

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

FCC 16M-11

In the Matter of)	EB Docket No. 03-152
)	
WILLIAM L. ZAWILA)	Facility ID No. 72672
)	
Permittee of FM Station JBGS, 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)	

ORDER

Issued: March 22, 2016

Released: March 22, 2016

A Motion to Compel was filed by the Enforcement Bureau (“Bureau”) on August 21, 2015 against Avenal Educational Services, Inc. (“Avenal”) and Central Valley Educational Services, Inc. (“Central Valley”). As with earlier enforcement motions against other parties, the Bureau now seeks to compel Avenal and Central Valley to fully respond to the Enforcement Bureau’s interrogatories and document requests served on July 28-29, 2015.

The broad standard for Commission discovery provides:

Persons and parties may be examined regarding any matter, not privileged, which is relevant to the hearing issues It is not ground for objection to use of these procedures that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

47 CFR § 1.311(b). The Presiding Judge and his advisory staff have reviewed the interrogatories and the document requests in the Enforcement Bureau's first sets of discovery requests to Avenal and Central Valley, and conclude that they fully meet the Commission's broad standard for discovery quoted above.

Discovery Standards

Commission rules "provide discovery procedures to facilitate preparation for the hearing, eliminate surprise and promote fairness." *In the Matter of Amendment of Part 1 of the Rules of Practice & Procedure to Provide for Discovery Procedures*, 11 F.C.C. 2d 185, 186, para. 3 (1968). *See also Hillebrand Broad., Inc.*, 1 FCC Rcd 419, 419-20, para. 3 (1986) (holding that Commission delegated broad discretion to presiding judges to regulate hearings).

It is within the Presiding Judge's discretion to set the scope of documentary and interrogatory discovery. *Id.* *See also* 47 CFR § 1.313 ("The use of the procedures set forth in §§ 1.311 through 1.325 of this part is subject to control by the presiding officer . . ."). If after review of documents discovered and after questioning witnesses at depositions it appears to counsel that other documents have not been produced which would constitute or would probably lead to the introduction of substantial evidence on an issue to be litigated, such additional documents, if requested by motion and in the possession or control of a party, are required to be produced. The same applies to discovery of information through interrogatories. *Id.*

Avenal and Central Valley Must Respond to Enforcement Bureau Requests, Despite Contention over Who Represents Each Party¹

As has been noted with much frustration, we are faced with the bizarre situation of two different sets of principals and two individual counsel claiming to represent Avenal and Central Valley. The Presiding Judge agrees with the Enforcement Bureau that the fact that two combative attorneys claim to represent two separate corporate entities known as Avenal and Central Valley does not justify either party refusing to respond to the Bureau's discovery requests. *See* Motion to Compel at 3.

¹ Avenal and Central Valley are unable to determine whether their respective interests in this litigation proceeding are represented by Mr. William L. Zawila or Mr. Michael Couzens, each of whom is a member of the California State Bar, and each of whom has entered an appearance representing both Avenal and Central Valley. (Copies of Notices of Appearance included as Attachment A (Zawila) and Attachment B (Couzens).)

Counsel are aware that the Presiding Judge can provide no advice on how they might resolve this self-imposed dilemma. In the first instance, Mr. Zawila and Mr. Couzens, must provide retainer documents (*e.g.*, retainer letter or retainer agreement). These counsel then must devise a workable solution (if possible) among themselves, while consulting with the parties, on how best to fulfill their professional and fiduciary obligations to provide clear and definitive representation of each respective client.

Objections to Discovery Based on Section 1.325

Apparently for purpose of delay, Zawila and Couzens both object to the Bureau's discovery efforts by an extremely narrow reading of Section 1.325 of the Commission's rules. *See* 47 CFR § 1.325(a). The Rule provides in its first sentence: "A party to a Commission proceeding may request any other party . . . to produce and permit inspection and copying . . . of any designated documents . . . which constitute or contain evidence within the scope of . . . § 1.311(b) . . ." *Id.* Zawila notes that the section "require[s] such requests to be directed to a party in a proceeding." Zawila Obj.'s at 3. Clearly, the Bureau's requests *were* directed to parties in this proceeding, namely, Avenal and Central Valley. The fact that two lawyers claim separately to represent Avenal and Central Valley is neither the Bureau's problem nor its responsibility to resolve.

