

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FCC 15M-33
10477

In the Matter of)	EB Docket No. 03-152
)	
WILLIAM L. ZAWILA)	Facility ID No. 72672
)	
Permitted 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 KAJP, 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)	
)	
In re Application of)	
)	
WESTERN PACIFIC BROADCASTING, INC.)	File No. BR-19970804YJ
)	Facility ID No. 71936
For Renewal of License for AM Station KKFO, Coalinga, California)	

ORDER

Issued: December 23, 2015

Released: December 23, 2015

Preliminary Statement

Last June, the Presiding Judge lifted a stay on discovery after discussion with counsel. *See Order* FCC 15M-21, released June 4, 2015. Enforcement Bureau then served on Zawila 98 interrogatories and 80 document requests. Under consideration is Enforcement Bureau Motion to Compel William L. Zawila (“Zawila”) to Provide Complete Answers to Outstanding Discovery Requests” (“Compel Motion”) filed and served by Enforcement Bureau on July 28-29, 2015. Zawila responded to the discovery requests in August. Dissatisfied with Zawila’s Response to Interrogatories of August 14 and Response to Document Requests of August 11, Enforcement Bureau seeks to compel full and complete responses.

The 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 C.F.R. §1.311(b).

The Presiding Judge has reviewed the 98 interrogatories and the 80 document requests and determined that they meet the Commission’s broad standard for discovery. Yet each interrogatory, with the exception of one objection based on privilege, was refused because each was thought by Zawila to be vague, ambiguous, overbroad, not calculated to lead to discovery of admissible evidence, burdensome, oppressive or unduly expensive. Zawila suggests that Commission documents can be obtained through §1.325(b) procedures (copying and photographing FOIA documents). Similar objections under §1.325(b) were made to Enforcement Bureau’s requests for Zawila documents under discovery rules.

Discussion

Commission rules “provide discovery procedures to facilitate preparation for the hearing, eliminate surprise and promote fairness.” *Discovery Procedures*, 11 F.C.C. 2d 185, 186 (1968). *See also Hillebrand Broadcasting*, 1 F.C.C. Rcd 419-20 (1986) (Commission delegated broad discretion to presiding judges to regulate hearings).

It is within the Presiding Judge’s discretion to set the scope of documentary discovery. *Id.* 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, would be required to be produced. Also, if new issues are added, a motion for discovery documents related to such new issues would be favorably considered.

Zawila's Objections

To illustrate, Enforcement Bureau's Interrogatory No. 1 asks Zawila to describe his discussions with Robert F. Turner about building out facilities at KNGS, KAAX, KZPE and/or KYAF. The term "discussion" is defined and the locality of each of the four radio stations is identified. Yet Zawila objects because he considers the question to be vague, ambiguous, not relevant, burdensome, oppressive, too expensive, and seeks privileged matters. Enforcement Bureau's interrogatory No. 2 seeking description of construction at KNGS is subjected to the same objections, except that Enforcement Bureau is directed to FCC files and records for the information sought. Zawila responses to interrogatories 3 through 98 recite the same objections with occasional minor variations.

Under expansive allegations of the *HDO*, Enforcement Bureau opposes proposed assignments of broadcast properties owned or controlled by Zawila. There are complicated questions of fact involved and character issues which must be resolved before any favorable action can be taken on the assignment applications. There is also a question of conflict in proper legal representation by Zawila or Michael Couzens of the same parties. Thus, for evident reasons, it is in Zawila's interest to cooperate in Enforcement Bureau's discovery in order to reach a resolution of these questions.

Stonewalling

Zawila's consistency in refusing to answer even obvious fact interrogatories shows his inclination to stonewall. In his Opposition to Enforcement Bureau's Compel Motion Zawila offers not much more than *ad hominem* quips which fail to advance serious discovery. As a permittee and agent for multiple permittees and a licensee¹, Zawila has obligations to provide clearly relevant information and data that are responsive to the requests of the Enforcement Bureau. For example, Enforcement Bureau asks Zawila and others to:

1. Describe all discussions that you had with Robert F. Turner about building out the KNGS facilities, the KAAX facilities, the KPZE facilities and/or the KYAF facilities.
- 2-6. Describe all efforts that were taken to construct the facilities at KNGS [KAAX, KYAF, KZPE, KZPO].
7. Explain whether you filed an FCC Form 854 with WTB certifying the completion of construction of or otherwise concerning the tower (antenna structure) in connection with the permit for KNGS, and if not, explain why not.

In his Opposition to Motion to Compel, Zawila devotes nearly a page discussing the *Hearing Designation Order*² ("*HDO*") which Zawila recognizes as making "serious allegations

¹See 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, EB Docket No. 03-152, filed by Zawila on September 14, 2015.

