

**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	)	File No. BLH-19990804KJ
KNGS, Coalinga, California	)	Facility ID No. 72672
)	
Avenal Communications Services, Inc., Permittee	)	File No. BLED-19990810KC
of FM Station KAAX, Avenal, California	)	Facility ID No. 3365
)	
Central Valley Educational Services, Inc.,	)	File No. BLED-19990805KB
Permittee of FM Station KYAF, Firebaugh,	)	Facility ID No. 9993
California)	
)	
H.L. Charles D/B/A Ford City Broadcasting,	)	File No. BLH-19990804KG
Permittee of FM Station KZPE, Ford City,	)	Facility ID No. 22030
California)	
)	
Linda Ware D/B/A Lindsay Broadcasting, Licensee	)	File No. BLH-19980206KB
of FM Station KZPO, Lindsay, California	)	Facility ID No. 37725
)	

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 2019

Released: December 23, 2019

By the Commission:

I. INTRODUCTION

1. By this memorandum opinion and order, we dismiss a petition for reconsideration filed by Michael Couzens (Couzens) on behalf of Avenal Educational Services, Inc. (Avenal) and Central Valley Educational Services, Inc. (Central Valley).¹ This pleading seeks reconsideration of a memorandum opinion and order by the Commission dismissing and denying an appeal filed by William Zawila (Zawila) seeking review of a ruling by Chief Administrative Law Judge Richard L. Sippel (the Judge) dismissing Avenal and Central Valley as parties to this proceeding.² We dismiss Couzens's

¹ Petition for Reconsideration by Avenal Educational Services, Inc. and Central Valley Educational Services, Inc., EB Docket No. 03-152 (dated March 3, 2017) (Petition for Reconsideration). *See also* Enforcement Bureau's Opposition to Petition for Reconsideration by Avenal Educational Services, Inc. and Central Valley Educational Services, Inc., EB Docket No. 03-152 (filed March 22, 2017) (Enforcement Bureau Opposition); Reply to Enforcement Bureau's Opposition to Petition for Reconsideration [FCC 17-6], EB Docket No. 03-152 (filed March 27, 2017) (Reply to Opposition).

² *William L. Zawila et al.*, EB Docket No. 03-152, Memorandum Opinion and Order, 32 FCC Rcd 1592 (2017) (*Zawila Order*), dismissing and denying appeal of *William L. Zawila et al.*, EB Docket No. 03-152, Memorandum Opinion and Order, FCC 16M-23 (July 25, 2016) (*Zawila ALJ Order*). We address an appeal from another of the Judge's orders in this proceeding in *William L. Zawila et al.*, EB Docket No. 03-152, Memorandum Opinion and Order, FCC 19-136 (December 23, 2019).

petition for reconsideration on the grounds that it (1) was not properly served on the parties and (2) relies on new arguments that were not properly raised before.³

II. BACKGROUND

2. On February 1, 2017, the Commission issued the *Zawila Order* dismissing and denying an appeal by Zawila challenging the Judge's dismissal of Avenal and Central Valley from this hearing proceeding.⁴ The Commission upheld the Judge's decision, finding that Zawila's appeal was late filed and, as separate and independent grounds, that Zawila failed to present any convincing arguments or evidence that would support his appeal.⁵

3. The Judge's decision to remove Avenal and Central Valley from the proceeding rested on his determination that the companies were not properly incorporated at the time of their applications, and thus were not eligible to hold their authorizations as nonprofit educational organizations under the Commission's rules.⁶ Zawila contested the Judge's ruling, claiming that Avenal and Central Valley were properly incorporated at the time of their applications.⁷ In the portion of the *Zawila Order* that, as a separate and independent ground for decision, denied Zawila's appeal, the Commission stated:

While Zawila states that Avenal and Central Valley "were in full compliance with FCC requirements when they filed their initial applications," he cites no evidence or detailed explanation to support this conclusory assertion. . . . If there is other evidence showing incorporation of Avenal and Central Valley on an earlier date, Zawila has not presented it or indicated that it exists. We have no reason to believe that the [Judge] ignored or mischaracterized the evidence. Absent evidence of earlier incorporation, we have no basis to find that Avenal and Central Valley qualified as nonprofit educational organizations, as required by section 73.503, at the time they filed their applications.⁸

4. Couzens filed a Petition for Reconsideration seeking further review of the *Zawila Order*.⁹ In his petition, Couzens states that, although he supports the dismissal of Avenal and Central Valley from the proceeding, he seeks deletion from the *Zawila Order* of the Commission's language quoted above and other related language, which he considers prejudicial to Avenal and Central Valley.¹⁰ The Enforcement

³ Zawila and Couzens each claim to represent Avenal and Central Valley and deny that the other is a legitimate representative of these entities. See *William L Zawila et al*, EB Docket No. 03-152, Clarification of Memorandum Opinion and Order, FCC 16M-26 at 1-2 (Sep. 26, 2016) ("Mr. Zawila and another attorney, Michael Couzens, both purport to represent Avenal and Central Valley, but neither has been able to definitively prove their representation"). Because the Judge has not resolved whether Couzens in fact speaks for Avenal and Central Valley, we refer to the petitioners herein as "Couzens."