Bureau counsel are criticized by these conflicted attorneys. The Presiding Judge finds that the Bureau is being represented by a team of trained trial attorneys who are learned in the Commission's discovery rules. The Bureau's questions (interrogatories) and requests (documents) are well-crafted, clear, concise, understandable, reasonable, and relevant under § 1.311(b) of the Commission's discovery rules. The rule is clear that all evidence is discoverable if it "appears reasonably calculated to lead to the discovery of admissible evidence." In the course of their objections, neither Mr. Zawila nor Mr. Couzens refers to or cites a specific discovery question or a document request that raises any question of relevance under § 1.311(b). Thus, there has been no reason or rational excuse offered by either Mr. Zawila or Mr. Couzens for refusing to answer, produce, or disclose any discovery requested to date by the Enforcement Bureau.

Couzens further argues that Sec. 1.325(b) does not permit "[p]arties seeking Commission records . . . to proceed by document demand . . ." Couzens Obj. at 2. However, that section only relates to parties seeking records *from the Commission*, but not the seeking of the same or similar records from non-government parties.² Moreover, as discussed further in *Order FCC 16M-08* at 5-6, a party's use of FCC discovery rules effectively shifts discovery outside the

² If Avenal or Central Valley possesses or controls a copy of a Commission filing, it must be provided to the Bureau in discovery, except where a privilege is claimed, in which case it will be submitted to the Presiding Judge *in camera* for review. If the copy is not legible or is to be used for evidence as an official noticed document, a copy may be sought—as a last resort—under FOIA procedures at the expense of the requesting party. Recall that documents denied under FOIA are subject to requests for reconsideration and further appeal to the Commission, which renders discovery *via* FOIA unworkable in a formally litigated matter.

parameters of the more cumbersome FOIA. As such, FOIA cannot appropriately be applied to this discovery in litigation under procedures prescribed by the Presiding Judge. *Cf. supra* and note 2 below.

Zawila's Other Objections

Yet again, a party that Mr. Zawila claims to represent has engaged in disingenuous stonewalling through broad, unfocused objections without any reasoning or factual justification. *See* similar rulings in *Order FCC M16-08*, rel. March 14, 2016, granting the Enforcement Bureau's Motion to Compel against the Estate of H.L. Charles d/b/a/ Ford City Broadcasting ("FCB"); *Order FCC M16-09*, rel. March 15, 2016, granting the Enforcement Bureau's Motion to Compel against the Estate of Linda Ware d/b/a Lindsay Broadcasting ("LB"). Zawila, purportedly on behalf of Avenal and Central Valley, has even refused to produce information or documents in response to any Bureau request because, he claims, such requests are "vague, ambiguous, and unintelligible," "seek irrelevant information not calculated to lead to the discovery of admissible evidence," and are "burdensome, oppressive, and cause unnecessary expense." *See* Zawila Obj.'s at 2-3. *See also contra* analysis of Presiding Judge, *supra*.

Such general objections are non-specific, vague, and indefinite, and therefore must be rejected.

Couzens' Other Objections

In addition, Mr. Couzens objects to the Bureau's document requests³ on the ground that the time frames for which the Bureau has requested information are vague and overbroad. Couzens Obj. at 2. Such objections can be cured in part and responded to by specifying the time periods which Couzens deems relevant and providing answers and responsive documents limited to on or about those time periods. Of course, that assumes that Couzens could and would get it right as to the relevant time periods. But at least it would be a good-faith effort by Couzens, who is a licensed attorney and an officer of the court. It will be justified under the common bromide that some discovery is better than no discovery. As a last resort, and upon a proper showing, parties are permitted and capable of seeking compel orders, though resulting delay and expense are the byproducts.

Finally, without any basis in fact, Couzens recklessly, without any cause, accuses Bureau counsel of acting with "malice." *Id.* at 2-3. Yet not one instance of a malicious act or statement is alleged. Couzens' castigating assertion would seem to be lodged solely on his unjustified assumption that he should have been entitled to toll the response time to all of the Bureau's discovery requests until after the Presiding Judge decided the enlargement motion, which has been done. The Bureau agreed to toll the response time to certain discovery requests, pending a

³ It is the Presiding Judge's understanding that Couzens has neither responded nor objected to the Bureau's interrogatories, which is unacceptable.

decision on issues to be added. The Bureau was being reasonable, given that many of its discovery requests were directed to matters already designated in the *HDO*. The enlargement motion had no impact on Couzens' ability to respond to those Bureau requests. And there is absolutely no hint of malice perceived on the Bureau's part. Clearly, Couzens should have responded to discovery, and refrained from his allegation of malice.

