administrative Law Judge Richard L. Sippel (FCC 17M-28), received September 8, 2017, from the Estate of Linda Ware, Cynthia Ramage, Executor; the Estate of H.L. Charles, Robert Willing, Executor; and William L. Zawila (Exceptions).

³ Because William L. Zawila represents all the private parties and because the matters at issue largely concern his conduct, we refer to him personally as “Mr. Zawila” and to the parties collectively as “Zawila.”

II. BACKGROUND

2. Designation for Hearing. The Commission designated this case for hearing in 2003 in response to allegations that the principals of the above-captioned stations had made misrepresentations to and lacked candor with the Commission, transferred control of the relevant facilities without authorization, and violated several Commission operating rules.⁴ To a large extent, the designated issues focused on Mr. Zawila's participation in station affairs as a principal or attorney for the various entities involved. The administrative law judge originally assigned to this case stayed the proceeding in 2003 so that the parties could pursue a distress sale of their facilities.⁵ The Media Bureau rejected the proposed distress sale, and after a series of petitions for reconsideration and applications for review, the Commission ultimately resolved the distress sale proceeding in 2014.⁶ Around the same time, the hearing proceeding was reactivated before Judge Sippel.⁷

3. Discovery. Once the proceeding was reactivated, the Enforcement Bureau commenced discovery. On July 28, 2015, the Enforcement Bureau served Zawila with a set of interrogatories, and, on July 29, served a set of document requests.⁸ On February 2, 2016, the Enforcement Bureau served a set of requests for admission and, on February 4, 2016, a second set of document requests.⁹ The Judge's dissatisfaction with Zawila's responses to these discovery requests led him to issue the summary decision now before us. More specifically, the Judge found, on December 23, 2015, that Zawila had failed, without justification, to provide substantive responses to the Enforcement Bureau's interrogatories and document requests.¹⁰ He ordered Zawila to revisit all of the requests, as well as requests for admission that the Enforcement Bureau had served on September 4, 2003, before the proceeding had been stayed. The Judge also ordered Zawila to submit a status report by January 5, 2016, describing Zawila's efforts to respond to discovery, and scheduled a status conference on February 24, 2016, to discuss discovery.¹¹ Zawila never filed the status report specified by the Judge.

4. Subsequently, on February 18, 2016, the Judge rescheduled the status conference for March 22, 2016, and directed Zawila to use the additional time to comply with the Enforcement Bureau's interrogatories and document requests.¹² On February 29, 2016, the Judge denied Zawila's request for an order to protect Zawila from the Enforcement Bureau's discovery requests on account of the proceeding's age.¹³ The same day, the Judge rescheduled the status conference to March 29, 2016.¹⁴

⁴ *William Zawila*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 18 FCC Rcd 14938 (2003) (HDO).

⁵ Order, FCC 03M-39 (September 10, 2003).

⁶ *See Estate of Linda Ware*, Memorandum Opinion and Order, 29 FCC Rcd 15061 (2014).

⁷ Order, 14M-33 (October 16, 2014).

⁸ *See* Order, FCC 16M-18 (May 10, 2016) (May 2016 Order) at 2-3.

⁹ *See id.* at 3.

¹⁰ Order, FCC 15M-33 (December 23, 2015).

¹¹ *Id.* at 7.

¹² Order, FCC 16M-03 (February 18, 2016).

¹³ The request was originally filed by attorney Michael Couzens, who (like Mr. Zawila) claimed to represent Avenal Educational Services, Inc. (Avenal) and Central Valley Educational Services, Inc. (Central Valley). The Judge denied Couzens's request and noted that Zawila had been delinquent in attempting to join in Couzens's motion. Order, FCC 16M-05 (February 29, 2016) at 2, note 1. The Judge ultimately removed Avenal and Central Valley from the proceeding, because they had failed to demonstrate that they were qualified to apply for their respective facilities. *William L. Zawila*, Memorandum Opinion and Order, FCC 16M-23 (July 25, 2016), *reported at* 2016 WL 4061843, *appeal dismissed*, 32 FCC Rcd 1592 (2017), *recon. denied* Memorandum Opinion and Order, FCC 19-137 (December 23, 2019).