² *Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order* FCC 03-158, released July 16, 2003, 18 FCC Red 14938 (2003)

against the respondents and their attorney.” Opposition at 2. There Zawila complains that the Enforcement Bureau should have “developed evidence to support the allegations “of the HDO before its issuance. *Id.* As an attorney representing parties in this case, Zawila should recognize that the matters in the *HDO* are mainly allegations, not proven facts.

This case initially was assigned to a former Judge who is now retired. Before retiring, at the request of the parties, he signed an order staying this case. The first conference was held on September 9, 2003.³ A second conference was held on May 12, 2004, continuing discussions of a distress sale.

The Stay

The first conference was held by Judge Steinberg as scheduled wherein distress sale was discussed. The presiding judge then stayed discovery until February 9, 2004, in order to explore a distress sale opportunity.⁴ But the stay did not apply to outstanding *Requests for Admissions of Facts served by Enforcement Bureau on September 4, 2003*. An opportunity to sell properties to a qualified minority seemed possible.⁵ But the proposed sale failed to pass muster with the Media Bureau.⁶

Turning to the *HDO*, Robert F. Turner (“Turner”) is identified as an engineer from Bakersfield, CA who in 1999 volunteered information on Zawila properties to the FCC. Mr. Smith was contacted by Zawila and Mr. Jay Stevens and was asked to construct at KNGS and at other stations controlled by Zawila, unauthorized antennas mounted on utility poles that would be using portable power generators to broadcast *sans* main studios. There were similar allegations by Richard Smith of Zawila wanting to use utility poles for mounting antennas. Mr. Smith filed an Informal Objection against Zawila’s license applications for KNGS, Coalinga, CA. *See HDO, supra* at 2-7.

Discussion

Clearly, Zawila is in an excellent position to provide answers to fact regarding the stations as directed in interrogatory questions. It also appears that providing Enforcement Bureau with timely information under controlled conditions such as written answers would be in

³ *See Order* FCC 03M-39, released September 12, 2003 (detailing matters discussed).

⁴ *See Order* FCC 03M-39, released September 12, 2003. Requirements were imposed on Zawila *inter alia* to submit status reports of progress of sales in November 2003 and January-February 2004. A hearing date was set in May 2004, and a round of pleadings on Richard Smith’s motion to intervene was established. Smith ultimately was denied intervention in *Order* FCC 03M-52 issued December 2003.

⁵ *Order* FCC 04M-09, released March 5, 2004.

⁶ *Order* FCC 04M-15, released April 30, 2004. *See Memorandum Opinion and Order* FCC 14-197 released December 11, 2014, in which the Commission denied multiple applications for review contesting dismissals of assignment applications under the Commission’s former distress sale policy. The reason for dismissal was failure to pay required station annual regulatory fees with the resulting dismissals made under the Commission’s “red light policy.” 47 CFR §1.1910. By January 7, 2005, no payment was received and the assignment applications were dismissed. The following permittee applicants were represented by attorney Zawila: William L. Zawila, counsel for estate of Linda Ware; counsel for estate of H.L. Charles; counsel for Mr. William L. Zawila. One strategy of Zawila was to seek leave to make payment of fees owed by respective stations from proceeds of proposed stations’ sales. That scheme failed. The scope of the representation by Zawila as shown in pleadings, shows the extent of Zawila’s knowledge of the condition of these stations, thus demonstrating his undeniable ability to fully answer interrogatories and to fully respond to document requests.

Zawila's best interest. His outright refusals and stonewalling may eventually result in adverse inferences and assumptions that would justify resolving *HDO* allegations against Zawila.

In another context, consider Zawila's statement in his opposition:

The discovery [questions and documents] served by the Enforcement Bureau suggest that the Enforcement Bureau knows little or nothing about the stations that are subject to this proceeding.

Assuming the accuracy of this conclusion, it would support the enforcement of a compel motion for purposes of bringing Enforcement Bureau and the Presiding Judge *up to speed* if Zawila knows more relevant facts beyond those facts as alleged in the *HDO*. He must share his knowledge.

Zawila also objects that Enforcement Bureau's requests for answers to interrogatories:

are not limited to the relevant time periods in the *HDO* or specific facts or circumstances within the relevant time periods in the *HDO*.

Such objections can be readily cured by specifying the time periods which Zawila deems relevant and providing answers and responsive documents limited to on or about those time periods.⁷ Of course, that assumes that Zawila could and would get it right as to the elastic relevant time periods. But at least it would be a good faith start by Zawila, on the assumption that some reliable discovery is better than nothing. And the parties are capable of seeking compel orders.

Documents

Zawila repeats essentially the same arguments for not responding to Enforcement Bureau's request for documents. Without giving even one tangible example, Zawila repeats his *mantras* that document discovery requests are burdensome, oppressive, unnecessarily expensive, and cover an unreasonably excessive expanse of 30 years. But nowhere does Zawila contend that he has neither possession or control over the requested documents.

