

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

In the Matter of	) MB Docket No. 14-82
	)
<b>PATRICK SULLIVAN</b>	) FRN 0003749041, 0006119796,
(Assignor)	) 0006149843, 0017196064
	)
and	) Facility ID No. 146162
	)
<b>LAKE BROADCASTING, INC.</b>	) File No BALFT-20120523ABY
(Assignee)	)
	)
Application for Consent to Assignment of	)
License of FM Translator Station W238CE,	)
Montgomery, Alabama	)

To: Marlene H. Dortch, Secretary  
Attention: Chief Administrative Law Judge Richard L. Sippel

**PATRICK SULLIVAN and LAKE BROADCASTING,**  
**INC. FINDINGS OF FACT AND**  
**CONCLUSIONS OF LAW**

Appearances of Counsel

Jerold L. Jacobs on behalf of Patrick Sullivan and Lake Broadcasting, Inc.; Gary Oshinsky and William Knowles-Kellett on behalf of the Enforcement Bureau.

**I. PRELIMINARY STATEMENT**

1. In this proceeding, Patrick Sullivan ("Sullivan") is the proposed assignor of FM Translator Station W238CE, Montgomery, Alabama, and Lake Broadcasting, Inc. ("Lake") is the proposed assignee (collectively, the "Applicants"). Mr. Michael S. Rice is the President, sole owner, and director of Lake, and this proceeding focuses on him in his own right and as the embodiment of Lake.

2. By *Hearing Designation Order* ("HDO"), DA 14-703, released May 23, 2014,

there are four hearing issues:

1. To determine the effect, if any, of Mr. Rice's felony convictions on his qualifications and/or the qualifications of Lake to be a Commission licensee;
2. To determine the effects, if any, of the misrepresentation and lack of candor by Mr. Rice's broadcast companies on his qualifications and/or the qualifications of Lake to be a Commission licensee;
3. To determine whether Mr. Rice or Lake is qualified to be a Commission licensee; and
4. To determine whether the pending assignment application should be granted.

3. In accordance with Section 309(c) of the Communications Act of 1934, as amended, the burdens of proceeding with the introduction of evidence and of proof with respect to all issues designated were assigned to the Applicants.

4. Prehearing conferences were held on June 24, 2014, May 4, 2016, November 17, 2016, and February 16, 2017. The hearing commenced on May 3, 2017, and the record was closed at the conclusion of the May 5, 2017 hearing session (Tr. 676). Proposed Findings of Fact and Conclusions of Law are being filed by the Applicants and the Enforcement Bureau (the "Bureau") on May 10, 2018, and Reply Findings and Conclusions are due to be filed by the Applicants and the Bureau on June 11, 2018.

## **II. PROPOSED FINDINGS OF FACT**

5. Issue No. 1 explores the effect, if any, of Mr. Rice's felony convictions in 1994 on his qualifications and/or the qualifications of Lake to be a Commission licensee.

6. The *HDO* (para. 11) makes clear that the purpose of this hearing is to determine whether Mr. Rice "has been sufficiently rehabilitated and, therefore, is qualified to hold the Station's license". Therefore, these Proposed Findings focus on the history of Mr. Rice's rehabilitation as revealed in the hearing record. As these Proposed Findings demonstrate, Mr. Rice's felony convictions have no continuing effect on his qualifications or the qualifications of Lake to be a licensee because Mr. Rice is fully rehabilitated from his past criminal activity, has a very low risk of re-offending, and is fully fit to become a Commission licensee again.

### **a. Michael Rice's Rehabilitation (Issue No. 1)**

#### **1. Early History and Broadcast Involvement, 1941-1990**

7. Michael Rice was born on June 30, 1941, so he is now 76 years old. His involvement in broadcast matters began some 60 years ago when he participated in amateur radio and electronics in high school (graduated in 1959). Mr. Rice also took various college-level broadcast courses from 1959 to 1961 and was involved in on-air and programming production for his campus radio station. In addition to formal schooling, Mr. Rice gained vast broadcast expertise through other professional training, years of practical experience, and as a result of his natural electronics and engineering aptitude. Mr. Rice has also been an active participant in numerous

broadcast and local civic groups, is a Certified Professional Broadcasting Engineer, and holds an FCC General Operator License (formerly called a First Class License).

