

**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

**PROPOSED ORDER REGARDING NEGATIVE FINDINGS OF FACT WARRANTED
BY DISCOVERY VIOLATIONS**

Pursuant to the Presiding Judge's request, and in accordance with the Enforcement Bureau's motion for negative findings of fact, made orally and granted by the Presiding Judge at the March 29, 2016 Status Conference in the above-captioned proceeding, the Chief, Enforcement Bureau, through his attorneys, respectfully submits the below proposed order.

ORDER

At the Status Conference held on March 29, 2016, counsel for the Enforcement Bureau (Bureau) requested that the Presiding Judge enter adverse findings of fact against William L. Zawila (Zawila), 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) as a consequence of these parties' continuous refusal to provide timely and complete responses to the Bureau's pending discovery requests despite repeated instructions and orders from the Presiding Judge to do so.¹

The Presiding Judge and his advisory staff have reviewed the record in this case, and conclude that, at every turn, Zawila, LB, and FCB have failed to comply with their respective discovery obligations.

The Bureau's Outstanding Discovery Requests

On September 4, 2003, the Bureau served requests for admission on Zawila, LB, and FCB.²

On July 28, 2015, the Bureau served its first set of interrogatories on Zawila, LB, and FCB.³

On July 29, 2015, the Bureau served its first set of document requests on Zawila, LB, and FCB.⁴

On February 2, 2016, the Bureau served requests for admissions on Zawila, LB, and FCB.⁵

¹ Mr. Zawila failed to attend the Status Conference. The Bureau and Mr. Couzens agreed at the Status Conference to hold discovery issues regarding Avenal Educational Services, Inc. and Central Valley Educational Services, Inc. in abeyance pending resolution of certain issues concerning the permit applications for these entities.

² Enforcement Bureau's Requests for Admission of Facts [To William L. Zawila] (served Sept. 4, 2003); Enforcement Bureau's Requests for Admission of Facts [To The Estate of Linda Ware d/b/a Lindsay Broadcasting] (served Sept. 4, 2003); Enforcement Bureau's Requests for Admission of Facts [To The Estate of H.L. Charles d/b/a Ford City Broadcasting] (served Sept. 4, 2003).

³ Enforcement Bureau's First Set of Interrogatories To William L. Zawila (served July 28, 2015); Enforcement Bureau's First Set of Interrogatories To The Estate of H.L. Charles D/B/A Ford City Broadcasting (served July 28, 2015); Enforcement Bureau's First Set of Interrogatories To The Estate of Linda Ware d/b/a Lindsay Broadcasting (served July 28, 2015).

⁴ Enforcement Bureau's First Set of Requests for Production of Documents To William L. Zawila (served July 29, 2015); Enforcement Bureau's First Set of Interrogatories To The Estate of Linda Ware d/b/a Lindsay Broadcasting (served July 29, 2015); Enforcement Bureau's First Set of Requests for Production of Documents To The Estate of H.L. Charles d/b/a Ford City Broadcasting (served July 29, 2015).

⁵ Enforcement Bureau's Requests for Admission To William L. Zawila (served Feb. 2, 2016); Enforcement Bureau's Requests for Admission To The Estate of Linda Ware d/b/a Lindsay Broadcasting (served Feb. 2, 2016); Enforcement Bureau's First Set of Requests for Production of Documents To The Estate of H.L. Charles d/b/a Ford City Broadcasting (served Feb. 2, 2016).

On February 4, 2016, the Bureau served a second set of document requests on Zawila.⁶

The Presiding Judge's Directives Concerning the Parties' Discovery Obligations

The Presiding Judge has repeatedly directed the parties to cooperate fully in the discovery process.

On December 23, 2015, in *Order*, FCC 15M-33, the Presiding Judge instructed Zawila “to provide positive and cooperative responses” to the Bureau’s interrogatories and requests to produce documents, as well as to the requests for admission served in 2003.⁷ The Presiding Judge further instructed Zawila to engage in “good faith negotiations” with the Bureau concerning its interrogatories and document requests and to submit a status report with attached declarations describing the production efforts to all parties and to the Presiding Judge by January 5, 2016.⁸

On February 18, 2016, in *Order*, FCC 16M-03, the Presiding Judge cancelled the status conference originally scheduled for February 24, 2016 and reset the conference for March 22, 2016.⁹ He instructed Zawila “to use the time before March 22, 2016 to comply with the Enforcement Bureau’s outstanding discovery requests.”¹⁰

On February 24, 2016, in *Order*, FCC 16M-04, the Presiding Judge noted that “[c]ounsel must be aware that outstanding discovery issues are set forth in *Order* FCC 15M-33 at 7...for which the non-government parties are delinquent.... The next Status Conference set for March 22, 2016, might be avoided, in part or in whole, if [Mr. Zawila does his] homework and satisfactorily complete[s] delinquent discovery.”¹¹