5. As the status conference approached, the Judge faulted Zawila's continuing failure to respond to the Enforcement Bureau's discovery requests. In response to the Enforcement Bureau's motions to compel, the Judge, on March 14, 2016, admonished Zawila to provide "positive and cooperative" responses to the Enforcement Bureau's requests, to justify any nonresponses or partial responses, and to negotiate with the Enforcement Bureau concerning any incomplete responses.¹⁵ The Judge advised the Enforcement Bureau and Zawila that if they had substantially completed discovery by March 23, they should alert the Judge and, if the March 29 status conference were no longer necessary, propose alternatives.¹⁶

6. On March 24, 2016, Mr. Zawila filed a statement in which he advised the Judge that neither he nor his clients would attend the March 29 status conference due to lack of funds,¹⁷ that they would instead "revisit" the Enforcement Bureau's discovery requests, and that they anticipated serving responses beginning "as early as 3-26-16."¹⁸ On March 26 and 28, 2016, Zawila filed responses to the Enforcement Bureau's requests for admission but responded to the Enforcement Bureau's interrogatories only with objections that the Judge had already rejected.¹⁹ Mr. Zawila did not attend the March 29, 2016, status conference.

7. The Judge's Order and Decision. The Judge held Zawila "in default" and invited the Enforcement Bureau to submit a draft order making negative inferences against Zawila.²⁰ The Judge subsequently issued an order in May 2016 finding that Zawila had repeatedly failed to comply with discovery obligations. He found that Zawila's responses to the Enforcement Bureau's interrogatories reflected "disingenuous stonewalling" and that Zawila had failed to respond on a timely basis to the Enforcement Bureau's document requests and requests for admissions.²¹ The Judge likewise rejected Zawila's March 26 and 28, 2016, responses to the Enforcement Bureau's request for admissions as "tardy."²² Finally, the Judge ruled that Zawila's failure to provide complete substantive responses to the Enforcement Bureau's interrogatories, document requests, and requests for admission justified making negative findings with respect to the issues specified in the HDO.²³ Zawila filed an interlocutory appeal

(Continued from previous page) _____

¹⁴ Order, FCC 16M-06 (February 29, 2016).

¹⁵ Order, FCC 16M-08 (March 14, 2016) at 6.

¹⁶ *Id.* at 7, note 7.

¹⁷ The Judge had previously denied Mr. Zawila's request to participate in the conference by speakerphone. Order, FCC 16M-04 (Feb. 24, 2016).

¹⁸ Statement for Status Conference Set for March 29, 2016, filed by Zawila, March 24, 2016.

¹⁹ Response to Enforcement Bureau's Requests for Admission to the Estate of Linda Ware, filed March 26, 2016; Response to Enforcement Bureau's Requests for Admission to the Estate of H.L. Charles, filed March 26, 2016; Response to Enforcement Bureau's Requests for Admission to William L. Zawila, filed March 28, 2016. Zawila attached copies of these responses to the Exceptions but did not produce contemporaneous date-stamped copies.

²⁰ Omnibus Order, FCC 16M-14 (March 30, 2016) at 1, 3.

²¹ May 2016 Order at 5.

²² *Id.* at 5 note 21. The Judge cited 47 CFR § 1.246(b), which states: "[e]ach 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 [the party responds to the requests]."

²³ May 2016 Order at 6. The Judge cited 47 CFR § 1.323(d), which provides in part: "[i]f an answer [to interrogatories] does not comply fully with the requirements of this section, the presiding officer may order that an amended answer be served, may specify the scope and detail of the matters to be covered by the amended answer, and may specify any appropriate procedural consequences (*including adverse findings of fact and dismissal with prejudice*) which will follow from the failure to make a full and responsive answer." (Emphasis added.). The Judge found no reason to afford Zawila an additional opportunity to file amended answers before making adverse findings

(continued....)

of the Judge's May 2016 Order.²⁴ The Enforcement Bureau followed up on the May 2016 Order by filing a motion for summary decision, to which Zawila filed an opposition, and the Enforcement Bureau, with leave from the Judge, filed a response.²⁵

8. In his Summary Decision, the Judge first noted that Zawila's interlocutory appeal of the May 2016 Order was untimely and was unauthorized. The appeal was unauthorized because it did not fall within the scope of matters that could be appealed as of right on an interlocutory basis, and Zawila had not timely requested permission to file the appeal.²⁶ Turning to the merits, he found that Zawila had failed to support objections to the adverse findings of fact in the May 2016 Order, and he reaffirmed that these adverse findings were justified given Zawila's extensive and protracted failure to comply with discovery obligations.²⁷ In this regard, the Judge expanded on his previous finding that Zawila had failed to respond to the Enforcement Bureau's 2003 requests for admission, finding that Zawila's asserted 2003 responses were not reliable, but in any event that they demonstrated neither a material factual dispute nor substantial compliance with discovery.²⁸ The Judge also rejected Zawila's complaint that the passage of time and other factors made the Enforcement Bureau's discovery requests excessively burdensome, finding that, despite these circumstances, Zawila was "in an excellent position" to provide answers to the Enforcement Bureau's requests.²⁹ He therefore found that there were no material questions of fact as to the adverse findings in the May 2016 Order, and that these findings appropriately formed the basis for a summary decision.³⁰ In view of the foregoing, the Judge concluded that Mr. Zawila and the other parties had violated numerous provisions of the Communications Act and the Commission's rules, including by making multiple misrepresentations and exhibiting a lack of candor, and that they therefore did not possess the basic qualifications to remain permittees and licensees.³¹ He revoked Zawila's authorizations and certified the proceeding to the Commission pursuant to 47 CFR § 1.92.³²

9. Zawila's Exceptions. Zawila asserts 14 numbered exceptions to the Summary Decision. These exceptions advance four distinct arguments, which we set forth in detail in the discussion below.

