Re: FCC 17-6

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	EB Docket No. 03-152
WILLIAM L. ZAWILA Permittee of FM Station KBGS, Coalinga, California	Received & Inspected Facility ID No. 72672 MAR 09 2017 FCC Mail Room
AVENAL EDUCATIONAL SERVICE, INC. Permittee of FM Station KAAX, Avenal, California	Facility ID No. 3365
CENTRAL VALLEY EDUCATIONAL SERVICES, INC. Permittee of FM Station KYAF, Firebaugh, California	Facility ID No. 9993
H. L. CHARLES d/b/a FORD CITY BROADCASTING Permittee of FM Station KZPE, Ford City, California	Facility ID No. 22030
LINDA WARE d/b/a LINDSAY BROADCASTING Licensee of FM Station KZPO, Lindsay, California	Facility ID No. 37725

TO: The Commission

PETITION FOR RECONSIDERATION
BY AVENAL EDUCATIONAL SERVICES, INC. AND CENTRAL VALLEY EDUCATIONAL SERVICES, INC.

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March 3, 2017.

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SUMMARY

The decision from which William L. Zawila sought review had dismissed Petitioners from the hearing case. Petitioners supported the dismissal and did not, themselves, seek appeal. Petitioners support the denial of review.

Petitioners seek review because the Commission's Order made conclusions of law adverse to Petitioners, who were not a party and had no chance to participate. Specifically, the Commission stated in dicta, retroactively, that petitioners' applications should have been dismissed, based on misapplication of post-2007 case law regarding the timing of corporate formation. For reason given by Petitioners, this ruling violated the Statute, as well as Commission Rules and policy. Petitioners seek reconsideration to have the Commission narrow its holding, and to vacate those parts of the Memorandum Opinion and Order in paras. 4 and 11-14 that adversely affected Petitioners' rights to due process of law.

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IV. Petitioners should be permitted to proceed to construct KAAF and to obtain licenses for both KAAX and KYAF as a matter of course. [11]

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TO: The Commission

PETITION FOR RECONSIDERATION

Central Valley Educational Services, Inc. (CVES or Central Valley) and Avenal Educational Services, Inc. (AES or Avenal) by their attorney (collectively, "Petitioners") here move the Commission to modify its Memorandum Opinion and

Order ("Order") released on February 1, 2017, and dismissing and denying an appeal authored by William L. Zawila. We agree with and support the bottom-line result of that Order. Reconsideration is needed to vacate certain specific findings in the Order that are prejudicial to Petitioners and that violate the Communications Act, the Commission's Rules, and due process of law.

I. Procedural Setting

Petitioners' entities became entwined with an oral evidentiary hearing, EB Docket N. 03-152, through a series of deceptions and malfeasances by William L. Zawila. Zawila was hired by Verne White as a communications attorney to make the initial filings for two of the captioned stations, KAAX, Avenal, California and KYAF, Firebaugh, California.[1] As related by Mr. White in his declaration under oath, Zawila later falsified Commission records to place himself in apparent ownership or control of the stations.

The presiding (and chief) administrative law judge dismissed these entities from the case on July 25, 2016, FCC 16M-23. Zawila, falsely claiming to represent the entities, submitted an application for review.[2] Petitioners, delighted to be rid of Zawila and his basic qualification problems, had no problem with the dismissals and did not appeal. We were no longer parties and no longer entitled to participate, and that is why it was not possible to participate at an earlier stage of this

1 See Mr. White's sworn declaration accompanying the Informal Objection, August 18, 2016, in conjunction with Zawila's application for review here.

2 The Order, at fn. 22, declined to rule on the probative evidence we presented to show that Zawila was using Petitioners' FRN accounts to make his appeals here.

proceeding, Section 1.106(b)(1) of the Rules and Regulations. So the Commission's Order took into account only Zawila's contentions, mis-stated the law and failed to address decisionally significant matters affecting Petitioners.

II. The Commission's finding of "No Basis" for concluding that Petitioners were qualified at the time they filed their initial applications violated due process and the Communications Act.

Petitioners hold construction permits for KAAX, Avenal, California and KYAF, Firebaugh, California. The latter has been on the air since 2005. After the the judge had dismissed these applicants in the Order that Zawila appealed here, the judge issued a clarifying order, FCC 16M-26, rel. September 26, 2016, stating that the dismissal was "without prejudice." He opined: "Thus, the agency may bring the same claims against Avenal and Central Valley, based on the same set of facts, in another proceeding." Id. p. 2.