On February 29, 2016, in *Order*, FCC 16M-06, the Presiding Judge again instructed “[c]ounsel for the non-government parties...to focus on producing discover[y] questions and documents in a complete and timely manner....”¹²

On March 14, 2106, in *Order*, FCC 16M-08, the Presiding Judge instructed FCB “to provide positive and cooperative responses” to the Bureau’s interrogatories and requests to produce documents, as well as any requests for admission.¹³ The Presiding Judge further instructed FCB, to engage in “good-faith negotiations” with the Bureau concerning its discovery requests, and to “certify to such good-faith negotiations in a declaration document.”¹⁴

⁶ Enforcement Bureau’s Second Set of Requests for Production of Documents To Mr. Zawila (served Feb. 4, 2016).

⁷ *Order*, FCC 15M-32 (ALJ, rel. Dec. 23, 2015), at 7.

⁸ *See id.*

⁹ *See Order*, FCC 16M-03 (ALJ, rel. Feb. 18, 2016).

¹⁰ *Id.* at 2.

¹¹ *Order*, FCC 16M-04 (ALJ, rel. Feb. 24, 2016), at n.4.

¹² *Order*, FCC 16M-06 (ALJ, rel. Feb. 29, 2016), at n.1.

¹³ *Order*, FCC 16M-08 (ALJ, rel. Mar. 14, 2016), at 6.

¹⁴ *Id.*

The Presiding Judge similarly instructed LB on March 15, 2016.¹⁵

Status of the Parties' Discovery Efforts

As the Bureau informed the Presiding Judge at the Status Conference, to date, Zawila, LB, and FCB have not provided complete substantive responses to the Bureau's first set of interrogatories. The only "responses" received by the Bureau were objections which the Presiding Judge has already considered and rejected as amounting to "disingenuous stonewalling."¹⁶

Pursuant to Section 1.323(d) of the Commission's rules,¹⁷ the Presiding Judge is authorized to make adverse findings of fact against a party if that party fails to fully respond to interrogatories.¹⁸ In this instant case, none of these parties have fully responded to the Bureau's outstanding interrogatories despite repeated instructions from the Presiding Judge to do so.

In addition, the Bureau informed the Presiding Judge at the Status Conference that Zawila, LB, and FCB have failed in all other regards to timely respond to the Bureau's outstanding document requests and requests for admissions.¹⁹

These additional violations buttress the Presiding Judge's conclusion that further efforts to order Zawila, LB, and FCB to comply with their discovery obligations and to fully respond to the Bureau's discovery requests would be fruitless. The Presiding Judge sees little alternative other than to make adverse findings against Zawila, LB, and FCB that would justify resolving the allegations in the HDO against Zawila, LB, and FCB.

Accordingly, for good cause shown, the Presiding Judge rules as follows:

Rulings

IT IS ORDERED THAT, based on the failures of Zawila, LB, and FCB to provide complete substantive responses to the Bureau's first set of interrogatories, first set of document requests, and requests for admissions, and based on the failure of Zawila to provide complete substantive responses to the Bureau's second set of document requests, the Presiding Judge makes the following findings of fact against Zawila, LB, and FCB:

¹⁵ See *Order*, FCC 16M-09 (ALJ, rel. Mar. 15, 2016), at 2.

¹⁶ *Order*, FCC 16M-11, at 4.

¹⁷ See 47 C.F.R. § 1.323(d) ("[I]f the answer does not full comply with the requirements of this section, the presiding officer may ...specify any procedural consequences (including adverse findings of fact and dismissal with prejudice) which will follow from failure to make a full and responsive answer.").

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

¹⁹ On March 28, 2016 – more than 5 weeks after the February 18, 2016 deadline – Zawila, LB, and FCB served responses to the Bureau's requests for admissions. The Presiding Judge disregarded these untimely responses and deemed admitted the requests for admissions against Zawila, LB, and FCB. See 47 C.F.R. § 1.246(b).

