

**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
JOINDER IN MOTION FOR PROTECTIVE ORDER (47 C.F.R. § 1.313)**

1. On February 8, 2016, Central Valley Educational Services, Inc. (Central Valley) and Avenal Educational Services, Inc. (Avenal) – as represented by Mr. Couzens – filed a motion for protective order.¹ On February 11, 2016, the Enforcement Bureau (Bureau) opposed this motion.² On February 20, 2016, Mr. Zawila (on behalf of himself) – and Avenal, Central Valley, The Estate of Linda Ware d/b/a Lindsay Broadcasting (LB), and The Estate of H.L. Charles d/b/a Ford City Broadcasting (FCB) (which he purportedly represents) – filed a request, without any supporting argument, to join Mr. Couzens' motion for protective order.³ For the reasons discussed below, the Chief, Enforcement Bureau, through his attorneys, respectfully opposes this Joinder.

Outstanding Discovery Requests

2. On January 12, 2016, the Presiding Judge issued a *Memorandum Opinion and Order* authorizing the Bureau to serve additional discovery requests, including requests for admission, requests for documents, and interrogatories.⁴ In compliance with that *Order*, the Bureau served the following discovery on the parties:

- On January 21, 2106, the Bureau served interrogatories on Avenal and Central Valley (Second Interrogatories). Avenal and Central Valley were obligated to provide their answers and/or objections to the Second Interrogatories by February 4, 2016.⁵
- On February 2, 2016, the Bureau served requests for admissions on Avenal, Central Valley, LB, FCB, and Mr. Zawila (RFAs). These parties were obligated to provide

¹ See Motion for Protective Order (47 C.F.R. Sec. 1.313), filed Feb. 8, 2016.

² See Enforcement Bureau's Opposition to Motion for Protective Order, filed Feb. 11, 2016.

³ See Joinder in Motion for Protective Order (47 C.F.R. Sec. 1.313), filed Feb. 20, 2016 (Joinder).

⁴ See *Memorandum Opinion and Order*, FCC 16M-01 (ALJ, rel. Jan. 12, 2016), at 5.

⁵ See 47 C.F.R. § 1.323(b).

their responses to the RFAs by February 18, 2016.⁶

- On February 4, 2016, the Bureau served a set of document requests on Avenal, Central Valley, and Mr. Zawila (Second Document Requests). Avenal, Central Valley, and Mr. Zawila were obligated to provide their answers and/or objections to the Second Document Requests by February 18, 2016.⁷

None of the parties – whether represented by Mr. Zawila or Mr. Couzens – responded to any of this newly-propounded discovery. Instead, as noted above, on February 8, 2016, Avenal and Central Valley (as represented by Mr. Couzens) filed a motion for protection from having to respond to any of the Bureau’s discovery requests.⁸ Mr. Zawila subsequently filed the instant Joinder on behalf of himself and his clients.

The Instant Joinder Is Untimely

3. As set forth above, Mr. Zawila did not file the instant Joinder on behalf of himself, Avenal, Central Valley, LB, and FCB until February 20, 2016 – more than two and half weeks *after* the deadline for Avenal and Central Valley to respond to the Bureau’s Second Interrogatories and two days *after* the deadline for Avenal, Central Valley, LB and FCB and Mr. Zawila to respond to the Bureau’s RFAs and for Avenal, Central Valley, and Mr. Zawila to respond to the Bureau’s Second Document Requests. It is well-settled in federal discovery practice that “[m]otions for a protective order must be made *before or on the date the discovery*

⁶ See 47 C.F.R. § 1.246(b).

⁷ See 47 C.F.R. § 1.325(a)(2).

⁸ In July 2015, the Bureau served interrogatories and document requests on Mr. Zawila, Avenal, Central Valley, LB, and FCB. The parties provided nothing more than general objections. Because none of the parties provided substantive responses, the Bureau filed motions to compel. In December 2015, the Presiding Judge ordered Mr. Zawila to “revisit all interrogatories and requests to produce documents that were served by the Enforcement Bureau, as well as all requests for admissions served in 2003, and...to provide positive and cooperative responses.” *Order*, FCC 15M-33 (ALJ, rel. Dec. 23, 2015), at 7. Mr. Zawila still has not complied with this *Order*. The Bureau’s motions to compel Avenal, Central Valley, LB and FCB are pending.

is due”⁹ and that failure to do so constitutes grounds for denial.¹⁰ Here, Mr. Zawila has failed to offer any good cause for his untimely filing. In fact, Mr. Couzens filed his motion for protection nearly two weeks earlier – on February 8, 2016. Thus, Mr. Zawila had more than sufficient time to join Mr. Couzens’ motion on behalf of himself and his clients before the February 18, 2016 deadline to respond to the Bureau’s RFAs and Second Document Requests.¹¹ Instead, he waited until after the deadline – and until after the Presiding Judge instructed him to use the time before the March 22, 2016 status conference to comply with the Bureau’s outstanding discovery requests – to file the Joinder.¹² As a result, the Joinder should be denied.