10. Enforcement Bureau Reply. The Enforcement Bureau argues that Zawila's Exceptions should be dismissed as procedurally defective because they were not timely filed with the Secretary's Office and were not served on the Enforcement Bureau.³³ The Enforcement Bureau also disputes Zawila's claims on the merits. The Enforcement Bureau's arguments are discussed below to the extent necessary to resolution of this matter.

(Continued from previous page) _____

because, "although given two chances to comply, none of the Zawila parties have responded substantively to the Bureau's interrogatories." May 2016 Order at 5. The Judge characterized the only responses received as "objections which the Presiding Judge has already rejected as 'disingenuous stonewalling.'" *Id.*

²⁴ Appeal of Order (FCC 16M-18) to the Full Commission, filed June 6, 2016, by Zawila.

²⁵ Summary Decision at 4, para. 9.

²⁶ *Id.* at 3-4, para. 7; *see* 47 CFR § 1.301(a), (b).

²⁷ Summary Decision at 4-6, paras. 11-16; 7-8, paras. 17-21.

²⁸ *Id.* at 7-8, para. 20.

²⁹ *Id.* at 8, para. 21.

³⁰ *Id.* at 8, paras. 22-23.

³¹ *Id.* at 8-16, paras. 24-54.

³² *Id.* at 16-17.

³³ Enforcement Bureau's Reply to the Zawila Parties' Exceptions to Summary Decision (FCC 17M-28), filed November 9, 2017.

III. DISCUSSION

11. Interlocutory Appeal. As a preliminary matter, we dismiss as unauthorized Zawila's interlocutory appeal of the Judge's May 2016 Order, which challenged, on grounds similar to those raised in the Exceptions, the Judge's adverse findings against Zawila. We agree with the Judge that adverse findings are not within the scope of interlocutory actions that may be appealed as of right.³⁴ We also agree that the appeal is untimely, because the date stamp indicates it was not received within five days of the release of the May 2016 Order.³⁵

12. Timeliness and Service. We agree with the Enforcement Bureau that Zawila's Exceptions were not timely filed or properly served and are therefore subject to dismissal. The Exceptions bear a timely FCC Mailroom date stamp of September 8, 2017.³⁶ They are, however, directed to "Chairman and Commissioners of the Federal Communications Commission" rather than to the Commission's Secretary. Apparently as a result of this specification, the Exceptions do not appear to have been received by the Office of the Secretary and officially entered into the docket of this proceeding as reflected by the Commission's Electronic Comment Filing System (ECFS). The Exceptions also have no certificate of service, as required by the Commission's rules for all pleadings submitted in hearing proceedings.³⁷ The Enforcement Bureau indicates that the unserved Exceptions did not come to its attention until October 30, 2017, when the Judge's office, which had received a copy of the Exceptions, by chance notified the Enforcement Bureau in response to an unrelated inquiry.³⁸ Based on the foregoing, the Enforcement Bureau argues that the Exceptions should be rejected as not timely filed or properly served.

13. Under the Commission's rules, pleadings are deemed filed "upon their receipt at the location designated by the Commission."³⁹ The rules designate the Office of the Secretary as the location for filing appeals of orders terminating hearing proceedings, such as the Summary Decision.⁴⁰ Moreover, the official filing location for pleadings is specified as the Office of the Secretary on the Commission's

³⁴ Under 47 CFR § 1.301(a), interlocutory rulings appealable as of right include: (1) a ruling that denies or terminates the right of any person to participate as a party to a hearing proceeding; (2) a ruling that requires testimony or the production of documents, over objection based on a claim of privilege; (3) a ruling that denies a motion to disqualify the presiding judge; (4) a ruling granting a joint request filed under 47 CFR § 1.525 without terminating the proceeding; and (5) a ruling removing counsel from the hearing. Zawila's appeal does not fall within any of these categories, nor does Zawila allege that it does.

³⁵ See 47 CFR § 1.301(c)(2). The order was released on May 10, 2016, and the appeal was date stamped on June 3.