The Commission's Order does not do this. It merely concludes, in dicta, that

> [W]e 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.

The adoption of this finding, outside the presence of Petitioners, cannot be squared with proper procedures, required by Statute, to oust a permit holder of its permit:

> (c) Before revoking a license or permit pursuant to subsection (a), or issuing a cease and desist order pursuant to subsection (b) the Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters which respect to which the Commission is inquiring and shall call upon said licensee, permittee, or person to appear before the Commission at a time and place stated in the order, but no less than thirty days after receipt of such

order, and give evidence upon the matter specified therein. . . [47 U.S.C. Section 312(c)].

Both FCC16M-23 and the post-dismissal FCC 16M-26 opined on the Petitioners' legal qualifications, in disregard of proper procedures for making such findings.[3] Instead, the judge dismissed Petitioners from the case and, in conjunction with that, made an adverse qualification ruling constituting nothing more than his partially-informed opinion. Now the Commission has compounded the error, adopting the judge's approach by restating this opinion, again without the parties before it, and in disregard of 47 U.S.C. Section 312(c) supra. All parts of the Order embodying this unlawful holding should be vacated.

III. For each of four sufficient reasons the Commission should not proceed anew to designate these qualifying issues for hearing.

The Commission has the authority to follow the judge's helpful suggestions, designate the qualification issues anew against Petitioners, and order a new hearing. For each one of four sufficient reasons, the Commission should not do so.

A. Petitioners' initial applications were fully compliant, under then existing law.

Initial applications for Central Valley (BPED-881017MD) and Avenal (BPED-19890320MB) were filed respectively in 1988 and 1989. At that time Commission policy was that the Commission and staff " do not generally consider

3 The judge could have entertained a motion for summary decision, and followed the applicable rules, 47 CFR Sec. 1.251. Alternatively, the judge could have received from the parties proposed findings and conclusions, Sec. 1.263, and adopted an initial decision, Se. 1.267, covering "all material issues of fact law, or discretion" and setting forth the appropriate rule, order or sanction, Sec. 1.267(b).

issues of a licensee's compliance with the requirements of state corporate law where no challenge has been made in state court," *Fatima Response, Inc.*, 14 FCC Rcd 18543, 18546 (1999). That case involved, as here, both an educational applicant and an undisputed allegation of lack of *de jure* corporate existence when the application was initially filed. A misrepresentation issue was rejected, the Commission noting that it would not be logical for the applicant to knowingly make false statements with respect to a matter about which the Commission was unlikely to inquire. The applicant was "admonished" for its corporate organization deficiencies, and the application granted, Id. This policy of forbearance, in the absence of any State-law challenge in state court, persisted at least as late as 2006, see *Charles N. James* [WBSL(AM), Bay St Louis, MS], DA 06-2090 released on October 25, 2006.[4] It began to change only after the Commission in 2007 opened a filing window for new noncommercial educational applicants and, confronted with a large volume of mutually exclusive applications, began looking for ways to tighten basic qualification analysis.

Here, according to the Order, para. 4, "Prior Commission decisions" have interpreted "nonprofit educational organization" as being "recognized by the laws of the state in which it proposes to operate at the time it submits its application." If by "prior" is meant prior to the judge's designation of the qualification issue on

4 "[W]e generally will not deny an application based on alleged violation of such laws where no challenge has been made in state courts and the determination is one that is more appropriately a matter of state resolution," *Charles N. James;* citing *Fatima Response*, *supra*; *Abundant Life, Inc.*, 16 FCC Rcd 4972 (2001); *North American Broadcasting Co., Inc.*, 15 FCC 2d 979, 983 (Rev. Bd., 1969).

January 12, 2016, this is true. But if the implication was that "prior" case law applied at the time when these applications went on file, the characterization certainly is not right, and the language needs to be vacated.

B. The Commission fails to assess the legal significance of the fact that these applications were filed in the non-reserved band.

