

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

FCC 16M-12

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 FOR FURTHER BRIEFING

Issued: March 23, 2016

Released: March 23, 2016

On January 14, 2016, Mr. Michael Couzens, on behalf of Avenal Educational Services, Inc. (“Avenal”) and Central Valley Educational Services, Inc. (“Central Valley”), filed a Request for Permission to File Appeal the Presiding Judge’s *Memorandum Opinion and Order FCC 16M-01*, rel. Jan. 12, 2016 (“*MO&O*”).

In his Ruling, the Presiding Judge advised the parties that he would add issues to the *HDO*¹ regarding “whether Avenal and/or Central Valley were or were not qualified to hold permits for Stations KAAX (FM) or KYAF (FM) at the time they submitted their respective applications.” *MO&O* at 3, para. 5. Those issues were added to the *HDO* by *Order FCC 16M-02*, rel. Feb. 2, 2016.

Mr. Couzens argues, *inter alia*, that those issues should not have been added to the *HDO* because Avenal’s and Central Valley’s “facilities were applied for and granted in the non-reserved band.” Couzens Motion to Appeal at 2.

Mr. Couzens’ argument raises the question of whether “[a]n applicant for an NCE [noncommercial educational] FM station must certify its eligibility to own and operate such station *at the time it files its application*”² if the NCE applicant applies in the **non-reserved band**, rather than the band reserved for NCEs. In other words, do the NCE licensing requirements of Section 73.503 not apply to NCEs choosing to operate in the non-reserved band?

In this case, Couzens and any parties he may represent have the burden of persuasion on the question that he raises. Interestingly, both Couzens and Bureau counsel argue that the absence of authority on point supports each opposing position. *Compare* Couzens Motion to Appeal at 7 (“No case exists holding that, in the non-reserved band, a noncommercial applicant must have its organizational form completed and shown prior to filing.”) *and* Bureau Opposition at 4-5 (“[T]here i[s] nothing in either the Commission’s rules or precedent that exempts non-commercial educational entities who apply in the non-reserved band from these requirements [of Section 73.503].”). Couzens, as movant, fails to meet his burden to persuade.

However, the absence of authority presents an enigma – an unresolved puzzle, which is antithetical to a regulatory agency. Therefore, Mr. Couzens may, if he wishes, file supplemental briefing, at a minimum, on the following:

- (1) Any further authority found addressing whether Section 73.503 applies to NCE stations in the non-reserved band and/or whether an NCE corporate form applicant in the non-reserved band must in fact be incorporated at the date of application;
- (2) Whether case law regarding Low Power FM stations should be applicable to NCE stations in the non-reserved band;
- (3) How *Subpart I* (“Procedures for . . . Applications for Noncommercial Education Broadcast Stations on Non-Reserved Channels”) and *Subpart K* (“Application and Selection Process for . . . Certain Applications for Noncommercial Educational

¹ *Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order*, FCC 03-158, 18 FCC Rcd 14938 (July 16, 2003).

² *Hammock Envtl. & Educ. Cmty. Servs.*, 25 FCC Rcd 12804, 12807 (2010) (emphasis added) (footnote omitted). See also *MO&O* at 3 n.12.

Stations on Non-Reserved Channels”) of Part 73 of the Commission’s Rules apply to the question of whether Avenal and/or Central Valley, as non-incorporated entities on the date of filing, were or were not qualified to receive and hold permits for Stations KAAX (FM) or KYAF (FM) at the time they submitted their respective applications, and received their licenses/permits.

Mr. Couzens’ optional briefing must be furnished to the Bureau and the Presiding Judge by 12:00 PM noon on **Friday, April 1, 2016**. The Enforcement Bureau shall respond by 12:00 PM noon on **Friday, April 8, 2016**. Neither party’s filing will exceed five (5) pages but may incorporate by reference authority from previous filings.

Counsel are further advised that the Presiding Judge, in his discretion, may ask counsel to comment on the issue at the Status Conference set for **next Tuesday, March 29, 2016**. If at that time the Presiding Judge is sufficiently informed on the issue through independent research, staff advice, comment, or argument of counsel, he may issue a Bench Ruling on the question, which shall be recorded by the Court Reporter.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION³



Richard L. Sippel
Chief Administrative Law Judge

³ Courtesy copies of this Order will be sent by email on issuance to all counsel. An additional copy will be faxed to William L. Zawila.