³⁶ Exceptions to a summary decision are due 30 days after release of the summary decision. 47 CFR § 1.251(e) (summary decision is subject to appeal in the same manner as an initial decision); 47 CFR § 1.276(a) (30-day filing period for exceptions to an initial decision). Here, the summary decision issued on Thursday, August 10, 2017, making the deadline for exceptions Monday, September 11, 2017. Because the thirtieth day fell on a Saturday, the filing was due the next business day. See 47 CFR § 1.4(j).

³⁷ See 47 CFR § 1.211 (all pleadings filed in a hearing proceeding must be accompanied by proof of service). Zawila admits that the Exceptions were not served. Opposition at 3. Zawila claims, however, that service of the exceptions was not required, because the Judge had terminated the proceeding and "there was no 'hearing proceeding' in existence." *Id.* See Summary Decision at 17 ("IT IS FURTHER ORDERED that this proceeding IS TERMINATED, and is now CERTIFIED to the Commission in accordance with 47 CFR § 1.92"). This argument misunderstands the scope of section 1.211. Section 1.211 is a "General" rule within 47 CFR Part 1, Subpart B, Hearing Proceedings, which includes the rules governing proceedings on review of hearing decisions, 47 CFR §§ 1.271-1.282. Furthermore, "pleading" is defined in Subpart B to include "exceptions . . . filed with the Commission in a hearing proceeding." 47 CFR § 1.204. Reading the rules as a whole, there is no question that the service requirement in section 1.211 applies to exceptions filed under section 1.276. Although the Summary Decision terminated proceedings before the Judge, the proceeding continued to exist for the purpose of review by the Commission.

website.⁴¹ Because the Exceptions were not directed to the Commission's Secretary and were not in fact received there within the time period for filing exceptions, we find that that the Exceptions were not properly filed within the time period specified by the rules and they are therefore dismissed.⁴² The absence of service provides an independent basis for our conclusion that the Exceptions should be dismissed.⁴³ Together, these failures to comply with the Commission's rules resulted in the Exceptions being unknown to decision-makers and parties. Additionally, because we find that the Enforcement Bureau had no opportunity to respond to the Exceptions within the time period specified by the rules, we grant the Enforcement Bureau's motion for leave to file its Reply out-of-time.⁴⁴

14. Merits of Zawila's Exceptions. As a separate and independent basis for our decision, we find that even if we were to reach the merits of the Exceptions, we would deny them. As noted above, Zawila asserted 14 numbered exceptions. These exceptions advance four distinct arguments, which we address in the following paragraphs.

15. Zawila first argues that the designation of this proceeding for hearing violated the provision governing timeliness in the Commission's *Character Policy Statement*.⁴⁵ Zawila observes that the *Character Policy Statement* states that, in determining an applicant's character qualifications, the Commission generally will not consider alleged misconduct that is more than ten years old.⁴⁶ According to Zawila, the misconduct alleged here dates back to the original applications for the stations in question in the late 1980s, and thus was more than 10 years old when the matter was designated for hearing, and the extensive hiatus in considering the case makes the alleged misconduct even more untimely.⁴⁷ Zawila contends that it is inherently unfair to litigate this case after the passage of so much time given the loss of evidence, faded memories, and the deaths of witnesses and principals, which have made it impossible to answer many of the discovery requests and interrogatories.⁴⁸

16. We find no inconsistency between the designation of this proceeding for hearing and the 10-year period for considering misconduct under the *Character Policy Statement*. As Zawila points out,

(Continued from previous page) _____

³⁸ See Reply, Exhibit 1 (email from Rachel B. Funk, Attorney Advisor, Office of the Administrative Law Judge to Pamela Kane, Enforcement Bureau counsel (October 30, 2017)).

³⁹ 47 CFR § 1.7.

⁴⁰ 47 CFR § 1.302(d) (appeals "shall be filed with the Secretary").

⁴¹ <https://www.fcc.gov/general/electronic-and-hard-copy-filing-address#block-menu-block-4>

⁴² See *Application of Columbia Millimeter Communications, L.P.*, Order on Reconsideration, 15 FCC Rcd 10251, 10253, para. 6 (WTB 2000) (petition for reconsideration was untimely where it was received at the Mellon Bank lockbox rather than the Secretary's Office).