The judge, in an Order on January 12, 2016, FCC 15M-01, gave reasons for his belief that the failure to be "recognized under California corporate law" at the time of application was disqualifying, and stated his intention to add basic qualifying and misrepresentation issues. Petitioners, on January 14, 2016, filed a request for permission to file an appeal (Sec. 1.301(b) of the Rules). As grounds for appeal Petitioners showed that the facilities were applied for and granted in the non-reserved band (on Channel 295 (106.9 MHz) and on Channel 234 (94.7 MHz). On February 2, and without any regard for this issue, the judge added the qualifying issues, issues (d) and (g) and related misrepresentation issues (e) (f) (h) and (i). The motion for leave to appeal was denied much later, in FCC-16M23, the Order subject to Zawila's appeal here.[5]

The request for permission to file appeal gives a complete and thorough

5 All of the precedents he cited in his fn 12 are distinguishable because they concerned LPFM, where initial filings are governed by an express rule, Section 73.853(b): "Only local organizations will be permitted to submit applications and hold authorizations in the LPFM service. For purposes of this paragraph an organization will be deemed local *if it can certify, at the time of application*, that it meets the criteria listed below and if it continues to satisfy the criteria at all times thereafter." [emphasis added] For NCE's generally there is no express requirement in the rules, regarding the timing of corporate formation.

explanation of why these issues should not have been added. As we said, referring to the noncommercial reservation:

> "Subpart C eligibility is strictly limited.
>
> > A noncommercial educational FM broadcast station will be licensed only to a non-profit educational organization and upon a showing that the station will be used for the achievement of an educational program. (47 C.R.F. Sec. 503(a))
>
> "Use of the noncommercial band is considered a privilege, limited only to those entities who meet the qualification standard set forth in Section 73.503 of the rules as well as the Public Broadcasting Act, 47 U.S.C. Sec, 397(6)(a). In the non-reserved band, however, individuals, unincorporated associations, for profit entities and non-profit entities alike may apply."

The Commission's Order here makes no mention of the fact that Petitioners originally applied in the non-reserved band. The Order, unintentionally it appears, is the first-ever ruling of the Commission that Sec. 73.503(a) of the Rules (which by its terms applies to "licensing," not to initial application) requires of non-reserved band applicants that all corporate formalities be fulfilled prior to the initial filing.[6] Because in this band the status is easily changed later, even to that of an individual applicant, such a pre-filing restriction would have served no purpose.

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6 In support of this decision, the Order, in fn 16, offers two citations. Both contradict the asserted point. The Order cites a low power FM decision, *Regarding Six Applications for New Low Power FM Stations*, 28 FCC Rcd 13390, 13393-4, para. 10. Ironically, the very same decision, elsewhere, distinguished precedents regarding non-reserved band applicants, noting that this places them in an entirely different category: "Unlike a non-reserved band FM station, an LPFM station must operate as an NCE station, and thus an LPFM licensee must maintain eligibility at all times," *Six Applications, Id.*, at n. 45. The other citation was to another LPFM case, *Hope Radio of Rolla, Inc.*, 28 FCC Rcd 7754 (May 14, 2013), quoted in the Order in the body of para. 4 as stating that a nonprofit organization must be one that is "recognized by the laws of the state in which it proposes to operate at the time it submits its application." [emphasis in the original] In that case an LPFM applicant was not incorporated at the time it filed its application [in violation of Sec. 73.801, not applicable here]. The applicant sought to avoid dismissal by siting *Fatima Response*, analyzed *supra* at 4. The Commission found that case distinguishable, as follows: "Unlike a non-reserved band FM station, an LPFM station must operate as an NCE station, and thus an LPFM licensee must maintain NCE eligibility at all times. LPFM R&O, 15 FCC Rcd at 2213, n. 33."

All findings in the Order with this newly discovered guideline should be vacated.

C. Petitioners have voluntarily relinquished their noncommercial status.

When Petitioners' applications were dismissed, we forwarded an "*Ex Parte Communication*" to the judge, *Attachment A*, thanking him for de-coupling us from the person of William L. Zawila, whose defiance of proper discovery already had sped him on the path to terminating sanctions. We noted that nothing in the dismissal prevented Petitioners from resolving all qualification problems, by filing a notification that the stations had converted to commercial.[7]

Strangely, the judge was unable to leave matters where they now stood -- in the processing line at the Media Bureau. He issued a "Clarification of Memorandum Opinion and Order, FCC 16M-23," FCC 16M-26 released on September 26, 2016. The clarification noted that the dismissal was "without prejudice," a conclusion with which we agree, as discussed supra at p. 3. But the judge also took it upon himself to claim that petitioners' notification of change would not be sufficient. Instead, he averred, the change to commercial status would need Commission approval, pp. 2-3. These conclusions of law were made after our parties had been dismissed and so we had no opportunity to participate in any way. The judge closed with the categorical and outrageous claim that "Avenal and Central Valley have not erased all issues with their respective statuses simply by attempting to convert to commercial status." It is unclear what the judge meant by "issues" after the parties had been dismissed.

