

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

FCC 16M-18
10578

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: May 10, 2016

Released: May 10, 2016

Procedural Background

At the Status Conference held on March 29, 2016,¹ 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 their continuous refusals to provide timely and complete responses to pending discovery requests despite repeated instructions and orders from the Presiding Judge to do so.²

The Presiding Judge and his advisor have reviewed the record in this case multiple times. It is concluded that Zawila, LB, and FCB (collectively, the “Zawila parties”) have repeatedly failed to comply with their respective discovery obligations, and therefore the Judge has concluded that the requested negative inferences are warranted.

Intentionally Unanswered Discovery Requests

2003

On September 4, 2003, the Bureau served Requests for Admission on Zawila, LB, and FCB.³ The case was stayed in March 2004 before any reply.⁴

2015

After the stay was lifted in 2015, *see supra* note 4, the Enforcement Bureau made further discovery demands on the Zawila parties:

On July 28, 2015, the Bureau served its First Set of Interrogatories on Zawila, LB, and FCB.⁵

On July 29, 2015, the Bureau served its First Set of Document Requests on Zawila, LB,

¹ Pleading an unsupported assertion of having insufficient funds, and without recognition of conditions for proceeding *in forma pauperis* under 47 CFR § 1.224, Mr. Zawila, a California resident, did not attend the Status Conference because the parties he represents could or would not pay his way.

² The Bureau and Mr. Couzens agreed at the Status Conference to hold in abeyance discovery issues regarding Avenal Educational Services, Inc. and Central Valley Educational Services, Inc. pending resolution of issues concerning the status of these permit applications.

³ *See* 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).

⁴ The case was stayed by the former Presiding Judge – at the request of the Zawila parties – on March 5, 2004, which extended eleven years to June 4, 2015. No response to the Bureau’s Requests for Admission from 2003 was made after the stay was lifted by *Order*, FCC 15M-21.

⁵ *See* 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

and FCB.⁶

On February 2, 2016, the Bureau served further Requests for Admission on Zawila, LB, and FCB.⁷

On February 4, 2016, the Bureau served its Second Set of Document Requests on Zawila.⁸

None of the Zawila parties filed any pleading explaining their delinquencies in failing to respond to any of the above Bureau discovery requests. Although request for further extension probably would have been refused, no such request was made. Rather, the Enforcement Bureau was met with defiant stonewalling, notwithstanding the Presiding Judge's multiple directives concerning discovery.

The Judge's Orders Issued in Furtherance of Moving the Zawila Parties to Answer Discovery

With frustrated stoicism, the Presiding Judge repeatedly directed the parties to cooperate.

On December 23, 2015, by *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 twelve years earlier.⁹ 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 by January 5, 2016,¹⁰ with attached Declarations describing production efforts made.

On February 18, 2016, by *Order*, FCC 16M-03, the Presiding Judge cancelled a Status Conference originally scheduled for February 24, 2016, resetting the Conference for March 22, 2016.¹¹ He urged Zawila "to use the time before March 22, 2016 to comply with the Enforcement Bureau's outstanding discovery requests."¹²

(served July 28, 2015).

⁶ See 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).

⁷ See 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).

⁸ See Enforcement Bureau's Second Set of Requests for Production of Documents To Mr. Zawila (served Feb. 4, 2016).

⁹ *Order*, FCC 15M-33 (ALJ, rel. Dec. 23, 2015) at 7.

¹⁰ See *id.*

¹¹ See *Order*, FCC 16M-03 (ALJ, rel. Feb. 18, 2016).

¹² *Id.* at 2.

On February 24, 2016, by *Order*, FCC 16M-04, the Presiding Judge specifically observed 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.... [and that] [t]he 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.”¹³

On February 29, 2016, in *Order*, FCC 16M-06, the Presiding Judge again made quite clear to “[c]ounsel for the non-government parties...to focus on [answering] discover[y] questions and [producing] documents in a complete and timely manner....”¹⁴

On March 14, 2016, 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.¹⁵ 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.”¹⁶

The Presiding Judge similarly ordered LB to comply with discovery on March 15, 2016.¹⁷

Zawila’s Unfounded Objections

On or about April 7, 2016, Mr. Zawila filed an objection to the proposed order making negative findings of fact against him. The Presiding Judge finds Zawila’s grounds for objection to be without merit.

