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

AUG 9 - 2016

**Federal Communications Commission
Office of the Secretary**

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

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Attn: The Commission

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**ENFORCEMENT BUREAU'S OPPOSITION TO
APPEAL OF ORDER (FCC 16M-23) TO THE FULL COMMISSION**

1. On July 25, 2016, the Presiding Judge issued *Order*, FCC 16M-23, concluding that Avenal Educational Services, Inc. (Avenal) and Central Valley Educational Services, Inc. (Central Valley) were not qualified applicants at the time they submitted their respective applications for construction permits for the noncommercial educational stations KAAX(FM) and KYAF(FM) at issue in this proceeding.¹ The Presiding Judge then dismissed Avenal and Central Valley from the proceeding.² Avenal and Central Valley (as represented by Mr. Zawila) appealed this *Order*.³ For the reasons discussed below, the Chief, Enforcement Bureau (Bureau), through his attorneys, respectfully opposes this Appeal.

2. In *Orders*, FCC 16M-01 and FCC 16M-02,⁴ the Presiding Judge added an issue to the proceeding to determine whether Avenal and Central Valley were qualified, pursuant to the requirements of Section 73.503(a) of the Commission's rules, to apply for stations KAAX(FM) and KYAF(FM) at the time they submitted their applications.⁵ In response to these *Orders*, Avenal and Central Valley (as represented by Mr. Couzens) requested permission, pursuant to Section 1.301(b) of the Commission's rules, to file an appeal of *Order*, FCC 16M-01 (Couzens

¹ See *Memorandum Opinion and Order*, FCC 16M-23 (ALJ, rel. Jul. 25, 2016).

² See *id.* at 10.

³ See Appeal of Order (FCC 16M-23) to the Full Commission, served by mail on July 30, 2016. On the same day, Avenal and Central Valley (as represented by Mr. Zawila) also served by mail an Amended Appeal of Order (FCC 16M-23) to the Full Commission (Amended Appeal). The Bureau responds herein to the assertions made in the Amended Appeal, referred to herein as "the Appeal." As referenced in the Appeal, there is a dispute in this case as to who represents Avenal and Central Valley – William L. Zawila or Michael Couzens. It does not appear that Avenal and Central Valley, as represented by Mr. Couzens, filed a timely appeal to *Order*, FCC 16M-23.

⁴ See *Memorandum Opinion and Order*, FCC 16M-01 (ALJ, rel. Jan. 12, 2016), and *Order*, FCC 16M-02 (ALJ, rel. Feb. 2, 2016).

⁵ Section 73.503(a) states that "[a] noncommercial educational FM broadcast station will be licensed only to a non-profit educational organization and upon showing that the station will be used for the advancement of an educational program." 47 C.F.R. § 73.503(a).

Request).⁶ Avenal and Central Valley (as represented by Mr. Zawila) filed a request to appeal *Order*, FCC 16M-02 (Zawila Request).⁷ The Presiding Judge requested that the Bureau respond to each of these Requests.⁸ The Presiding Judge also ordered additional briefing directed to the issues raised in the Requests.⁹

3. In the Appeal, Avenal and Central Valley suggest that, in concluding that Avenal and Central Valley were not qualified applicants, the Presiding Judge considered only Mr. Couzens' position and "completely ignore[d] the position put forth by Mr. Zawila."¹⁰ Yet, the Appeal fails to present any specific position put forth by Mr. Zawila or, more importantly, any evidentiary support for any such position, that the Presiding Judge failed to consider.¹¹ Rather, the Appeal simply states that Avenal and Central Valley "were in full compliance with FCC requirements when they filed their initial applications"¹² without offering any evidence demonstrating that either entity was a non-profit corporation or an unincorporated non-profit association, as required by Section 73.503(a) of the Commission's rules, when they filed their applications.

4. In addition, the Appeal suggests that *Order*, FCC 16M-23, violates the Commission's Character Policy because it is based on Avenal's and Central Valley's "alleged

⁶ See [Central Valley and Avenal's] Request for Permission to File Appeal (47 C.F.R. Sec. 1.301(b)), filed Jan. 14, 2016.

⁷ See [Zawila's] Request to Appeal 2-2-16 Order (FCC 16M-02), served by mail on February 3, 2016.

⁸ See Email from Presiding Judge to the Parties, EB Docket No. 03-152, dated Feb. 19, 2016, attached hereto as Exhibit 1; see also 47 C.F.R. § 1.301(b) ("Pleadings responsive to [a] request [to file an appeal] shall be filed only if they are requested by the Presiding Officer.").

⁹ See *Order For Further Briefing*, FCC 16M-12 (ALJ, rel. Mar. 23, 2016).

¹⁰ Amended Appeal at 4.