⁴³ Failure to serve in itself renders a pleading defective and subject to dismissal. See 47 CFR § 1.211 (requiring service in hearing proceedings); AT&T & Associated Bell System Cos., Docket No. 19129, Memorandum Opinion and Order, 27 F.C.C.2d 914, 915, para. 6 (1971) (dismissing petition for stay on the grounds that it was not properly served on other parties in a hearing, as well as not filed in sufficient time for consideration prior to the effectiveness of the order in question); see also *Petition for Limited Clarification of Frontline Wireless, LLC*, WT Docket No. 17-153, Order, 24 FCC Rcd 14899, 14900, para. 3 (2009) (citing failure to serve petition for reconsideration in accordance with 47 CFR § 1.106(f) as alternative ground for dismissal); *Thomas K. Kurian and AMTS Consortium, LLC*, File No. 0002196859, Second Order on Further Reconsideration, 22 FCC Rcd 20970, 20971, para. 3 (WTB MD 2007) (similar); *D&I Electronics, Inc.*, Order, 16 FCC Rcd 15243, 15249, para. 15 (WTB PSPWD 2001) (dismissing petition for reconsideration due to failure to serve); *Application of Sherry Rullman*, File No. 12903-CM-P-83, Memorandum Opinion and Order, 8 FCC Rcd 4012, 4012-13, para. 6 (1993) (explaining that service of process affords interested parties an opportunity to be heard and thus failure to provide service as required by Commission rules renders pleading procedurally defective).

⁴⁴ Replies to exceptions are ordinarily due 10 days after the time for filing exceptions, in this case September 21, 2017. 47 CFR § 1.277(c). Because the Enforcement Bureau was unaware of the exceptions here until October 30, 2017, the Enforcement Bureau moved for leave to file within 10 days of learning of them (November 9, 2017).

(continued....)

under the *Character Policy Statement*, in determining an applicant's character qualifications, the Commission generally does not consider misconduct more than ten years old – that is, more than ten years before the designation of the proceeding for hearing.⁴⁹ Here, the HDO issued in 2003, making the relevant time period for considering alleged misconduct 1993-2003. While some of the discovery requests may touch on station operations going back to the original stations' applications in the 1980s, such as whether the stations ever had main studios, the designated issues grew out of the Enforcement Bureau's inspections and inquiries beginning in 1999.⁵⁰ Thus, the focus of designated issues is on the state of station operations within the 10-year period referred to in the *Character Policy Statement*. To the extent Zawila alleges prejudice arising out of the hiatus between the stay of proceedings and the reactivation of the proceeding in 2014,⁵¹ that claim fails for three separate reasons. First, as noted above, the 10-year period is measured from the 2003 hearing designation order, not the 2014 lifting of the stay of the hearing proceedings. Second, Zawila's own protracted and ultimately unsuccessful pursuit of distress sale relief contributed significantly to the complained of delay in resolving this proceeding. Third, we agree with the Judge that Zawila has failed to explain why Mr. Zawila's personal knowledge is insufficient to fill any gaps in information that might have resulted from the deaths of other parties.⁵² We therefore reject Zawila's argument that this proceeding should not have been designated for hearing.

17. Second, Zawila argues that the Summary Decision violates the *Character Policy Statement* in that it revokes the authorizations for all three stations. Zawila cites language in the *Character Policy Statement* indicating that termination of all rights should be considered “[o]nly in the most egregious case.”⁵³ Zawila further contends that revoking the three authorizations is especially inappropriate here because the principals have otherwise unblemished records and no charges are levelled specifically against Linda Ware or H.L. Charles or their successors.⁵⁴ Zawila asserts that station KZPO, which is and has always been owned by a first-time female broadcaster, has a meritorious record of service and that its loss would harm the community in various respects as well as innocent creditors.⁵⁵ Zawila further asserts that there is no basis for the speculation that Mr. Zawila secretly acquired the

(Continued from previous page) _____

Enforcement Bureau's Motion for Leave to File A Reply to the Zawila Parties' Exceptions to the Summary Decision, filed November 9, 2017 at 3.

⁴⁵ *Policy Regarding Character Qualification in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986) (*Character Policy Statement*), *recon. dismissed/denied*, Memorandum Opinion and Order, 1 FCC Rcd 421 (1986); *see also Character Qualifications in Broadcasting Licensing*, Policy Statement and Order, 5 FCC Rcd 3252 (1991), *further modified*, 7 FCC Rcd 6464 (1992).

⁴⁶ Exceptions at 3, *citing Character Policy Statement*, 102 FCC 2d at 1229, para. 105.

⁴⁷ Exceptions at 4-6.

⁴⁸ *Id.* at 5-6.

⁴⁹ *See Contemporary Media, Inc.*, Initial Decision of Administrative Law Judge Arthur I. Steinberg, 12 FCC Rcd 14254, 14291, para.150 (ALJ 1997) (finding that misconduct was appropriately considered under *Character Policy Statement* because it occurred within “the 10 years before designation for hearing”).

⁵⁰ *See, e.g.*, HDO, 18 FCC Rcd at 14939, paras. 3-4 (initial Enforcement Bureau investigation was triggered by complaint made on November 17, 1999).

⁵¹ Exceptions at 5-6.

⁵² *See* Summary Decision at 8, para. 21.

⁵³ Exceptions at 6, *citing Character Policy Statement*, 102 FCC 2d at 1228, para. 103.

⁵⁴ Exceptions at 7.