7 Attached were stamped copies of letters to the secretary confirming the conversion.

Petitioners had no opportunity to respond to the judge and his outlandish *ex parte* statements. But in view of them on October 26, 2016 Avenal (BMPED-20161026AAP) and Central Valley (BMPED-20161026AAV) submitted on Form 340 applications for minor amendment on Form No. 340, to change their status from non-commercial to commercial.[8] These applications were accepted for filing and are pending. The Commission's staff can and should should approve these "routine" applications.

D. A disqualification of the Permittees Based on Alleged Flaws in their Original Applications Would be Grossly Untimely.

The hearing designation order in this case was issued on July 16, 2003. For reasons that are not entirely clear, the case was frozen in amber until about October 16, 2014, when the chief administrative law judge, now sitting as the new trial judge here, issued an order requesting parties to report status and submit updates, FCC 14M-33. The judge instructed the Enforcement Bureau to propose new issues regarding the ownership of Petitioners, but the Bureau went further and proffered an unrequested issue regarding the timeliness of Petitioners' corporate existence.[9] We argued in pleadings that the Enforcement Bureau had failed to justify its late addition of the issues, under Section 1.229(b)(3) and 1.229(c), the latter showing

8 The Permittees stated in Exhibit 1: "Commission precedent has indicated that an application should be made pursuant to this rule [sec. 73.1690(c)(9)], both for licensees and permittees, *High I-Q Radio, Inc.* 19 FCC Rcd 7225 (April 21, 2004) at 7235, para. 38. As noted there, 'permission to change from noncommercial to commercial service on a non-reserved channel is routinely granted. . . .' Permittee will not be engaging in other than noncommercial, educational broadcast services unless and until this modification application is granted."

9 Enforcement Bureau's Supplemental Motion to Add Issues with Proposed Order, June 18, 2015.

"substantial public interest importance."[10] All the Bureau said was, "The Bureau's Motion meets that standard."

The enlargement request from the Enforcement Bureau came, not within the required 15 days of the designation order. It came some 26 or 27 years since the Petitioners were initially found qualified. It came twelve years after the hearing designation order. It came ten months after the judge's revival of the case with his October 16, 2014, status order.

The central holding in the present Order is that Zawila's arguments on appeal need not be considered because his application for review was filed one day late. It ill becomes the decision maker, then, to posit a disqualifying issue that was raised at least eight years, if not 28 years too late. The time constraints on Commission decision, review, reconsideration and reversal exist for a reason. As discussed above, every scrap of supporting decisional law regarding corporate existence that could be used to disqualify the Petitioners was issued after 2007. Petitioners' KYAF has been on the air providing first community service for twelve years.

There needed to be some cogent public interest reason for revisiting the original grants. The issue has no value as precedent, because non-reserved band authorizations are now distributed through an auction, where no applicant is required to establish its legal qualification *bona fides*, prior to bid. Moreover, a reversal of the initial grants raises the disturbing specter that no processing line

10 Motion to enlarge are limited to 15 days from the publication of the hearing designation order, 47 C.F.R. Sec. 1.229(a).

determination is ever settled or insulated from collateral attack, even decades later. Here, and for all other cases in which it might be an unedifying landmark, unless it is modified, the Order is the enemy of "the orderliness and predictability which are the hallmarks of lawful administrative action," *Network IP LLC v. FCC*, 548 F. 3d 116, 127 (D.C. Cir., 2008).

IV. Petitioners should be permitted to proceed to construct KAAF and to obtain licenses for both KAAX and KAAF as a matter of course.