¹¹ Notably, Avenal and Central Valley, as represented by Mr. Zawila, did not respond to the Couzens Request and did not submit any pleadings challenging the positions Mr. Couzens took in response to the Presiding Judge's orders for additional briefing.

¹² Amended Appeal at 4.

misrepresentations” regarding their legal status when they initially applied for their respective stations almost thirty (30) years ago that cannot now be considered.¹³ This assertion is baseless for at least two reasons. First, the *Order* is not based on misrepresentations made by either Avenal or Central Valley. Indeed, the *Order* specifically states that “there has been no evidence introduced and thus no affirmative findings of misrepresentation.”¹⁴ Rather, the *Order* is based on documentation from the California Secretary of State showing that Avenal and Central Valley were not incorporated entities until at least 10 years *after* they applied for their respective construction permits for stations KAAX(FM) and KYAF(FM),¹⁵ and on the lack of evidence demonstrating that either entity was an unincorporated association at the time they applied for these permits.¹⁶

5. Second, the Commission’s Character Policy does not, as the Appeal suggests, preclude the Presiding Judge from considering matters that occurred more than 10 years ago.¹⁷ Indeed, as the Presiding Judge previously recognized, the Commission’s 1986 Character Policy contains no such limitation.¹⁸ Instead, it suggests only that, *as a general matter*, the Commission should impose a 10-year limitation when considering past conduct in the context of examining an applicant’s (or, in this case, a permittee’s) character.¹⁹ The Commission retains the discretion to investigate and consider conduct that occurred beyond that time period if the circumstances

¹³ Amended Appeal at 5.

¹⁴ *Order*, FCC 16M-23, at ¶ 17.

¹⁵ *See id.* at ¶ 5.

¹⁶ *See id.* at ¶¶ 13-16.

¹⁷ *See* Amended Appeal at 4-5.

¹⁸ *See, e.g., Order*, FCC 16M-10 (ALJ, rel. Mar. 21, 2016), at 2-3; *Order*, FCC 16M-05 (ALJ, rel. Feb. 29, 2016), at 2.

¹⁹ *See Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, 102 FCC 2d 1179, 1229 (1986) (emphasis added).

warrant.²⁰

6. Moreover, the only reason the issues in this proceeding have not yet been fully prosecuted for more than 10 years is because, *at the request of Avenal and Central Valley* (and the other parties to the proceeding purportedly represented by Mr. Zawila), Administrative Law Judge Steinberg stayed this case in September 2003 and again, indefinitely, in March 2004.²¹ This stay was not lifted until the Presiding Judge's recent *Order*, FCC 15M-21, after which time the Bureau promptly re-commenced prosecution of the case.²² Avenal and Central Valley should not be permitted to now use a delay that was precipitated by their own actions as a shield against responding to viable allegations.

Conclusion

7. For the reasons stated above, Avenal and Central Valley have failed to offer any grounds for their Appeal. The Bureau thus respectfully requests that the Commission deny the Appeal.

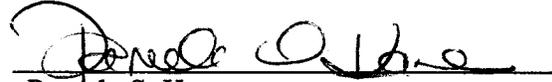
²⁰ In the Commission's 1990 *Policy Statement and Order* concerning character qualifications, it modified certain of the policies it enunciated in the Commission's 1986 Character Policy, including allowing the Commission to consider evidence of any conviction for misconduct involving a felony, regardless of when the conduct occurred. *See Policy Statement and Order*, 5 FCC Rcd 3252 (1990); *see also Titus*, 29 FCC Rcd 14066, 14071 (2014) (concluding that the Commission could consider convictions that occurred more than ten years before the Order to Show Cause).

²¹ *See, e.g., Order*, FCC 03M-39 (ALJ, rel. Sept. 12, 2003); *Order*, FCC 04M-09 (ALJ, rel. Mar. 5, 2004).

²² *See Order*, FCC 15M-21 (ALJ, rel. June 4, 2015), at 2.

Respectfully submitted,

Travis LeBlanc
Chief, Enforcement Bureau



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August 9, 2016

EXHIBIT 1

Pamela Kane

To: Pamela Kane
Subject: Request for Pleading

From: Richard Sippel
Sent: Friday, February 19, 2016 1:54 PM
To: Pamela Kane; Michael Engel; 'Michael Couzens' (cuz@well.com)
Cc: Patricia Ducksworth; Monique Gray
Subject: Request for Pleading

Request Enforcement Bureau to submit by February 24, 2016, responsive pleading to pending motion to dismiss proceedings filed by Michael Couzens ; and responsive pleading(s) to requests for permission to file appeals of Order 16M-01 and Order 16M-02.

Presiding Judge Sippel

CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 9th day of August, 2016, sent copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO APPEAL OF ORDER (FCC 16M-23) TO THE FULL COMMISSION" to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
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