⁵⁵ *Id.* at 6, 7-8, 9-11.

station from Ware.⁵⁶

18. We do not find that the revocation of authorizations for all three stations is excessive by the standards of the *Character Policy Statement*. The revocation of authorizations for all three stations does not contravene the principle enunciated in the *Character Policy Statement* that the loss of a single station ordinarily is a sufficient sanction for misconduct because of its deterrent impact.⁵⁷ The Summary Decision does not revoke authorizations for multiple stations based on misconduct involving a single station. Rather, the Judge found that revocation of each station license/construction permit is independently warranted by serious, disqualifying misconduct involving that particular station and permittee/licensee.⁵⁸ Under these circumstances, the loss of each licensee's or permittee's individual station for misconduct involving that particular station is not excessive, as the loss of multiple stations for misconduct at a single station might be.⁵⁹ Additionally, we decline to consider Zawila's claims that station KZPO has a meritorious record of public service. Even assuming this evidence is properly before us, we would not give it any weight. We do not consider a station's record of service, or the diversity of its ownership or similar matters, to mitigate serious deliberate misconduct such as misrepresentation and lack of candor, as clearly established by Commission precedent.⁶⁰

19. Third, Zawila faults the Judge for two factual inaccuracies. Zawila contends that the Summary Decision erroneously stated that its "factual findings are based exclusively on [Zawila's] defaults on the Bureau's Requests for Admission that were served on [Zawila] on July 29, 2015."⁶¹ Zawila claims that no requests for admission were served on that date.⁶² Zawila also faults the Judge's characterization that "[a]t the request of the parties, on September 12, 2003 [footnote omitted] and again on March 5, 2004 [footnote omitted], the proceeding was stayed indefinitely."⁶³ Zawila contends that the stay requested by the parties was not intended to be indefinite, but was for the limited purpose of allowing a distress sale of the stations.

20. These arguments merit little discussion. The Summary Decision indeed erred in giving the date of the Enforcement Bureau's requests for admission as July 29, 2015, instead of February 2, 2016. In addition, the Summary Decision's characterization of the stay in this proceeding as "indefinite" rather than for the purpose of implementing a distress sale was arguably imprecise. But these are trivial miscues that have no effect on the Judge's reasoning or the validity of the Summary Decision, and Zawila does not point to any such possible effect.

21. Zawila's remaining arguments go directly to the Judge's basis for making findings

⁵⁶ *Id.* at 8-9.

⁵⁷ The *Character Policy Statement* states: "[s]uffering the loss of a single station, with the costs thereby imposed, will likely deter all but the most unrepentant from serious future misconduct. Only in the most egregious case need the termination of all rights be considered." *Character Policy Statement*, 102 FCC2d at 1228, para. 103.

⁵⁸ See Summary Decision at 11, para. 37 (KNGS); 13, para. 44 (KZPE); 16, para. 54 (KZPO).

⁵⁹ Compare *Entercom License, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 7149, 7153, para. 14 (2017) (finding that misconduct at one station did not warrant sanctions against licensee's other stations).

⁶⁰ See, e.g., *Chameleon Radio Corp.*, Decision, 13 FCC Rcd 13549, 13553, para. 18 (1998); *KQED, Inc.*, Order, 5 FCC Rcd 1784, 1785, para. 6 (1990). Given the Judge's findings of disqualifying misconduct that we uphold below, we need not dwell on Zawila's subsidiary allegation that the Judge falsely found that Mr. Zawila "secretly acquired" Station KZPO from Linda Ware. Whether Mr. Zawila "secretly acquired" the station or not, disqualifying misconduct occurred at the station.

⁶¹ Exceptions at 11, citing Summary Decision at 2, para. 2.

⁶² The requests for admission were in fact served on February 2, 2016. See May 2016 Order at 3. July 29, 2015, was the date of the Enforcement Bureau's first set of document requests.

⁶³ Exceptions at 11-12, citing Summary Decision at 2, para. 3.

adverse to Zawila. These adverse findings in turn formed the basis for the Judge's conclusions that no substantial and material questions of fact existed concerning Zawila's qualifications and that a summary decision was therefore appropriate. Although we conclude that the Judge's findings should be modified in certain respects, we affirm his ultimate drawing of adverse inferences against Zawila and his issuance of a summary decision, as discussed in more detail below.

22. Zawila primarily argues that no adverse findings should be based on the 2016 requests for admission in light of the parties' March 26 and 28, 2016, responses to those requests.⁶⁴ In Zawila's view, the Judge should not have rejected these responses as untimely, because the Judge had extended the time for their submission without imposing any deadline. Further, Zawila argues that the responses demonstrate the existence of material disputes warranting a hearing.