First, Zawila represents that the Bureau’s requests for admissions in 2003 were responded to on or about October 20, 2003 by Zawila’s then-counsel, Katten Muchin Zavis & Rosenman. However, there is no evidence of any response in the record, and Bureau counsel has represented that the Bureau does not possess any such responses. Rather, the evidence in the record suggests the opposite. Judge Steinberg issued *Order*, FCC 03M-39 in September 2003, staying discovery responses until February 2004. A prehearing conference held in September 2003 reflects that the requests for admission were still pending. *See* Prehearing Tr. 9:5-7 (Sept. 9, 2003). On February 9, 2004, Katten Muchin, as counsel for Zawila and the other two parties at issue, pleaded a Joint Petition for Extraordinary Relief, in which they requested an indefinite stay while they pursued the sale of the parties’ radio stations. The request for a stay was granted in *Order*, FCC 04M-09 (rel. March 5, 2004), remaining in place for over eleven years, until lifted by the Presiding Judge on June 4, 2015. *See Order*, FCC 15M-21.

Even if Zawila’s assertion of compliance was supported by the record, the whole of Zawila’s behavior outweighs the sum of its parts. Zawila has failed to participate fully and in good faith in this case since its inception. Not appearing at the March 29, 2016 Status

¹³ *Order*, FCC 16M-04 (ALJ, rel. Feb. 24, 2016) at n.4.

¹⁴ *Order*, FCC 16M-06 (ALJ, rel. Feb. 29, 2016) at n.1.

¹⁵ *Order*, FCC 16M-08 (ALJ, rel. Mar. 14, 2016) at 6.

¹⁶ *Id.*

¹⁷ *See Order*, FCC 16M-09 (ALJ, rel. Mar. 15, 2016) at 2.

Conference was simply the final nail in the proverbial coffin, or, if one prefers, the piece of straw breaking the camel's back.

Zawila's second objection is that the Presiding Judge's orders requiring each of the Zawila parties to revisit and respond with specificity to the Bureau's discovery requests "contained no deadline date for compliance." Obj. at 3. However, since Zawila is a lawyer at the bar, he must have been aware or suspected that he was on thin ice, due to repeated warnings and admonitions – including in those orders. *See, e.g., Order*, FCC 16M-08, at 3 (rel. March 14, 2016) (calling out Zawila's discovery objections as "stonewalling"). *See also Order to Show Cause*, FCC 16M-07 (rel. March 7, 2016). Arguing a Judge's Orders is not the way forward for a lawyer. As an officer of the court, attorney Zawila should have responded fully and in good faith in the first instance and, failing that, should have recognized his precarious situation and, at a minimum, acted with all deliberate haste the second time around. It is shocking in the extreme that no date for compliance was suggested by attorney-at-law, William L. Zawila, Esq.

In short, Zawila's opposition does not even come close to addressing the heart of his incomplete discovery responses, which, as noted above, results from his utter failure to participate in good-faith discovery. Yet despite repeated admonitions from the Presiding Judge, Zawila, as a licensed attorney, remains obstinate and uncooperative. Therefore, the Presiding Judge finds that the negative inferences asked to be taken against the Zawila parties are reasonable and appropriate.

Rulings

Section 1.323(d) of the Commission's rules¹⁸ authorizes the Presiding Judge to make adverse findings of fact against a party if that party fails to substantively respond to interrogatories.¹⁹ In the instant case, although given two chances to comply, none of the Zawila parties have responded substantively to the Bureau's interrogatories.

By the date of the Status Conference in March 2016 and continuing to the present, the Zawila parties have not provided 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 rejected as "disingenuous stonewalling."²⁰

In addition, the Bureau has informed the Presiding Judge that the Zawila parties have failed in other regards to timely respond to the Bureau's outstanding document requests and requests for admission.²¹

¹⁸ *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.").

¹⁹ *See* Enforcement Bureau's Supplemental Motion to Add Issues With Proposed Order, filed June 18, 2015.

²⁰ *Order*, FCC 16M-11 at 4.

²¹ *See* Status Conference Tr. at 23:21-23 (March 29, 2016). On March 28, 2016 – more than 5 weeks after the February 18, 2016 deadline – Zawila, LB, and FCB served tardy responses to the Bureau's requests for admissions. The Presiding Judge disregarded these untimely responses and granted the Bureau's requests for admissions against Zawila, LB, and FCB. *Id.* at 55:23-56:12. *See* 47 C.F.R. § 1.246(b).