**Lake Exh. 1, p.1.**

8. On the business side of broadcasting, Mr. Rice has been employed in the broadcast industry since 1961, holding various on-air, engineering, production, and supervisory jobs at radio and television stations throughout the country. He has also constructed and operated multiple broadcast stations. Between 1968 and 1979, he built and managed his first station in St. Charles, Missouri, and, due to his significant expertise, he was asked by the new owners to remain in a long-term technical advisory position after selling the facilities. **Id.**

9. In 1979, Mr. Rice established Contemporary Broadcasting, Inc. to build and run Station KFMZ(FM), Columbia, Missouri, which was one of the first stations locally to utilize FM stereo. In 1982, under Mr. Rice's auspices, Contemporary Media, Inc. purchased WBOW/WZZQ(FM), Terre Haute, Indiana, and implemented a long-range plan to rebuild the stations, including new AM/FM facilities and studio/office space. Eventually, WBUZ became a second AM facility in Terre Haute. In 1988, Mr. Rice founded Lake Broadcasting, Inc. ("Lake") and built Station KBMX(FM), Eldon, Missouri. Mr. Rice is the President and 100% stockholder of Lake. **Id.**

10. Mr. Rice's substantial experience, accomplishments, and contributions in the broadcast area are evidenced by the awards and personal and professional letters of commendation and support which he has received over the years. In



addition, his five radio stations received numerous awards and commendations for their broadcast performance, and all of them had an unblemished Commission compliance record. Finally, several of Mr. Rice's stations were designated by the Commission and the Federal Emergency Management Agency for civil defense purposes with special equipment and trained staff to broadcast critical disaster information to the public. **Id.**

## **2. Criminal Proceedings and Aftermath, 1991-2001**

11. Prior to his conviction for nonviolent sexual offenses unrelated to his broadcast operations, Mr. Rice was formally charged with the crimes on April 1, 1991, and he immediately (April 3, 1991) began voluntary hospitalization for six months for psychiatric evaluation at the Barnes Hospital in St. Louis, Missouri. From March 28, 1991 until his incarceration on September 30, 1994, Mr. Rice was under the continued psychiatric care of Wayne A. Stillings, M.D., now deceased, Assistant Professor of Clinical Psychiatry at the Washington University School of Medicine in St. Louis, MO. Dr. Stillings determined that Mr. Rice's aberrational prior offenses were the result of involuntary medical conditions (bipolar affective disorder, dysthymia, dissociative disorder, and alcohol abuse) for which he has been, and continues to be, successfully treated. After Mr. Rice's hospitalization ended, he resumed limited involvement in certain station activities, at the recommendation of his psychiatrist, until he was incarcerated. As of the time of his incarceration, all of Mr. Rice's conditions were in remission as a result of his treatment, and Dr. Stillings concluded that Mr. Rice was not a recidivist, had demonstrated genuine remorse for his wrongdoing, and could continue to be a productive citizen. **Id., pp. 1-2.** Mr.

Rice's medical treatment continued throughout his 5¼ years of incarceration, and his treatment also included his successful completion of a 12-month Missouri Sexual Offender Program ("MOSOP"), which began on April 20, 1998. **Certificate, Lake Exh. 1, App. A.** Following his release from prison on December 29, 1999, Mr. Rice's attorney notified the Commission, by a Section 1.65 Statement dated January 28, 2000, that he has "taken over responsibility for the operation of the business of [his three corporations], including the operation of the radio stations licensed to [the three corporations]". **Id., p.2.**

### **3. Rehabilitation, 1999 - Present**

12. During 1995-2001, the FCC conducted a revocation proceeding involving Mr. Rice's five radio station licenses and two construction permits, the licenses and permits were revoked, and there were appellate proceedings. On October 3, 2001, Mr. Rice shut down his five stations, pursuant to *Memorandum Opinion and Order*, FCC 01-300, released October 3, 2001. **Id.**

13. Upon release from prison at the end of 1999, Mr. Rice moved from his previous home in St. Louis County to St. Charles County, Missouri, where he bought a home in a residential subdivision. Importantly, at the Prehearing conference on June 24, 2014, the Presiding Judge stated: "The issue in this trial is rehabilitation" (Tr. 32), and "[R]ehabilitation starts...from the minute of completion of the crime to the present" (Tr. 40).

14. During his period of parole, which lasted 32 months, Mr. Rice participated in a group therapy program conducted by Rev. Dr. Mark Lee Robinson

and Carol J. Klooster, MSW. During that period and thereafter, he suffered no form of relapse, was not arrested or convicted of any crime, and was restored to all rights of citizenship, including the right to vote. **Voting Card, Lake Exh.1, App. B.** He completed his period of parole in August 2002.