23. While Zawila's responses to the 2016 requests for admission are sufficient to forestall a summary decision based solely on a finding that Zawila failed to respond to the requests, the Judge appropriately found that the substance of those responses did not establish genuine questions of material fact. Aside from arguments based on the *Character Policy Statement* that we have rejected earlier, Zawila does not question that the Enforcement Bureau's allegations, if true, would meet its burden to demonstrate that the Zawila parties lack the qualifications to hold broadcast licenses or construction permits.⁶⁵ Therefore, in order to defeat a motion for summary decision, Zawila must show a genuine issue of material fact as to the accuracy of those allegations. Moreover, "[a] party opposing [a] motion [for summary decision] 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 a genuine issue of material fact for determination at the hearing, that he cannot, for good cause, present by affidavit or otherwise facts essential to justify his opposition, or that summary decision is otherwise inappropriate."⁶⁶ Zawila's responses, however, are extremely cursory and do not address the substance of the allegations or explain the basis for the denials. Indeed, Zawila makes no effort to defend the adequacy of these responses or to explain how they create genuine questions of material fact. Thus, even assuming that Zawila's responses were timely filed,⁶⁷ we find that they failed to raise any material question of disputed fact.

24. Zawila also asserts more broadly that the Enforcement Bureau's discovery has been excessively burdensome and impossible to deal with, especially considering the age of the proceeding.⁶⁸

⁶⁴ Exceptions at 12-14, 18.

⁶⁵ 47 CFR § 1.91(d).

⁶⁶ 47 CFR § 1.251(b); *see also* 47 CFR § 1.246(b) ("A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder."); *Ramon Rodriguez*, Decision, 4 FCC Rcd 6817, para. 4 (Rev. Bd. 1989), *review denied*, Order, 5 FCC Rcd 4041 (1990), *reversed and remanded on other grounds sub nom. David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253 (D.C. Cir. 1991) (unsupported denial insufficient to raise question of material fact in response to a motion for summary decision). Similarly, courts have held that the existence of a substantial and material question of fact turns on "whether the totality of evidence arouses a sufficient doubt on the point that further inquiry is called for." *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985). An unexplained and unsupported denial does not by itself constitute evidence sufficient to arouse such doubt. *See U.S. v. One Parcel of Real Property Located at No. 14-I*, 899 F. Supp. 1415, 1419 (D.V.I. 1995) (one-word denials of requested admissions are insufficient to raise material questions of fact); *Praetorian Insurance Co. v. Site Inspection, LLC*, 604 F.3d 509, 513 (8th Cir. 2010) (deeming matters admitted where responses were insufficient and argumentative).

⁶⁷ We do not rest our decision on any finding that facts asserted in the requests for admission should be deemed admitted due to failure to comply with any response deadline set by the Judge. *See* 47 CFR § 1.246(b). We agree with Zawila that the Judge did not clearly indicate before the March 29, 2016, status conference that responses would be considered late despite being filed before the conference.

⁶⁸ Exceptions at 14-15, 17-18.

Zawila accuses the Enforcement Bureau of using discovery “as a weapon,”⁶⁹ rather than as a tool for obtaining information. Zawila complains that the Judge ignored his valid objections to the Enforcement Bureau’s discovery requests.

25. We find that these arguments fail to refute the Judge’s findings. Administrative law judges have broad discretion in managing discovery.⁷⁰ Other than defending the timeliness of responses to the 2016 requests for admission (and asserting that they create genuine issues of material fact), Zawila does not contest the Judge’s findings that Zawila’s responses to discovery requests in the 2015-16 time frame were consistently tardy and lacking in substance, indicating a continuing failure to meaningfully address the allegations raised. The March 29, 2016 status conference offered Zawila a final opportunity to inform the Judge’s exercise of discretion by addressing the Judge’s questions and developing Zawila’s objections, or to negotiate the requirements for complying with the requests. Rather than take advantage of this opportunity, however, Mr. Zawila declined to attend the conference, allegedly for lack of funds.⁷¹ In light of this history, we find that the Judge reasonably exercised his discretion by drawing negative inferences against Zawila and finding that these inferences justified summary decision.

26. Finally, Zawila asserts that the Judge had no basis to make any adverse findings based on Zawila’s responses to the 2003 requests for admission. Zawila maintains that the parties timely responded to the 2003 requests on October 20, 2003, and that the responses demonstrate material questions of fact, precluding summary decision.⁷² While Zawila has submitted evidence that responses to the October requests for admission were in fact submitted in 2003, Zawila does not include the responses themselves or explain how they raise substantial questions of material fact. Because we find Zawila’s failure to cooperate with the discovery process in 2015-16 is independently sufficient to support the Judge’s findings and decision, we need not and do not rely on anything that occurred in 2003.⁷³ Furthermore, because we do not rely on any lack of response in 2003, we need not address Zawila’s related contention that the Judge improperly permitted the Enforcement Bureau to change its theory concerning why Zawila’s response to the 2003 request for admissions was defective.⁷⁴

IV. ORDERING CLAUSES

27. ACCORDINGLY, IT IS ORDERED, that the Appeal of Order (FCC 16M-18) to the Full Commission, filed June 3, 2016, by the estate of Linda Ware, Cynthia Ramage, Executor; the estate of H.L. Charles, Robert Willing, Executor; and William L. Zawila, IS DISMISSED as unauthorized.