Zawila has built his stone wall and simply refuses to cooperate to any degree in providing discovery. And notwithstanding his fortified stonewall, he advances the ultimate *non-sequitur*:

It appears that the Enforcement Bureau lacks sufficient evidence to sustain its burden of proof on the allegations asserted on the allegations asserted in the subject *HDO*

⁷ Zawila has not suggested that he has misplaced or lost relevant documents and it is assumed that he has possession, control and ready access to relevant document which pertain to the stations' businesses. There is nothing untoward in Enforcement Bureau requests. Nor will Zawila be unduly challenged or inconvenienced. If there are relevant documents as to which Zawila claims privilege, he should identify such documents, summarize or paraphrase contents, and identify the person(s) who have copies. For good reason shown, the Presiding Judge will review *in camera* significant documents claimed privileged.

and is therefore attempting to re-shape this proceeding into a general inquiry into the entire almost 30 year history of each station subject to this proceeding.

Zawila has no basis for knowing the evidence which is in the possession of the Enforcement Bureau. But Zawila does know the scope of the information and the documents sought. Zawila also knows the universe of the information and documents he possesses or controls that relate to the stations that are the subject of the *HDO*. And Zawila, as registrant and lawyer, must or should know the multiple background facts, and also must understand the allegations in the *HDO*. So Zawila knows beyond question what evidence within his possession or control, including documents, Enforcement Bureau is seeking.

Inapposite FOIA Rule

Finally, Zawila misapplies an inapplicable discovery rule, i.e. Section 1.325 (b):⁸

Any party seeking the production of Commission records should proceed under §0.460 or §0.461 of this chapter. See §0.451 through §0.467.

Zawila never quotes the language of the above rule; he simply cites it. Obviously, Section 1.325 moves the discovery outside the parameters of the Rules of Practice. There is no application of that rule to the circumstances of this discovery. The rule incorporate the FCC's version of FOIA. Zawila does not cite one decided case authority that supports his argument, and does not identify one instance of a Commission Bureau employing FOIA in an enforcement proceeding.

Discovery in cases that have been set for hearing before an administrative law judge is conducted under Part 1, Subpart A – General Rules of Practice and Procedure and The Discovery and Preservation of Evidence §§1.311 to 1.340. There is no expectation that Enforcement Bureau would use FOIA [§1.325(b)] to obtain documents which as a party, it can obtain from another party to the case having a duty to retain and produce relevant documents. It is noted that the time to complete discovery by document request under Commission rules is faster and less expensive than proceeding under FOIA. However, FOIA may be used by a private party to obtain Commission records for which judicial notice is sought, or when a party claims it does not have a copy of the record which it should have, and where the same party does not have the same copy directly from the Commission. In any event, as the Commission has repeatedly held, parties are expected to know the discovery rules and cooperate in production, particularly when directed to do so by a Presiding Judge.

⁸ 47 CFR§1,325(b). *See also* FCC FOIA rules cited in §1.325: §0.460 (Request for inspections of records which are routinely available for public inspection); §0.461 (Request for inspection of materials not routinely available for public inspection). The reference to §0.451, *et seq.* concerns inspection of FCC records generally (public reference room, other locations; definitions; fees charged for searches.)

Rulings

William L. Zawila shall 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 Zawila is ordered to provide positive and cooperative responses.

Zawila's responses which deny all or part of a question or document request, must clearly state specific reasons to justify giving no response, or giving only partial responses, or providing anything less than full responses and production.

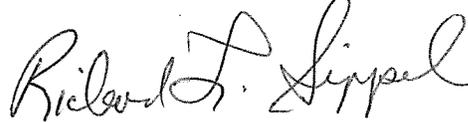
Zawila shall negotiate its incomplete responses to interrogatories and documents with Enforcement Bureau counsel before reporting to the Presiding Judge that only an incomplete response can be provided to Enforcement Bureau. Zawila must certify to good faith negotiations.

Zawila's Status Reports⁹ with attached declarations describing production efforts, shall be served on all parties and submitted to the Presiding Judge by email or facsimile **by Tuesday January 5, 2016, at 12 noon** and later filed with the Commission ECFS by **COB on Wednesday January 6, 2016.**

A Status Conference on-the-record shall be held in Washington, D.C. on **Thursday February 24, 2016 at 10 am** to take inventory of discovery completed and discovery needed, and to consider and rule on any unresolved or outstanding or future discovery issues. The status conference shall be held in OALJ's Courtroom, TW A-363, 445 12th Street, S.W., Washington, DC 20554.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Chief Administrative Law Judge

⁹ Service permitted by email or fax.