⁴ *Zawila Order*. See also William Zawila, Appeal of Order (FCC 16M-23) to the Full Commission, EB Docket No. 03-152 (filed Aug. 2, 2016); William Zawila, Amended Appeal of Order (FCC 16M-23) to the Full Commission, EB Docket No. 03-152 (filed Aug. 8, 2016).

⁵ *Zawila Order*, 32 FCC Rcd at 1596, para. 11.

⁶ *Id.* at 1593-94, para. 4; see 47 CFR § 73.503.

⁷ *Zawila Order*, 32 FCC Rcd at 1594-95, para. 6.

⁸ *Id.* at 1596, para. 12, 1597, para. 14 (footnotes omitted).

⁹ Petition for Reconsideration at 3-4.

¹⁰ Petition for Reconsideration at 2, 11-12; Reply to Opposition at 2. Specifically, Couzens argues that any finding that Avenal and Central Valley were not qualified (which he contests on the merits) should be made either in a separate hearing proceeding to consider revoking their construction permits, after service of an order to show cause, or upon future consideration of their applications for licenses. See Petition for Reconsideration at 3-4; Reply to Opposition at 6-7.

Bureau filed an opposition to Couzens's petition, contending that the Petition for Reconsideration is defective.¹¹

III. DISCUSSION

5. We find that the Petition for Reconsideration is procedurally defective on two grounds. First, Couzens failed to properly serve his petition on the parties to the proceeding. Second, Couzens, who did not himself appeal the Judge's order, raises new arguments that were not properly raised in Zawila's appeal. For these reasons, we dismiss the Petition for Reconsideration.

6. *Petition Was Not Properly Served.* Under section 1.106(f) of the Commission's rules, all petitions for reconsideration must be served on the parties to the proceeding.¹² According to the certificate of service accompanying the Petition for Reconsideration, while Couzens provided copies of the petition to the Commissioners and the Acting General Counsel, he failed to serve his petition on the Enforcement Bureau, Zawila, or other parties to the proceeding. Couzens argues that service was unnecessary because the *Zawila Order* dismissed Avenal and Central Valley, the companies Couzens claims to represent, from the underlying hearing, and thus Avenal and Central Valley were no longer obliged to provide service on the parties to that proceeding.¹³ Couzens further contends that service was not required because he does not seek to overturn the underlying decision from the Judge; rather "the matter for consideration here is between us and the Commission."¹⁴

7. We reject Couzens's arguments. He provides no legal support for the proposition that the circumstances in this case relieve him, or the parties he purports to represent, of the obligation to serve the parties to this proceeding. The language of the rule is categorical, and failure to serve the parties to a proceeding prejudices those parties' ability to respond to a petition. In particular, Couzens needed to serve Zawila, who filed the appeal that led to the order of which Couzens seeks reconsideration, and the Enforcement Bureau, which made a filing in opposition to Zawila's appeal. We therefore conclude that Couzens failed to properly serve his Petition for Reconsideration on the relevant parties and that his petition is defective for that reason and thus will be dismissed.

8. *Petition Raises New Arguments.* Under section 1.106(c) of the Commission's rules, a petition for reconsideration may generally rely on new arguments only if those arguments were unknown to the petitioner until after his last opportunity to present the arguments and the petitioner could not through the exercise of ordinary diligence have learned of the arguments in question prior to such

¹¹ Specifically, the Enforcement Bureau argues that Couzens failed to timely file or properly serve his petition, and that the Petition for Reconsideration provides no basis to revisit the *Zawila Order*. Enforcement Bureau Opposition at 3-5. Because we determine below that Couzens's petition should be dismissed for other reasons, we need not resolve the parties' dispute as to whether the filing was untimely.

¹² Failure to serve in itself renders a pleading defective and subject to dismissal. *See* 47 CFR § 1.106(f) (requiring service of petitions for reconsideration); *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 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); *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 in part on the ground that it was not properly served on other parties in a hearing as required under 47 CFR § 1.211).

¹³ Reply to Opposition at 2-3.