28. IT IS FURTHER ORDERED, that the Enforcement Bureau’s Motion for Leave to File a Reply to the Zawila Parties’ Exceptions to Summary Decision, filed November 9, 2017, IS GRANTED.

29. IT IS FURTHER ORDERED, that the Exceptions to the Summary Decision of Chief Administrative Law Judge Richard L. Sippel (FCC 17M-28), filed September 28, 2017, by the estate of

⁶⁹ *Id.* at 14.

⁷⁰ See, e.g., *Indosuez Carr Futures, Inc. v. Commodity Futures Trading Commission*, 27 F.3d 1260, 1267, n.4 (7th Cir. 1994); *The Baltimore Radio Show, Inc.*, Decision, 4 FCC Rcd 6437, 6439, para. 8 (Rev. Bd. 1989).

⁷¹ We do not find, under the circumstances, that Mr. Zawila’s unsubstantiated assertion of lack of funds rendered the Judge’s expectation that Mr. Zawila attend the settlement conference unreasonable.

⁷² Exceptions at 15-17. Relatedly, Zawila contends that the Judge improperly permitted the Enforcement Bureau, in its reply to Zawila’s opposition to the Enforcement Bureau’s motion for summary decision, to concede that these responses exist but to raise “clerical issues” concerning the responses. Zawila argues that this supplementation of the record “completely changes the theory of the motion.” *Id.* at 17. Exceptions at 15-17.

⁷³ This is consistent with the Judge’s disposition of the same objection. See Summary Decision at 8, para. 20 (“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”).

⁷⁴ See Exceptions at 17.

Linda Ware, Cynthia Ramage, Executor; the estate of H.L. Charles, Robert Willing, Executor; and William L. Zawila, ARE DISMISSED, and as a separate and independent matter ARE DENIED, and that the Summary Decision of Chief Administrative Law Judge Richard L. Sippel, FCC 17M-28 (Aug. 10, 2017) IS AFFIRMED.

30. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *William L. Zawila, Permittee of FM Station KNGS, Coalinga, California; Avenal Communications Services, Inc., Permittee of FM Station KAAX, Avenal, California; Central Valley Educational Services, Inc., Permittee of FM Station KYAF, Firebaugh, California; H.L. Charles D/B/A Ford City Broadcasting, Permittee of FM Station KZPE, Ford City, California; Linda Ware d/b/a Lindsay Broadcasting, Licensee of FM Station KZPO, Lindsay, California, EB Docket No. 03-152; File No. BLH-19990804KJ, Facility ID no. 72672; File No. BLED-19990810KC, Facility ID No. 3365; File No. BLED-199908505KB, Facility ID No. 993; File No. BLH-19990804KG, Facility ID No. 22030; File No. BLH-19980206KB, Facility ID No. 37725, Memorandum Opinion and Order*

Long ago the Federal Communications Commission established that the “trait of truthfulness” is a necessary element of the character required to operate a broadcast station in the public interest. This year, a decision from the agency revisited that notion and concluded that honesty with the FCC is a foundational requirement for holding a license.

Consistent with this precedent, in the immediate decision we uphold an earlier finding that a licensee’s misrepresentation, lack of candor, and false statements were used to mislead the FCC and defraud the public interest. In doing so, we affirm the decision to revoke the licenses and construction permits of a licensee that made a series of false statements to the agency. I support this decision as well as the time-honored principles that inform our review.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *William L. Zawila, Permittee of FM Station KNGS, Coalinga, California, et al.*, EB Docket No. 03-152.

As we affirm today, engaging in misrepresentation or lack of candor before the Commission is among the most serious offenses a regulatee can commit. It jeopardizes the Commission's ability to perform its core functions and causes the expenditure of additional, otherwise unnecessary, resources to correct. I support today's action because it upholds longstanding Commission precedent that, particularly when it comes to broadcasters, a lack of candor to the Commission is a strong indication that a party may not possess the requisite character to hold a Commission license. Moreover, in the case of an unscrupulous licensee with multiple stations, misrepresentation and lack of candor constitutes "serious deliberate misconduct" that could put all of a broadcaster's licenses at risk. On both accounts, I strongly agree and I expect that the Commission will remain vigilant in our review of the character qualifications of our licensees.