The Order held that Zawila's application for review was not in order because it was filed late. All else in the decision essentially was "dicta." The Commission frequently adopts this approach, to afford guidance to interested parties in matters beyond the adjudicatory facts. In this case, however, the holding that Avenal and Central Avenue violated Section 73.503(a) of the Rules was, at best, built from an incomplete record. From the foregoing it is obvious that the briefing here by Zawila himself was inadequate, or even non-existent.[11] Nor should the Commission wish to anchor an important new holding to the chief administrative law judge's written personal observations, after petitioners had been dismissed from the hearing. For the Commission, the wise course will be to avoid such a ruling as a question not before it and unnecessary to decide. Accordingly, all discussion of the point should be vacated from the Order. Specifically, the Commission should

11 It is difficult to understand what Zawila thought he was doing with this application for review. Had it been an unqualified success, Avenal and Central Valley would have been sent back to the ongoing hearing. There, to the extent that they were associated with Zawila at all, his fulsome record of deception and his refusal to cooperate with proper discovery were headed inexorably to his outright disqualification as a Commission licensee.

delete all of para. 4 after the first sentence, and should modify paras. 11-14 to make clear that it is making no conclusion of law as to the timeliness of incorporation.

With the benefit of hindsight it might be said that the judge should have held a hearing on the contested ownership question that had been designated, instead of taking the easy way out with the dismissal of these applicants. That these issues could not be resolved with paper submissions hardly meant that they could not be resolved in a live evidentiary hearing. But the litigious William L. Zawila should not prevent the Commission's proceeding in the normal course, through and including licensing of KAAX and KAAF.

Applications for license will be considered only upon public notice and the opportunity to comment, by Zawila as by any others. We only request that the Order be modified to exclude the unjustifiable pre-filing qualification language. Thereafter it will be up to the Media Bureau to grant or deny licensing in the normal course, based on applications for license, public notice, and a full public record.

Respectfully submitted,

Dated: March 3, 2017

Michael Couzens
Attorney for Central Valley Educational Services, Inc. and Avenal Educational Services, Inc.

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ATTACHMENT A.

MICHAEL COUZENS
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August 11, 2016

By email to Richard.Sippel@fcc.gov and by First Class Mail

Hon. Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Ex Parte Communication
Re: EB Docket No. 03-152

Dear Judge Sippel:

Let me begin by thanking you for your ruling, *Memorandum Opinion and Order*, FCC 16M-23, released on July 25, and dismissing my clients Central Valley Educational Services, Inc and Avenal Educational Services, Inc. (respectively Central Valley and Avenal) "as parties to this proceeding." We do not need to agree with the resolution of the original NCE qualification issue. But by removing us from the history of William L. Zawila, the Order segregates our permittees from a hearing on his record -- an outcome we always sought.

We appreciate the wisdom of the approach. You had the authority to impose sanctions (subject to appeals), up to and including the revocation of the Central Valley and Avenal construction permits. With your acts of restraint it will fall to the Media Bureau to make a qualification determination, when and if license applications are before it, and in light of your analysis. In our briefing submitted on March 25, 2016, we suggested in lieu of revocation that our permittees might simply lose their right to NCE status, remaining free to operate as commercial entities just like most of their neighbors, Brief, p. 3 and fn. 11.[1] Your decision did not discuss, and thus did not accept or reject that alternative. In any future application for license, the Bureau could make a public interest determination, out of recognition that these applicants were in compliance under the law as it was at the time.[2] The Bureau also would have the opportunity to consider the negligence and all the deceptions of Zawila, who handled (or mishandled) the original filings for these entities, prior to his being fired. Finally, the Bureau would have the opportunity to consider, in the case of Central Valley, that Verne White and his colleagues have operated station KYAF continuously and meritoriously for more than ten years, in service to Firebaugh, a rural community having no other broadcast outlet.

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1 See Attachments A and B, notifying the Commission that these stations had converted to commercial operations, effective August 1, 2016.

2 See *Fatima Response, Inc., Assignor*, FCC 99-282, 14 FCC Rcd 18543 (1999).

For these reasons we chose not to appeal your dismissal Order. In typical fashion Zawila has submitted a fulminating appeal of the Order. We will informally oppose his filing, and the rejection of that appeal will make yours a final Order. At this time Central Valley and Avenal are not parties. They are entitled to no notice of actions or pleadings. They have no right to present evidence or otherwise to participate. You lack jurisdiction over them to take any further action, unless they are served with notice of a new hearing and right to be heard.

