

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

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

To: Marlene H. Dortch, Secretary  
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S REPLY TO THE [ZAWILA PARTIES']  
OPPOSITION TO THE ENFORCEMENT BUREAU'S MOTION FOR LEAVE**

1. On August 9, 2016, the Enforcement Bureau (Bureau) filed a Motion for Summary Decision based upon the Presiding Judge's previous entry of adverse findings of fact against, and upon the admissions of, William L. Zawila (Zawila), H.L. Charles Broadcasting d/b/a Ford City Broadcasting (FCB), and Linda Ware d/b/a Lindsay Broadcasting (LB) (collectively, the Zawila Parties).<sup>1</sup> On August 19, 2016, the Bureau received the Zawila Parties' Opposition to the Motion for Summary Decision (Opposition).<sup>2</sup> On August 30, 2016, the Bureau moved for leave to file a reply to the Zawila Parties' Opposition.<sup>3</sup> The Zawila Parties have now opposed the Bureau's Motion for Leave, asserting, *inter alia*, that the Bureau's filing was untimely.<sup>4</sup> In making that assertion, the Zawila Parties rely on the timing for filing replies set forth in Section 1.45(c) of the Commission's rules.<sup>5</sup> This is the wrong rule.

2. Section 1.45 specifically states that "[e]xcept as otherwise provided in this chapter, pleadings in Commission proceedings shall be filed in accordance with the provisions of this section."<sup>6</sup> Thus, pleadings shall be filed in accordance with the provisions of Section 1.45

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<sup>1</sup> See Enforcement Bureau's Motion for Summary Decision, filed Aug. 9, 2016 (Motion for Summary Decision). See also Order, FCC 16M-24 (ALJ, rel. Jul. 25, 2016), inviting the Bureau to file a motion for summary decision in light of the entry of adverse findings of fact against the Zawila Parties.

<sup>2</sup> See Opposition to Enforcement Bureau's Motion for Summary Decision, served by mail and received Aug. 19, 2016 (Opposition).

<sup>3</sup> See Enforcement Bureau's Motion for Leave to File a Reply to the [Zawila Parties'] Opposition To Enforcement Bureau's Motion for Summary Decision, filed Aug. 30, 2016 (Motion for Leave). The Bureau filed a reply contemporaneously with its Motion for Leave. See Enforcement Bureau's Reply to the [Zawila Parties'] Opposition to the Motion for Summary Decision, filed Aug. 30, 2016 (Reply).

<sup>4</sup> See Opposition to Enforcement Bureau's Motion for Leave to File a Reply to the Zawila Parties' Opposition to Enforcement Bureau's Motion for Summary Decision, served by mail and received on September 13, 2016, at 2 (9/13/16 Opposition).

<sup>5</sup> See *id.* In their 9/13/16 Opposition, the Zawila Parties cite to Section 1.45(b) of the Commission's rules. The Bureau notes that Section 1.45(b) only applies to the timing of oppositions. The Bureau believes the Zawila Parties meant to cite to Section 1.45(c) for the timing of replies. See 47 C.F.R. § 1.45(c).

<sup>6</sup> 47 C.F.R. § 1.45.

only in those situations where no other rule applies. Here, the Bureau filed its Motion for Summary Decision pursuant to Section 1.251 of the Commission's rules.<sup>7</sup> Section 1.251 contains its own provisions for the timing of pleadings in the summary decision cycle.<sup>8</sup> Thus, Section 1.251, and not Section 1.45, of the Commission's rules governs the timing of the parties' summary decision submissions.

3. Section 1.251 does not identify a deadline by which reply briefs must be submitted, presumably because it does not contemplate that such briefs would be routinely filed. However, it would make no sense to apply the timing provisions of Section 1.251 to motions for summary decision and oppositions, but then to apply the timing provisions of a different Commission rule (*e.g.*, Section 1.45) to additional pleadings in the same summary decision cycle (such as replies). Consistent with its previous practice where the applicable rule is silent, the Bureau chose instead to promptly seek leave from the Presiding Judge to file a reply to the Zawila Parties' Opposition.

4. Moreover, even applying the timing of Section 1.45, the Bureau timely filed its Motion for Leave and the corresponding Reply. Pursuant to Section 1.45(c), the filing deadline for the Bureau's reply would have been five days after the time for filing oppositions to its Motion for Summary Decision expired.<sup>9</sup> Applying Section 1.45(c), in conjunction with Section 1.4 of the Commission's rules (the computation of time rule),<sup>10</sup> the Bureau's Reply would have been due on September 2, 2016 – and not on August 24, 2016 as the Zawila Parties incorrectly contend.

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<sup>7</sup> See 47 C.F.R. § 1.251.

<sup>8</sup> See 47 C.F.R. § 1.251(a)(1) and (b).