These developments buttress the Presiding Judge's conclusion that to helplessly wait further for the Zawila parties to comply with discovery obligations and to fully respond to the Bureau's discovery requests would be a fruitless waste of time. Therefore, the Presiding Judge is prepared to make appropriate adverse fact-findings under 47 CFR § 1.323(d).

ORDER

Accordingly, for good cause shown, (1) based on 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 (2) based on failures of Zawila to provide complete substantive responses to the Bureau's second set of document requests, the Presiding Judge FINDS THE FOLLOWING FACTS against the parties Zawila, LB, and FCB:

Station KNKS (FM)

- 1) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS(FM), moved the antenna for Station KNKS(FM) to a tower that was different than the one described in the construction permit obtained for Station KNKS (FM);²²
- 2) There was no main studio at the “North Dome Ridge” site in Kettleman Hills specified in the construction permit for Station KNKS (FM);²³
- 3) There was no 91-meter tower at the “North Dome Ridge” site in Kettleman Hills specified in the construction permit for Station KNKS (FM);²⁴
- 4) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS(FM), failed to maintain a properly staffed main studio for Station KNKS (FM);²⁵
- 5) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS(FM), failed to maintain a local telephone number for Station KNKS (FM);²⁶
- 6) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS (FM), failed to maintain a toll-free telephone number for Station KNKS (FM);²⁷
- 7) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS (FM), failed to maintain proper public inspection files for Station KNKS (FM);²⁸
- 8) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS (FM), failed to file an FCC Form 854 with the Commission’s Wireless Telecommunications Bureau certifying that the tower for Station KNKS (FM) had been completed;²⁹
- 9) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS (FM), failed to notify the Commission within 24 hours of completion of construction of the tower for Station KNKS (FM) for which an Antenna Registration Number had been assigned;³⁰

²² See HDO at para. 113(b).

²³ See HDO at para. 7.

²⁴ See HDO at para. 7.

²⁵ See HDO at para. 113(c).

²⁶ See HDO at para. 113(c).

²⁷ See HDO at para. 113(c).

²⁸ See HDO at para. 113(d).

²⁹ See HDO at para. 113(e).

³⁰ See HDO at para. 113(e).

- 10) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS (FM), failed to immediately notify the Commission of changes in the structure's height for the tower on which the antenna of Station KNKS (FM) was to have been mounted;³¹
- 11) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS (FM), did not have a right-of-way to operate a radio station from the KNKS (FM) site;
- 12) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS (FM), represented to the Commission in November 2000 that Station KNKS (FM) was constructed in compliance with its construction permit;³²
- 13) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS (FM), represented to the Commission that the antenna for Station KNKS (FM) was constructed on a 91-meter tower;³³
- 14) The antenna for Station KNKS (FM) was not constructed on a 91-meter tower;³⁴
- 15) The antenna for Station KNKS (FM) was not constructed in compliance with the construction permit;³⁵
- 16) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS (FM), represented to the Commission that Kunec Engineering erected a 91-meter tower for Station KNKS (FM);³⁶
- 17) Kunec Engineering did not erect a 91-meter tower for Station KNKS (FM);³⁷
- 18) The tower for Station KNKS (FM) was not destroyed by vandalism;³⁸
- 19) William L. Zawila, individually and/or as an officer of the permittee of Station KNKS (FM), represented to the Commission in the application for a license to cover the construction permit for Station KNKS (FM) that the construction requirements for Station KNKS (FM) had been met;³⁹

³¹ See HDO at para. 113(e).

³² See HDO at para. 113(a).

³³ See HDO at para. 113(a).

³⁴ See HDO at para. 113(a).

³⁵ See HDO at para. 113(a).

³⁶ See HDO at paras. 17.

³⁷ See HDO at paras 18, 113(a).

³⁸ See HDO at para. 113(a).

³⁹ See HDO at para. 6.