¹⁴ *Id.*

opportunity, if they relate to new events or changed circumstances since the petitioner's last opportunity to present arguments to the Commission, or if the Commission finds that consideration of the arguments is required by the public interest.¹⁵

9. We find that Couzens in his Petition for Reconsideration relies in all material respects on arguments that were previously known to him and could have been raised earlier. Specifically, he asserts that Avenal and Central Valley should have been afforded additional due process rights and procedures before the Judge or the Commission could have made any determinations regarding the validity of their applications or their qualifications. He contends that both the *Zawila Order* and the *Zawila ALJ Order* unjustly opined on Avenal's and Central Valley's qualifications as nonprofit educational organizations without providing for a full hearing on the matter.¹⁶

10. Couzens did not appeal the Judge's order or otherwise substantively challenge any of the conclusions drawn by the Judge. While Couzens did file an objection to Zawila's appeal of the Judge's order based on Zawila's claim to represent Avenal and Central Valley, Couzens did not raise the arguments regarding Avenal's and Central Valley's qualifications that he now presents in his Petition for Reconsideration.¹⁷

11. Couzens argues that he did not appeal the Judge's order for two reasons. First, he contends that because the Judge's order dismissed Avenal and Central Valley from the proceeding, the entities were "no longer parties and no longer entitled to participate" in the proceeding and thus could not file an appeal of the Judge's order.¹⁸ We are aware of no precedent, and Couzens cites none, that supports this contention. Section 1.301(a)(1) of the Commission's rules specifically provides that if an administrative law judge's order "terminates the right of any person to participate as a party to a hearing proceeding, such person, as a matter of right, may file an appeal from that ruling."¹⁹ While the Judge's order may have dismissed Avenal and Central Valley as parties to the proceeding, Couzens, as their purported representative, nonetheless retained the right to appeal that order. Thus, his claim that he was no longer entitled to participate and appeal the Judge's decision is without merit.

12. Second, Couzens asserts that Avenal and Central Valley had no reason to appeal the Judge's decision because they "had no problems with the dismissals."²⁰ However, the Judge's order was not limited to a bare dismissal of Avenal and Central Valley from the proceeding, but rendered conclusions that Couzens now attempts to challenge in his Petition for Reconsideration.²¹ These conclusions made by the Judge form the basis of the language in the *Zawila Order* to which Couzens now objects.²² That language merely upholds the reasoning in the Judge's original order dismissing the

¹⁵ 47 CFR § 1.106(c).

¹⁶ Petition for Reconsideration at 3-4.

¹⁷ See Michael Couzens, Informal Objection to "Appeal of Order (FCC 16M-23) to the Full Commission", EB Docket No. 03-152 (filed Aug. 19, 2016).

¹⁸ Petition for Reconsideration at 4; see also Reply to Opposition at 4 ("Strongly supporting that result [of the Judge's order], and welcoming the new status as non-parties to the proceeding, [Avenal and Central Valley] also perceived no avenue of appeal . . .").

¹⁹ 47 CFR § 1.301(a)(1).

²⁰ Petition for Reconsideration at 4.

²¹ *Id.* at 6 (stating that the Judge "opined on the Petitioners' legal qualifications, in disregard of proper procedures for making such findings . . . [and] made an adverse qualification ruling constituting nothing more than his partially-informed opinion"). Couzens acknowledges that many of the issues raised in the Petition for Reconsideration were briefed to the Judge. See Reply to Opposition at 6.

²² See Petition for Reconsideration at 6 (stating that "the Commission has compounded the [Judge's] error, adopting the judge's approach by restating [the Judge's] opinion").

parties; namely, that Avenal and Central Valley were not eligible applicants for their authorizations.²³ Thus, Couzens was on notice of the Judge's reasoning, and the related facts and arguments, but nonetheless failed to timely raise them in an appeal or a response to Zawila's appeal. If Couzens objected to the adequacy of the process that the Judge afforded prior to making conclusions regarding Avenal's or Central Valley's qualifications, he was obligated to raise those objections in an appeal of the Judge's order.

13. Thus, we conclude that Couzens is attempting on reconsideration to rely on arguments that he could have previously raised in an appeal of the Judge's order and that should have been known to him at that time. Furthermore, we find that the public interest does not require that he be given a belated opportunity to raise these arguments now.²⁴ Pursuant to section 1.106(c) of the Commission's rules, he cannot raise those arguments on reconsideration.

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED that the Petition for Reconsideration, filed by Michael Couzens on behalf of Avenal Educational Services, Inc., and Central Valley Educational Services, Inc., IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²³ See *Zawila Order*, 32 FCC Rcd at 1597, para. 14 (“[W]e have no basis to find that Avenal and Central Valley qualified as nonprofit educational organizations, as required by section 73.505, at the time they filed their applications.”); *Zawila ALJ Order* at para. 16 (“Therefore, the Presiding Judge finds, as matters of law and fact, that Avenal and Central Valley were not unincorporated nonprofit associations – or otherwise organized entities recognized by state or federal law – at the time of their respective applications. Accordingly, Avenal and Central Valley were not eligible applicants for license at the time they filed their applications.”)

²⁴ See *Canyon Area Residents*, Memorandum Opinion and Order, 14 FCC Rcd 8152, 8154, para. 7 (1999) (“We cannot allow a party to ‘sit back and hope that a decision will be in its favor and, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.”) (quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941)).