<sup>9</sup> See 47 C.F.R. § 1.45(c).

<sup>10</sup> See 47 C.F.R. § 1.4.

5. Specifically, pursuant to Section 1.251, the time for filing oppositions to the Bureau's Motion for Summary Decision expired 14 days after August 9, 2016 (the date the Bureau filed its Motion) – or August 23, 2016.<sup>11</sup> Applying Section 1.45(c), the Bureau had five days thereafter to file a reply, with Section 1.4(g) of the Commission's rules governing the computation of those five days.<sup>12</sup> Section 1.4(g) states "if the filing period is less than 7 days, intermediate holidays shall not be counted in determining the filing date."<sup>13</sup> The Commission defines intermediate holidays to include Saturdays and Sundays.<sup>14</sup> Thus, for the purposes of calculating a deadline pursuant to Section 1.45(c), five days after August 23, 2016 is August 30, 2016.

6. In addition, because the Zawila Parties served their Opposition *by mail* and the response time for replies under Section 1.45(c) is less than 10 days, Section 1.4(h) of the Commission's rules also applies.<sup>15</sup> This provided the Bureau with an additional three days (excluding holidays) beyond the five business days allowed by Section 1.45(c) in which to respond.<sup>16</sup> Thus, the Bureau had until September 2, 2016 to file its Reply. The Bureau timely filed its Reply three days earlier – on August 30, 2016.

7. The Bureau further notes that even using the Zawila Parties' incorrect calculation of August 19, 2016 as the deadline for filing oppositions to the Bureau's Motion for Summary Decision, the Bureau would still have had until August 31, 2016 to submit its Reply. As

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<sup>11</sup> See 47 C.F.R. § 1.251(b). The Zawila Parties incorrectly calculate the expiration date for filing its Opposition to the Bureau's Motion for Summary Decision as August 19, 2016 – presumably because they relied on Section 1.45(b) for the timing provisions – which requires that oppositions be filed within 10 days after the original pleading is filed – and not on Section 1.251(b) which allows for *14 days*. See 9/13/16 Opposition at 2.

<sup>12</sup> See 47 C.F.R. § 1.4(g).

<sup>13</sup> *Id.*

<sup>14</sup> 47 C.F.R. § 1.4(e).

<sup>15</sup> See 47 C.F.R. § 1.4(h).

<sup>16</sup> See *id.*

discussed above, pursuant to Section 1.45(c), the Bureau had five days after the expiration date for filing oppositions to submit a Reply,<sup>17</sup> and because the filing period is less than seven days, Section 1.4(g) governed the computation of that five-day period.<sup>18</sup> Thus, five days after the expiration date for filing oppositions (using the Zawila Parties' August 19, 2016 deadline) would have been August 26, 2016 – not August 24, 2016 as the Zawila Parties incorrectly calculated.<sup>19</sup> Because the Zawila Parties served their Opposition *by mail* and the response time for replies under Section 1.45(c) is less than 10 days, Section 1.4(h) would have provided the Bureau with an additional three days (excluding holidays) in which to respond.<sup>20</sup> Thus, even using the Zawila Parties' improper expiration date of August 19, 2016, the Bureau would have had until August 31, 2016 to file a reply. Again, the Bureau timely filed its Reply on August 30, 2016.

8. For the foregoing reasons, the Bureau respectfully submits that its Motion for Leave to File a Reply to the [Zawila Parties'] Opposition To Enforcement Bureau's Motion for Summary Decision and its Reply to the [Zawila Parties'] Opposition To Enforcement Bureau's Motion for Summary Decision were timely filed.

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<sup>17</sup> See 47 C.F.R. § 1.45(c).

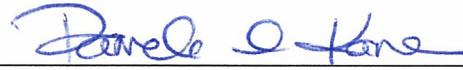
<sup>18</sup> See 47 C.F.R. § 1.4(g).

<sup>19</sup> The Bureau notes that the Zawila Parties failed to take Section 1.4(g) of the Commission's rules (*i.e.*, weekends are not counted) into consideration when calculating the due date for the Bureau's Reply. Instead, it appears they simply added five calendar days to August 19, 2016 to arrive at their purported August 24, 2016 deadline.

<sup>20</sup> See 47 C.F.R. § 1.4(h).

Respectfully submitted,

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Chief, Enforcement Bureau



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September 15, 2016

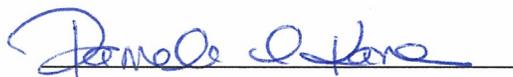
## CERTIFICATE OF SERVICE

Pamela S. Kane certifies that she has on this 15<sup>th</sup> day of September, 2016, sent copies of the foregoing "ENFORCEMENT BUREAU'S REPLY TO THE [ZAWILA PARTIES'] OPPOSITION TO THE ENFORCEMENT BUREAU'S MOTION FOR LEAVE" to:

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