The Enforcement Bureau on Tuesday (8/9) submitted a Motion for Summary Decision. In para. 24 it states that most of the issues against Central Valley and Avenal "are moot." It nevertheless claims that "summary decision is appropriate" on the issues added by FCC 16M-01 and FCC 16M-02. However, no finding and no sanction beyond what was held when the entities were parties may lawfully be imposed now, when they are not parties. This is a core precept of adjudication under the A.P.A. Accordingly, and contrary to their conclusions at p. 33, para. 69(a), summary decision is not appropriate on the issues once directed against Avenal and Central Valley in the HDO and in Order, FCC 16M-02, prior to their dismissal.

Some ten issues were added by your Order FCC 16M-02. Determining which issues were "moot," which were not, may not be an easy task. Zawila faces terminating sanctions, richly deserved, for defying proper discovery. Central Valley and Avenal had participated in the discovery status hearing, had begun their responses, and were fully prepared to comply with discovery in full when they ceased to become parties. Any adverse summary decision against them now necessarily would be based on the assumption that Central Valley or Avenal would be unwilling or unable to provide exculpatory evidence or argument. Your honor knows full well not to make such an assumption because it would be plain error. The July 25 Order speaks for itself, and the outcome as to these former parties is fully decided as far is it need be or can be. The fitting response to the Enforcement Bureau's request as to them is no further action.

In closing I want to thank you again. We accepted your court's jurisdiction and participated as best we could. We are happy to see the hearing ended as to us and we know that, as to the remaining parties, justice will be served.

Respectfully submitted,

Michael Couzens,
Attorney for Central Valley Educational Services, Inc. and Avenal Educational Services, Inc.

cc. Patricia Ducksworth
Rachel Funk
William L. Zawila
Pamela Kane
Michael Engel

STAMP AND RETURN

Attachment A.

MICHAEL COUZENS
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August 1, 2016

Received & Inspected

AUG - 1 2016

FCC Mailroom

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Re: KYAF, Firebaugh, CA (Facility ID 9993)
Notification of Election to Commercial Status

Dear Ms. Secretary:

Submitted here on behalf of Central Valley Educational Services, Inc., are an original and two copies of an election to commercial status. The election is effective immediately with this notification. At this time the permittee remains an incorporated non-commercial entity. The facility, situated at 94.7 MHz, is authorized in the non-reserved band.

Notification by letter is appropriate, see Report and Order, *Creation of Low Power Radio Service*, 15 FCC Rcd 2205 (2000) at 2213, fn. 33.[1]

Permittee understands and agrees that going forward it will no longer be exempt from regulatory fees. "If a noncommercial educational entity wishes to operate an unreserved broadcast facility on a commercial basis, it will be subject to to the Schedule of Charges," Report and Order in Gen. Docket No. 86-285, *Establishment of a Fee Collection Program to Implement Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, at para. 73, n. 63.

Respectfully submitted,

Michael Couzens,
Attorney for-profit
Central Valley Educational Services, Inc.

1 "In this regard, LPFM NCE stations will be different from full-service NCE stations that operate on the non-reserved band. The latter can convert from NCE status to commercial status at will by filing a notification letter with the Commission, but LPFM stations will not be permitted to change their noncommercial status."

STAMP AND RETURN

Attachment B.

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August 1, 2016

Received & Inspected

AUG - 1 2016

FCC Mailroom

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Re: KAAX, Aneval, CA (Facility ID 3365)
Notification of Election to Commercial Status

Dear Ms. Secretary:

Submitted here on behalf of Avenal Educational Services, Inc., are an original and two copies of an election to commercial status. The election is effective immediately with this notification. At this time the permittee remains an incorporated non-commercial entity. The facility, situated at 105.7 MHz, is authorized in the non-reserved band.

Notification by letter is appropriate. see Report and Order, *Creation of Low Power Radio Service*, 15 FCC Rcd 2205 (2000) at 2213, fn. 33.[1]

Permittee understands and agrees that going forward it will no longer be exempt from regulatory fees. "If a noncommercial educational entity wishes to operate an unreserved broadcast facility on a commercial basis, it will be subject to to the Schedule of Charges," Report and Order in Gen. Docket No. 86-285, *Establishment of a Fee Collection Program to Implement Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, at para. 73, n. 63.

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CERTIFICATE OF SERVICE

I, Clay Leander, certify that copies of the foregoing Petition for Reconsideration on March 3, 2017, were sent by First Class Mail, with postage fully prepaid, to the following:

Hon. Ajit Pai, Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Hon. Mignon Clyburn, Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Hon. Michael O'Rielly, Commissioner
Federal Communications Commission
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