Conclusion

Both Zawila and Couzens have offered baseless objections and made unfounded accusations with respect to the Bureau's discovery requests. Accordingly, in the interest of facilitating a timely decision of this case, the Presiding Judge rules as follows:

- (1) Avenal and Central Valley shall revisit all interrogatories and requests to produce documents that were served by the Enforcement Bureau, as well as any requests for admissions, and Avenal and Central Valley are ordered to simultaneously provide positive and cooperative responses.
- (2) Avenal's and Central Valley's responses which deny all or part of a question or document request, must state specific reasons to justify giving no response, or giving only partial responses, or providing anything less than full responses and production.
- (3) If necessary, Avenal and Central Valley shall in good faith negotiate its incomplete responses to interrogatories and documents with the Enforcement Bureau counsel before reporting to the Presiding Judge that only an incomplete response can be provided. Avenal and Central Valley must certify to such good-faith negotiations in declaration documents.

To aid the parties, a Status Conference on-the-record has been scheduled to be held in Washington, D.C. on **Tuesday, March 29, 2016 at 9:30 am**⁴ to take inventory of discovery completed and/or uncompleted, and any further discovery needed. The Presiding Judge will, if he sees fit, consider and rule in open court on any unresolved discovery issues, or other interlocutory procedural issues.

Further, a time schedule shall be set at the conference on dates for concluding all discovery required under (1), (2), and (3) above.

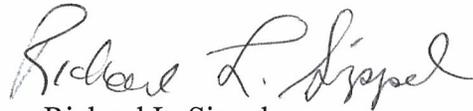
The Status Conference shall be held in OALJ's Courtroom, TW A-363, 445 12th Street, S.W., Washington, DC 20554.⁵

⁴ See *Order FCC 16M-06*, rel. Feb. 29, 2016. Notice of *Order FCC 16M-06* was given to Zawila by fax and First-Class Mail since OALJ was not aware that Zawila had his email address *william.zawila@yahoo.com*.

⁵ If there is substantial discovery completed or agreed by **March 23, 2016**, the parties shall together file appropriate pleadings alerting the Presiding Judge, and propose universally agreed-upon alternatives in *lieu* of the Status Conference scheduled for **March 29**.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION⁶

A handwritten signature in black ink, reading "Richard L. Sippel". The signature is written in a cursive style with a large initial 'R'.

Richard L. Sippel
Chief Administrative Law Judge

⁶ Courtesy copies of this Order will be sent by email to all counsel on the date of issuance.

Attachment A

William L. Zawila
ATTORNEY AT LAW

AUG 18 2 12 PM '03

RECEIVED & INSPECTED 12550 BROOKHURST STREET
GARDEN GROVE, CALIFORNIA 92640
(714) 636-5040

2003 AUG 15 P 12:23

August 14, 2003
FCC-MAILROOM

Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Enclosed Notice of Appearance for William L. Zawila,
Avenal Educational Services, Inc., Central Valley Educational
Services, Inc., H.L. Charles dba Ford City Broadcasting, and
Linda Ware dba Lindsay Broadcasting
Docket #03-152
Radio Stations KNKS, KAAX, KAJP, KZPE, and KZPO

Secretary:

Enclosed for filing with the Commission is an original and two
copies of a Notice of Appearance on behalf of William L. Zawila,
Avenal Educational Services, Inc., Central Valley Educational
Services, Inc., H.L. Charles dba Ford City Broadcasting, and
Linda Ware dba Lindsay Broadcasting in the above-referenced
proceeding.

Please contact this office if you have any questions in this
matter.

WLZ/jc
encls (3)

Very truly yours,


WILLIAM L. ZAWILA
Attorney for William L. Zawila,
Avenal Educational Services, Inc.,
Central Valley Educational Services,
Inc., H.L. Charles dba Ford City
Broadcasting, and Linda Ware dba
Lindsay Broadcasting

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

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FCC 03M-28

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02452

In the Matter of)

WILLIAM L. ZAWILA)

Permittee of FM Station KNKS,
Coalinga, California)

AVENAL EDUCATIONAL SERVICES, INC.)

Permittee of FM Station KAAX
Avenal, California)

**CENTRAL VALLEY EDUCATIONAL
SERVICES, INC.**)

Permittee of FM Station KAJP,
Firebaugh, California)

**H. L. CHARLES D/B/A FORD CITY
BROADCASTING**)

Permittee of FM Station KZPE,
Ford City, California)

**LINDA WARE D/B/A LINDSAY
BROADCASTING**)

Licensee of FM Station KZPO,
Lindsay, California)

In re Application of)

WESTERN PACIFIC BROADCASTING, INC.)