Findings of Fact Regarding Station KNGS (FM)

- 1) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS(FM), moved the antenna for Station KNGS(FM) to a tower that was different than the one described in the construction permit obtained for Station KNGS (FM);²⁰
- 2) There was no main studio at the “North Dome Ridge” site in Kettleman Hills specified in the construction permit for Station KNGS (FM);²¹
- 3) There was no 91-meter tower at the “North Dome Ridge” site in Kettleman Hills specified in the construction permit for Station KNGS (FM);²²
- 4) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS(FM), failed to maintain a properly staffed main studio for Station KNGS (FM);²³
- 5) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS(FM), failed to maintain a local telephone number for Station KNGS (FM);²⁴
- 6) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), failed to maintain a toll-free telephone number for Station KNGS (FM);²⁵
- 7) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), failed to maintain proper public inspection files for Station KNGS (FM);²⁶
- 8) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), failed to file an FCC Form 854 with the Commission’s Wireless Telecommunications Bureau certifying that the tower for Station KNGS (FM) had been completed;²⁷
- 9) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), failed to notify the Commission within 24 hours of completion of construction of the tower for Station KNGS (FM) for which an Antenna Registration Number had been assigned;²⁸

²⁰ See HDO at para. 113(b).

²¹ See HDO at para. 7.

²² See HDO at para. 7.

²³ See HDO at para. 113(c).

²⁴ See HDO at para. 113(c).

²⁵ See HDO at para. 113(c).

²⁶ See HDO at para. 113(d).

²⁷ See HDO at para. 113(e).

²⁸ See HDO at para. 113(e).

- 10) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), failed to immediately notify the Commission of changes in the structure's height for the tower on which the antenna of Station KNGS (FM) was to have been mounted;²⁹
- 11) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), did not have a right-of-way to operate a radio station from the KNGS (FM) site;
- 12) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), represented to the Commission in November 2000 that Station KNGS (FM) was constructed in compliance with its construction permit;³⁰
- 13) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), represented to the Commission that the antenna for Station KNGS (FM) was constructed on a 91-meter tower;³¹
- 14) The antenna for Station KNGS (FM) was not constructed on a 91-meter tower;³²
- 15) The antenna for Station KNGS (FM) was not constructed in compliance with the construction permit;³³
- 16) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), represented to the Commission that Kunec Engineering erected a 91-meter tower for Station KNGS (FM);³⁴
- 17) Kunec Engineering did not erect a 91-meter tower for Station KNGS (FM);³⁵
- 18) The tower for Station KNGS (FM) was not destroyed by vandalism;³⁶
- 19) William L. Zawila, individually and/or as an officer of the permittee of Station KNGS (FM), represented to the Commission in the application for a license to cover the construction permit for Station KNGS (FM) that the construction requirements for Station KNGS (FM) had been met;³⁷

Findings of Fact Regarding FCB and/or Station KZPE (FM)

²⁹ See HDO at para. 113(e).

³⁰ See HDO at para. 113(a).

³¹ See HDO at para. 113(a).

³² See HDO at para. 113(a).

³³ See HDO at para. 113(a).

³⁴ See HDO at paras. 17.

³⁵ See HDO at paras 18, 113(a).

³⁶ See HDO at para. 113(a).

³⁷ See HDO at para. 6.

- 20) William L. Zawila, individually and/or as an officer of, or on behalf of, FCB, moved the antenna for Station KZPE (FM) to a tower that was different than the one described in the construction permit obtained for Station KZPE (FM);³⁸
- 21) William L. Zawila, individually and/or as an officer of, or on behalf of, FCB, failed to maintain a properly staffed main studio for Station KZPE (FM);³⁹
- 22) Station KZPE (FM) was built without a main studio;⁴⁰
- 23) William L. Zawila, individually and/or as an officer of, or on behalf of, FCB, failed to maintain proper public inspection files for Station KZPE (FM);⁴¹
- 24) William L. Zawila was an undisclosed real party in interest in FCB's application for license;⁴²
- 25) FCB transferred control of Station KZPE (FM) to William L. Zawila without prior Commission authorization;⁴³
- 26) William L. Zawila assumed control of Station KZPE (FM) without prior Commission authorization;⁴⁴
- 27) FCB failed to maintain a properly staffed main studio for Station KZPE (FM);⁴⁵
- 28) FCB failed to maintain proper public inspection files for station KZPE (FM);⁴⁶
- 29) Station KZPE (FM) has never been in full time operation;⁴⁷
- 30) FCB did not place main studio equipment at the "Maricopa Ridge" site identified in the FCB's license application for Station KZPE (FM);⁴⁸
- 31) FCB did not place program origination equipment at the "Maricopa Ridge" site identified in the FCB's license application for Station KZPE (FM);⁴⁹

³⁸ See HDO at para. 113(b).

³⁹ See HDO at para. 113(c).

⁴⁰ See HDO at para. 113(c).

⁴¹ See HDO at para. 113(d).

⁴² See HDO at para. 113(f).

⁴³ See HDO at para. 113(f).

⁴⁴ See HDO at para. 113(f).

⁴⁵ See HDO at para. 113(c).

⁴⁶ See HDO at para. 113(d).

⁴⁷ See HDO at para. 62.

