

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of

EB Docket No. 03-152

**WILLIAM L. ZAWILA**

Facility ID No. 72672

Permittee of FM Station KBGS,  
Coalinga, California

**AVENAL EDUCATIONAL SERVICE, 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

**WESTERN PACIFIC  
BROADCASTING, INC.**

File BR-19970804YJ  
Facility ID No. 71936

For Renewal of License for AM  
Station KKFO, Coalinga, CA

**TO: Chief Administrative Law Judge**

**MOTION TO DISMISS ENTIRE PROCEEDING**

Central Valley Educational Services, Inc. (CVES) and Avenal Educational Services, Inc.,

(AES) by their attorney (collectively, “Movants”) here move to dismiss the entire hearing action in this Docket No. 03-152 with prejudice. This motion is based upon Commission's established policy that conduct which has occurred more than ten years ago should not be considered, *Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, 102 FCC 2d 1179 (1986) at 1229 (the “*Character Policy Statement*”). In this case the Commission's “Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order,” FCC 03-158 (“HDO”), was adopted on July 1, 2003 (released: July 16, 2003). As such every issue therein is based on allegations that are more than 12 years old. It is too late for them to be adjudicated. No issues have been added subsequently. The chief administrative law judge, authorized to conduct “adjudicatory cases,” Section 0.151 of the Rules, has no case or controversy to adjudicate, and the entire case must be dismissed. Movants believe this is the first time that this adopted legal constraint on the Commission's enforcement powers has been noted in this docket, but it is dispositive of all designated issues.

Section 308(b) of the Communications Act authorizes the Commission to prescribe facts by regulation “as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station. . . .” 47 U.S.C. Sec. 308(b). The Commission is authorized “at any time” to require further written statements, and thereafter to determine whether or not a license should be granted, denied or revoked, *Id.*

In furtherance of this charge, the *Character Policy Statement* was adopted in 1986 after full notice-and-comment rule making, and has remained the fixed point for all character rulings and analyses since. Finding previous character inquiries and decisions overly broad, the Commission stated that “future inquiries into an applicant's basic character eligibility will be narrowed to focus on the likelihood that an applicant will deal truthfully with the Commission and comply with the Communications Act and our rules and policies.” (*Id.* At 1183). These two factors – truthfulness and reliability – are intertwined and constitute the core holding with respect

to broadcast licensee conduct in the *Character Policy Statement*:

[O]ur concerns when reviewing FCC-related misconduct in the licensing context have clearly had a relationship to those two traits; we have questioned whether the licensee will in the future be likely to be forthright in its dealings with the Commission and to operate its station consistent with the requirements of the Communications Act and the Commission's Rules and policies.

Id. at 1209. From this perspective, it was said, any violation of the Communications Act, Commission rules or Commission policies “can be said to have a potential bearing on on character qualifications.” Id.

The HDO here followed this two-prong analysis. Under one heading is misrepresentation / lack of candor. “We believe there is a substantial and material question of fact as to whether Zawila possesses the requisite character qualifications to remain a Commission license.” HDO para. 96. With respect to technical and other rule violations, the HDO states at para. 101: “Reliability is the other key element of *character* necessary to operate a broadcast station in the public interest” (emphasis supplied), citing *Character Policy Statement* at 1209-1210 . All misrepresentation allegations and all rule violation allegations here are tethered to the Commission's statutory authority to inquire into character, and its implementing *Character Policy Statement*. See summary at HDO para. 112.<sup>1</sup> Past the ten-year marker, they have become immaterial. Because the proposed monetary forfeitures, HDO paras. 118-121, cannot stand without the excludable character findings, they too offer no basis to avoid dismissal of the action as having passed the bright line into the purely metaphysical.<sup>2</sup> Similarly, the issue of

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<sup>1</sup> The HDO at para. 111 states that it will specify an issue to determine whether the license for KKFO should be revoked for failure to transmit broadcast signals for twelve consecutive months, 47 U.S.C. Sec. 312(g), see issue stated in para. 115(h). This residual issue is no impediment to the general dismissal of the case because, shortly after the issuance of the HDO, on December 11, 2003, the station's renewal application was dismissed and its call sign deleted, BR-19970804YJ. The Commission's records show the deleted call sign, DKKFO, and the station ceased to exist more than eleven years ago.

<sup>2</sup> Previously, in our June 24, 2015, Opposition to a Motion to Enlarge Issues, we argued that any monetary forfeiture would be unenforceable, under 28 U.S.C. Section 2462, unless the enforcement action in court “was brought within five years from the date when the claim first accrued. . . .” The high dollar amounts here, if levied, would certainly end up in court.

possible unauthorized transfer of control of KZPE and KZPO (HDO, para. 99-100, and 114(a) (b)) are not separate, but stand as one more instance of alleged character unfitness, both under the misrepresentation prong and the reliability and adherence-to-rules prong, see para. 114(i).

The *Character Policy Statement* is clear about the time limit. The Notice of Inquiry in the character docket had raised the possibility of a bar to examining alleged misconduct more than ten years old, at 1225. The resolution was the following (at 1229):

As to the time period relevant to character we find that, as a general matter, conduct which has occurred or was or should have been discovered by the Commission, due to information within its control, prior to the current license term should not be considered, and that, even as to consideration of past conduct indicating “a flagrant disregard of the Commission's regulations and policies,” a ten year limitation should apply.

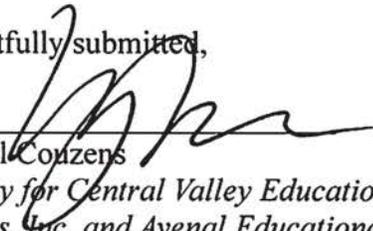
The rationale for this stance was inarguable. “The 'inherent inequity and practical difficulty' involved in requiring applicants to respond to allegations of greater age suggests that such limit be imposed.<sup>3</sup> (Id.) In the present case, three key percipient witnesses are deceased. As to all issues, key Commission records appear to have been lost or misfiled. With respect to the unauthorized transfer of control issues, HDO paras. 99-100, the facts may be unknowable. Not long after the HDO was issued, on June 2, 2005, the Commission approved in the involuntary assignments of KZPE from the late H.L. Charles to the executor of his estate, BAPH-20040520AJI, and of KZPO from the late Linda Ware to the executor of her estate, BALH-20030520AJH. The major target of the proceeding, William L. Zawila, in any rational system, would not be given the task of rebutting allegations that stem from the time period 1998 – 2002, i.e. from thirteen to seventeen years ago. With this proceeding passing into history, Zawila can still rest assured that the Commission' staff will extend every effort beyond the call of duty to confirm his future truthfulness and compliance with rules.

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<sup>3</sup> Citing *Kaye-Smith Enterprises*, 71 FCC 2d 1402, 1406-1407 (1979), *recon. denied*, 46 R.R. 2d 1583 (1980).

For the foregoing reasons, the present case should be dismissed with prejudice, the docket closed, and all the materials remitted to the National Archives' Washington National Records Center in Suitland, Maryland, for such interest as they may provide in the future to curious scholars.

Respectfully submitted,

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

Dated: September 22, 2015

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## CERTIFICATE OF SERVICE

I, Michael Couzens, do hereby certify that on this 22nd day of September, 2015, I sent copies of the foregoing document MOTION TO DISMISS ENTIRE PROCEEDING by First Class Mail, with postage prepaid, to the following:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
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Date: September 22, 2015

  
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Michael Couzens