FCB and/or Station KZPE (FM)

- 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);⁴⁰
- 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);⁴¹
- 22) Station KZPE (FM) was built without a main studio;⁴²
- 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);⁴³
- 24) William L. Zawila was an undisclosed real party in interest in FCB's application for license;⁴⁴
- 25) FCB transferred control of Station KZPE (FM) to William L. Zawila without prior Commission authorization;⁴⁵
- 26) William L. Zawila assumed control of Station KZPE (FM) without prior Commission authorization;⁴⁶
- 27) FCB failed to maintain a properly staffed main studio for Station KZPE (FM);⁴⁷
- 28) FCB failed to maintain proper public inspection files for station KZPE (FM);⁴⁸
- 29) Station KZPE (FM) has never been in full time operation;⁴⁹
- 30) FCB did not place main studio equipment at the "Maricopa Ridge" site identified in the FCB's license application for Station KZPE (FM);⁵⁰
- 31) FCB did not place program origination equipment at the "Maricopa Ridge" site

⁴⁰ See HDO at para. 113(b).

⁴¹ See HDO at para. 113(c).

⁴² See HDO at para. 113(c).

⁴³ See HDO at para. 113(d).

⁴⁴ See HDO at para. 113(f).

⁴⁵ See HDO at para. 113(f).

⁴⁶ See HDO at para. 113(f).

⁴⁷ See HDO at para. 113(c).

⁴⁸ See HDO at para. 113(d).

⁴⁹ See HDO at para. 62.

⁵⁰ See HDO at para. 56.

identified in the FCB's license application for Station KZPE (FM);⁵¹

- 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;⁵²
- 33) The antenna for Station KZPE (FM) was mounted on a pole that was 50 feet in height;⁵³
- 34) The Station KZPE (FM) antenna pole was not surrounded by a fence and did not have radiation hazard signs posted;⁵⁴

LB and Station KZPO (FM)

- 35) William L. Zawila assumed control of Station KZPO (FM) without prior Commission authorization;⁵⁵
- 36) LB transferred control of Station KZPO (FM) to William L. Zawila without prior Commission authorization;⁵⁶
- 37) William L. Zawila failed to maintain proper EAS equipment for Station KZPO (FM);⁵⁷
- 38) LB failed to maintain proper EAS equipment for Station KZPO (FM);⁵⁸
- 39) William L. Zawila failed to maintain proper EAS logs for Station KZPO (FM);⁵⁹
- 40) LB failed to maintain proper EAS logs for Station KZPO (FM);⁶⁰
- 41) William L. Zawila failed to maintain a properly staffed main studio for KZPO (FM);⁶¹

⁵¹ See HDO at para. 56.

⁵² See HDO at para. 58.

⁵³ See HDO at para. 58.

⁵⁴ See HDO at para. 58.

⁵⁵ See HDO at para. 114(b).

⁵⁶ See HDO at para. 114(b).

⁵⁷ See HDO at para. 114(c).

⁵⁸ See HDO at para. 114(c).

⁵⁹ See HDO at para. 114(c).

⁶⁰ See HDO at para. 114(c).

⁶¹ See HDO at para. 114(d).

- 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 at Section 73.1125 of the Commission's rules;⁶²
- 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;⁶³
- 44) LB failed to maintain a properly staffed main studio for KZPO (FM);⁶⁴
- 45) William L. Zawila failed to maintain station logs and to make station logs and facilities available on request for inspection by the Commission;⁶⁵
- 46) LB failed to maintain station logs and to make station logs and facilities available on request for inspection by the Commission;⁶⁶
- 47) William L. Zawila operated Station KZPO (FM) at a transmitter output power greater than 105% of authorized power;⁶⁷
- 48) LB operated Station KZPO (FM) at a transmitter output power greater than 105% of authorized power;⁶⁸
- 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;⁶⁹
- 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;⁷⁰
- 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

⁶² See HDO at para. 67.

⁶³ See HDO at para. 67.

⁶⁴ See HDO at para. 114(d).

⁶⁵ See HDO at para. 114(e).

⁶⁶ See HDO at para. 114(e).

⁶⁷ See HDO at para. 114(f).

⁶⁸ See HDO at para. 114(f).

⁶⁹ See HDO at para. 114(g).

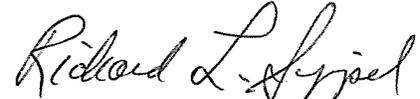
⁷⁰ See HDO at para. 114(g).

Commission's rules and in accordance with its station authorization;⁷¹ and

52) LB 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.⁷²

SO ORDERED.⁷³

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Chief Administrative Law Judge

⁷¹ See HDO at para. 114(h).

⁷² See HDO at para. 114(h).

⁷³ Courtesy copies sent on issuance to all counsel via email. Additional copies sent to William L. Zawila by fax and by First Class Mail.