

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

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)	

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

**ENFORCEMENT BUREAU'S OPPOSITION TO
MOTION TO DISMISS ENTIRE PROCEEDING**

1. On September 22, 2015, Central Valley Educational Services, Inc. (Central Valley) and Avenal Educational Services, Inc. (Avenal) filed a motion to dismiss the entire above-captioned proceeding with prejudice.¹ For the reasons discussed below, the Chief, Enforcement Bureau, through his attorneys, opposes this Motion.

2. First, there is currently a question pending before the Presiding Judge as to whether Central Valley and Avenal as represented by Mr. Couzens (who filed the Motion) are in fact the parties named in this proceeding, and whether Mr. Couzens is authorized to represent them. On June 4, 2015, the Presiding Judge issued *Order*, FCC 15M-21, directing the Enforcement Bureau (Bureau) to seek the addition of an issue to the above-captioned proceeding regarding the ownership and control of these companies.² On June 18, 2015, the Bureau complied with the Presiding Judge's instruction and filed a motion to enlarge the proceeding, which is currently pending.³ Thus, the question of who owns and controls Central Valley and Avenal, and who in fact properly represents them in this hearing, remains unsettled.⁴ As a result, it is unclear that Mr. Couzens has the authority to act on behalf of Central Valley and Avenal in bringing the instant Motion. For this reason alone, the Motion should not be granted.

¹ See Motion to Dismiss Entire Proceeding, filed Sept. 22, 2015 (Motion).

² See *Order*, FCC 15M-21 (ALJ, rel. June 4, 2015) at 3.

³ See Enforcement Bureau's Supplemental Motion to Add Issues, filed June 18, 2015.

⁴ Mr. Couzens' representation of Central Valley and Avenal is further called into question by the fact that it was Mr. Zawila, and not Mr. Couzens, who opposed the Bureau's motion to compel Central Valley and Avenal to provide complete responses to the Bureau's discovery requests on behalf of Central Valley and Avenal. See Joint Opposition to Enforcement Bureau's Motions to Compel Avenal Educational Services, Inc., Central Valley Educational Services, Inc., The Estate of Linda Ware, The Estate of H.L. Charles, and William L. Zawila To Provide Complete Responses to Outstanding Discovery Requests, filed Sept. 3, 2015; see also EB Docket No. 03-152.

3. Second, Central Valley and Avenal's Motion seeks to dismiss all of the issues designated for hearing without limitation. Even if the Central Valley and Avenal entities Mr. Couzens claims to represent are in fact the parties named in the Order To Show Cause, Notice of Opportunity For Hearing, and Hearing Designation Order (HDO),⁵ and he is in fact their proper legal representative, he does not claim to represent any of the other named parties. As such, he has no authority to act on behalf of Mr. Zawila, the Estate of H.L. Charles d/b/a/ Ford City Broadcasting, or the Estate of Linda Ware d/b/a Lindsay Broadcasting. Since none of these additional parties have joined the instant Motion, it offers no basis to dismiss any of the issues designated against them. To the extent the instant Motion seeks to dismiss the entire case, therefore, it should not be granted.

4. Third, even limiting the scope of the Motion to just those issues designated against Central Valley and Avenal, the Motion does not present any basis upon which to dismiss the case against them. Central Valley's and Avenal's only apparent argument is that because the conduct upon which the designated issues is based occurred more than ten years ago, it is too late for it to be adjudicated.⁶ In support, Central Valley and Avenal rely on a statement made in the Commission's *Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement* (Commission's 1986 Character Policy)⁷ that the Commission will apply a ten year limitation when considering past conduct indicating a 'flagrant disregard of the Commission's regulations and policies.'⁸ However, this is not a hard and fast rule. In fact, the

⁵ See *In re Zawila*, Order To Show Cause, Notice of Opportunity For Hearing, and Hearing Designation Order, 18 FCC Rcd 14938 (Jul. 16, 2003) (HDO).

⁶ See, e.g., Motion at 2-4.

⁷ *Policy Regarding Character Qualifications in Broadcast Licensing, Report, Order and Policy Statement*, 102 FCC 2d 1179 (1986).

⁸ *Id.* at 1229, para. 105 (citation omitted).

Commission's 1986 Character Policy states that it should impose a 10-year limitation when considering past conduct only "as a general matter."⁹ Thus, the Commission retains the discretion to consider conduct beyond that time period if the circumstances warrant.¹⁰

5. In addition, the Commission's 1986 Character Policy indicates that the purpose in limiting consideration of past conduct to 10 years is to avoid the "inherent inequity and practical difficulty' involved in requiring applicants to respond to allegations of greater age."¹¹ Here, the allegations in the HDO are based on conduct beginning in approximately 1999 and continuing through at least 2002. The HDO was released on July 16, 2003 – less than five years after the conduct in question. The parties to this proceeding – including Central Valley and Avenal – have been on notice of these allegations and of their obligations to respond to those allegations since at least that time. Thus, there is no "inequity and practical difficulty" involved in requiring Central Valley and Avenal to respond to the allegations in the HDO.

6. Moreover, the only reason the issues in the HDO have not yet been fully prosecuted is because, **at the request of Central Valley and Avenal (and the other parties to the proceeding)**, Administrative Law Judge Steinberg stayed the proceeding in September 2003 and again, indefinitely, in March 2004.¹² This stay was not lifted until the Presiding Judge's recent *Order*, FCC 15M-21,¹³ after which time the Bureau expeditiously re-commenced its

⁹ *Id.* (emphasis added).

¹⁰ 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).

¹¹ Commission's 1986 Character Policy at 1229, para. 105 (citation omitted).

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

¹³ *See Order*, FCC 15M-21, at 2.

prosecution of the issues in the HDO.¹⁴ Central Valley and Avenal cannot reasonably claim to have been prejudiced by a delay that was precipitated by their own actions. To dismiss the allegations against them under such circumstances would make a mockery of the Commission's hearing process. For these reasons, as well, the Motion should not be granted.

Conclusion

7. For the reasons stated above, the Bureau respectfully requests that the Presiding Judge deny Central Valley and Avenal's Motion.

¹⁴ Notably, Central Valley and Avenal thwarted the Bureau's efforts to obtain discovery in this matter, refusing to provide a substantive response to any of the Bureau's requests for documents or interrogatories. The Bureau was forced to file a motion to compel. *See* Enforcement Bureau's Motion To Compel Avenal Educational Services, Inc. and Central Valley Educational Services, Inc. To Provide Complete Responses To Outstanding Discovery Requests, filed Aug. 21, 2015. This motion is pending before the Presiding Judge.

Respectfully submitted,

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September 29, 2015

CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 29th day of September, 2015, sent copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO MOTION TO DISMISS ENTIRE PROCEEDING" to:

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