For Renewal of License for AM Station KKFO,
Coalinga, California)

EB Docket No. 03-FCC-MAILROOM

Facility ID No. 72672

Facility ID No. 3365

Facility ID No. 9993

Facility ID No. 22030

Facility ID No. 37725

File No. BR-19970804YJ

Facility ID No. 71936

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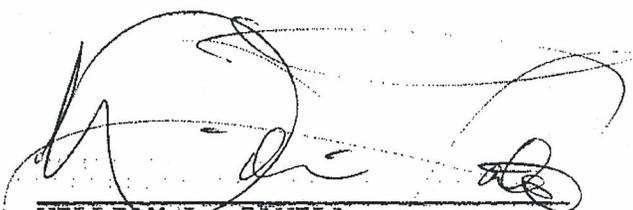
To: Administrative Law Judge Arthur I. Steinberg

NOTICE OF APPEARANCE

NOTICE OF APPEARANCE

William L. Zawila, Avenal Educational Services, Inc.,
Central Valley Educational Services, Inc., H.L. Charles dba
Ford City Broadcasting, and Linda Ware dba Lindsay Broadcasting
will appear at the hearing on the date fixed for hearing, and
will present evidence on the issues specified in this proceeding.

Respectfully submitted,



WILLIAM L. ZAWILA

Attorney for William L. Zawila,
Avenal Educational Services,
Inc., Central Valley Education-
al Services, Inc., H.L. Charles
dba Ford City Broadcasting,
and Linda Ware dba Lindsay
Broadcasting

August 14, 2003

Attachment B

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

In the Matter of

WILLIAM L. ZAWILA

EB Docket No. 03-152

Permittee of FM Station JBGS,
Coalinga, California

Facility ID No. 72672

AVENAL EDUCATIONAL SERVICE, INC.

Permittee of FM Station KAAX,
Avenal, California

Facility ID No. 3365

**CENTRAL VALLEY EDUCATIONAL
SERVICES, INC.**

Permittee of FM Station KYAF,
Firebaugh, California

Facility ID No. 9993

**H. L. CHARLES d/b/a FORD CITY
BROADCASTING**

Permittee of FM Station KZPE,
Ford City, California

Facility ID No. 22030

**LINDA WARE d/b/a LINDSAY
BROADCASTING**

Licensee of FM Station KZPO,
Lindsay, California

Facility ID No. 37725

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

NOTICE OF APPEARANCE

To all parties and attorneys of record:

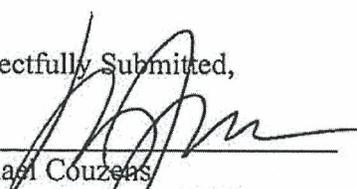
Please take notice that the undersigned enters his appearance in this matter as counsel for:

1. Central Valley Educational Services, Inc.
2. Avenal Educational Services, Inc.

All future notices should be served on or directed to me.

Dated: April 3rd, 2015

Respectfully Submitted,



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

Michael Couzens, Attorney at Law
6536 Telegraph Avenue, Suite B201
Oakland, CA 94609
Telephone (510) 658-7654
Fax (510) 654-6741
E-mail: cuz@well.com

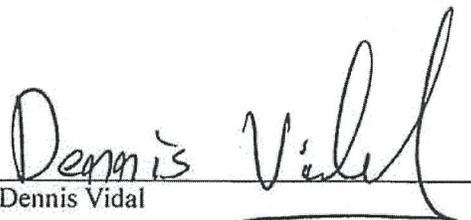
CERTIFICATE OF SERVICE

I, Dennis Vidal, a paralegal with the law firm of Micheal Couzens Law Office, hereby certify that on this 3rd day of April, 2015, I served copies of the foregoing "**Notice of Appearance**," "**Motion for Extension of Time**," and "**Notice of Appearance by Declaration**" on the following via first-class United States mail, postage prepaid:

Judge Richard L. Sippel
445 12th Street SW, Room 1-C768
Washington, D.C. 20534

Judy Lancaster
Investigations and Hearings Division
Enforcement Bureau
445 12th Street SW, Room 4-C330
Washington, D.C. 20534

William L. Zawila
12600 Brookhurst Street, Suite 105
Garden Grove, CA 92840


Dennis Vidal