The Instant Joinder Should Be Denied On Substantive Grounds

4. In the instant Joinder, Mr. Zawila offers no additional facts or legal argument to what Mr. Couzens has already presented in his pending motion. Rather, in what can only be characterized as a “me too” request, Mr. Zawila simply suggests that the issues and arguments Mr. Couzens made “apply with equal force and effect to the parties to this Joinder named herein-above.”¹³ The Bureau already opposed the substance of Mr. Couzens’ motion.¹⁴ For the sake of brevity, the Bureau respectfully requests that the Presiding Judge consider the Bureau’s Opposition as if incorporated herein. The instant Joinder should be denied for the same reasons

⁹ *Ayers v. Continental Casualty Co.*, 240 F.R.D. 216, 221 (N.D. W. Va. 2007) (citing *United States v. IBM Corp.*, 70 F.R.D. 700, 701 (S.D.N.Y. 1976)) (emphasis added).

¹⁰ See, e.g., *Brittain v. Stroh Brewery Co.*, 136 F.R.D. 408, 413 (M.D.N.C. 1991) (“The failure to timely move for a protective order constitutes grounds for denying the same.”) (citations omitted).

¹¹ Even if Mr. Zawila had joined the motion for protection at the time it was filed on February 8, 2016, it would have post-dated the February 4, 2016 deadline for Avenal and Central Valley (as represented by Mr. Zawila) to respond to the Bureau’s Second Interrogatories. At the request of Mr. Couzens, the Bureau granted Avenal and Central Valley (as represented by Mr. Couzens) an extension to respond to the Bureau’s Second Interrogatories until February 8. Mr. Couzens’ motion for protection was filed on that date.

¹² See *Order*, FCC 16M-03 (ALJ, rel. Feb. 18, 2016), at 2.

¹³ Joinder at 2.

¹⁴ See, *infra*, note 2.

as Mr. Couzens' original motion.

5. In addition, despite Mr. Zawila's assertion that the "legal issues, the points of law and authorities cited, and the argument expressed by Mr. Couzens are equally applicable to discovery served on" LB, FCB and Mr. Zawila,¹⁵ Mr. Couzens' motion was filed solely on behalf of Avenal and Central Valley. As such, it primarily focuses on the purported expense that Central Valley and Avenal would need to incur in order to respond to the Bureau's discovery requests. It does not even discuss LB, FCB, or Mr. Zawila – each of which have different outstanding discovery obligations directed to different factual circumstances and Commission rule violations. Thus, any attempt by these additional parties to join Mr. Couzens' original motion should be denied.

6. Lastly, because Mr. Zawila has repeatedly argued that he – and not Mr. Couzens – is the only counsel authorized to represent Avenal and Central Valley, it defies logic for Mr. Zawila to now seek to join a pleading filed by Mr. Couzens on behalf of these same two parties. The only plausible explanation for these strange bedfellows is that Mr. Zawila – and his purported clients – were simply looking for a way to avoid the Presiding Judge's recent instruction to "use the time before March 22, 2016, to comply with the Enforcement Bureau's outstanding discovery requests."¹⁶ Indeed, rather than prepare the requested discovery responses, Mr. Zawila chose instead to immediately draft and file the instant Joinder (and to simultaneously file a similar "Joinder in Motion to Dismiss Entire Proceeding").¹⁷ Mr. Zawila should not be allowed to continue to play musical chairs as to who represents Avenal and Central Valley as it suits him. On this basis, as well, the Joinder should be denied.

¹⁵ Joinder at 2.

¹⁶ *Order*, FCC 16M-03, at 2.

¹⁷ *See Joinder in Motion to Dismiss Entire Proceeding*, filed Feb. 20, 2016.

Conclusion

7. For the reasons stated above, the Bureau respectfully requests that the Presiding Judge deny the instant Joinder.

Respectfully submitted,

Travis LeBlanc
Chief, Enforcement Bureau



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February 26, 2016

CERTIFICATE OF SERVICE

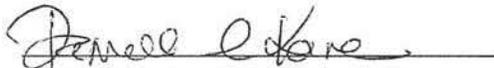
Pamela S. Kane certifies that she has on this 26th day of February, 2016, sent copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO JOINDER IN MOTION FOR PROTECTIVE ORDER (47 C.F.R. § 1.313)" to:

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