⁴⁸ See HDO at para. 56.

⁴⁹ See HDO at para. 56.

- 32) The chief operator for Station KZPE (FM) stated to the Commission that the antenna for Station KZPE (FM) was mounted on a pole that was 70 feet tall with a 20-foot antenna extension;⁵⁰
- 33) The antenna for Station KZPE (FM) was mounted on a pole that was 50 feet in height;⁵¹
- 34) The Station KZPE (FM) antenna pole was not surrounded by a fence and did not have radiation hazard signs posted;⁵²

Findings of Fact Regarding LB and Station KZPO (FM)

- 35) William L. Zawila assumed control of Station KZPO (FM) without prior Commission authorization;⁵³
- 36) LB transferred control of Station KZPO (FM) to William L. Zawila without prior Commission authorization;⁵⁴
- 37) William L. Zawila failed to maintain proper EAS equipment for Station KZPO (FM);⁵⁵
- 38) LB failed to maintain proper EAS equipment for Station KZPO (FM);⁵⁶
- 39) William L. Zawila failed to maintain proper EAS logs for Station KZPO (FM);⁵⁷
- 40) LB failed to maintain proper EAS logs for Station KZPO (FM);⁵⁸
- 41) William L. Zawila failed to maintain a properly staffed main studio for KZPO (FM);⁵⁹
- 42) LB certified to the Commission in its covering license application for Station KZPO (FM) that Station KZPO (FM) complied with the main studio requirements set forth

⁵⁰ See HDO at para. 58.

⁵¹ See HDO at para. 58.

⁵² See HDO at para. 58.

⁵³ See HDO at para. 114(b).

⁵⁴ See HDO at para. 114(b).

⁵⁵ See HDO at para. 114(c).

⁵⁶ See HDO at para. 114(c).

⁵⁷ See HDO at para. 114(c).

⁵⁸ See HDO at para. 114(c).

⁵⁹ See HDO at para. 114(d).

at Section 73.1125 of the Commission's rules;⁶⁰

- 43) Station KZPO (FM) did not have a main studio as of the time LB filed its covering license application for Station KZPO (FM) with the Commission;⁶¹
- 44) LB failed to maintain a properly staffed main studio for KZPO (FM);⁶²
- 45) William L. Zawila failed to maintain station logs and to make station logs and facilities available on request for inspection by the Commission;⁶³
- 46) LB failed to maintain station logs and to make station logs and facilities available on request for inspection by the Commission;⁶⁴
- 47) William L. Zawila operated Station KZPO (FM) at a transmitter output power greater than 105% of authorized power;⁶⁵
- 48) LB operated Station KZPO (FM) at a transmitter output power greater than 105% of authorized power;⁶⁶
- 49) William L. Zawila failed to maintain and make available for inspection records pertaining to the chief operator of station KZPO (FM), to post the written designation of chief operator, to maintain in the public inspection file agreements with the chief operator, and to have the chief operator review and sign station records and logs;⁶⁷
- 50) LB failed to maintain and make available for inspection records pertaining to the chief operator of station KZPO (FM), to post the written designation of chief operator, to maintain in the public inspection file agreements with the chief operator, and to have the chief operator review and sign station records and logs;⁶⁸
- 51) William L. Zawila failed to maintain and operate KZPO (FM) in a manner that complies with the technical requirements set forth in Section 73.1350(a) of the Commission's rules and in accordance with its station authorization;⁶⁹ and
- 52) LB failed to maintain and operate KZPO (FM) in a manner that complies with the

⁶⁰ See HDO at para. 67.

⁶¹ See HDO at para. 67.

⁶² See HDO at para. 114(d).

⁶³ See HDO at para. 114(e).

⁶⁴ See HDO at para. 114(e).

⁶⁵ See HDO at para. 114(f).

⁶⁶ See HDO at para. 114(f).

⁶⁷ See HDO at para. 114(g).

⁶⁸ See HDO at para. 114(g).

⁶⁹ See HDO at para. 114(h).

technical requirements set forth in Section 73.1350(a) of the Commission's rules and in accordance with its station authorization.⁷⁰

SO ORDERED.

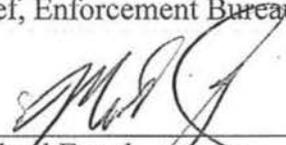
FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Chief Administrative Law Judge

⁷⁰ See HDO at para. 114(h).

Respectfully submitted,

Travis LeBlanc
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March 30, 2016

CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 30th day of March, 2016, sent copies of the foregoing "PROPOSED ORDER REGARDING NEGATIVE FINDINGS OF FACT WARRANTED BY DISCOVERY VIOLATIONS" to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
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