15. Mr. Rice was President and Board member of the Pebble Creek Condo Unit Owners Association for four years, ending in 2009, and in 2016 he again became a Board member. During that time, he also was property manager of a 24-unit condo community in nearby O'Fallon, Missouri. Mr. Rice has also served as a member of the Board of Directors of the Riverview Hills Homeowners Association, consisting of 42 homes where he lives. Mr. Rice is also a member of his local church, and attends services and activities there from time to time. Mr. Rice is also entering his third year as a Storm Spotter volunteer for the National Oceanic and Atmospheric Administration ("NOAA"). Spotters are trained by their local forecast office and are assigned an ID number to use when submitting reports via telephone, ham radio, or the Internet. **Lake Exh 1, pp. 2-3.**

16. Occupationally, Mr. Rice owns and manages communications towers in Missouri and Indiana, which are leased to various tenants including the FBI (two sites), NOAA, and other radio communications systems owned by telecoms and municipal governments. He provides free tower facilities for local amateur radio operators that are used for severe weather and disaster communications. He also invests in residential rental properties in Missouri (since 2001), manages the properties, and does repair and maintenance work on the units. **Id.**

17. With his extensive practical broadcast engineering experience and skill, Mr. Rice is regularly called upon to perform engineering work for various broadcast stations, help construct facilities, and make RF measurements. He continues to actively participate in the Society of Broadcast Engineers (“SBE”), is a member of St. Louis, Missouri Chapter 55, and holds a Certified Professional Broadcast Engineer (“CPBE”) accreditation. Mr. Rice has assisted and worked with registered Professional Radio Engineers, including Jack S. Sellmeyer, PE. Mr. Sellmeyer was honored at the 2009 NAB Convention in Las Vegas with the prestigious NAB Engineering Life Achievement Award. **Id.**

18. Lake offered into evidence six November – December 2014 letters of reference in **Lake Exh. 1, App. C** from long-time acquaintances and business associates of Mr. Rice – Gary Reynolds, Jack S. Sellmeyer, Vernon C. Jackson, John Adam Caran, Kevin. R. Berlen, and John Eric Hoehn. All express awareness of Mr. Rice’s prior history, describe their current neighborhood or business relationship, and variously state their beliefs that Mr. Rice is honest, is respected in his community, is a changed man, has achieved extraordinary rehabilitation and good standing in the St. Charles area, and fully complies with all Commission and FAA regulations in the current maintenance and operation of his communications towers.

19. Health-wise, Mr. Rice has recovered from two serious medical problems in the last eight years – a heart attack in 2010 and a hemorrhaged eye that required six hours of surgery to repair. More importantly, Mr. Rice suffers from Type 2 Diabetes and hypertension, and takes nine medications per day to keep him functional. As to his psychiatric condition, Mr. Rice remains on one psychotropic

medication per day (Wellbutrin 300 mg), and is receiving only occasional monitoring and maintenance psychiatric treatment now. Most importantly, Dr. Stillings, who treated Mr. Rice for more than 20 years, concluded in an October 31, 2011 letter to the Commission (**Lake Exh. 1, App. D**) that “Mr. Rice is fully recovered and rehabilitated from his psychiatric condition...There is no evidence that he will relapse...[and] [i]t is [his] opinion to a reasonable degree of medical and psychiatric certainty that Mr. Rice is qualified for FCC licensure”. Mr. Rice’s primary care physician is now Dr. Daniel Kramer (an internist), and his endocrinologist is Dr. Jerome Thurman.

20. On November 22, 2014, psychologists Dr. Ann Dell Duncan-Hively (“Dr. Duncan”) and Dr. Wells Hively (“Dr. Hively”), who examined Mr. Rice in 1991 and again in 2014, submitted to the Commission a Psychological Report concerning Mr. Rice’s rehabilitation, in which they; concluded (at 8) (**Lake Exh. 3, App. C**):

“As for the request by the Commission as to whether he has been sufficiently rehabilitated over the 23 years, our answer based on our testing, our analysis of the relevant materials and our contact with collateral sources all combine to indicate we find no psychological reason that Mr. Rice should not merit the reconsideration of his license status.”

21. Dr. Duncan testified at hearing as an expert witness on behalf of Mr. Rice. She is a Ph.D. clinical psychologist with a J.D. degree practicing psychology in Chesterfield, Missouri. Her full biographical sketch of education, licenses, employment, publications and presentations (since 1990), and continuing professional education (since 2000) is contained in **Lake Exh. 3, App. A**.

22. Mr. Rice became Dr. Duncan’s patient in July 1991, while he was hospitalized by Dr. Stillings at Barnes Hospital in St. Louis. Dr. Stillings requested consultation as to Mr. Rice’s

current mental and emotional state, his competency to stand trial, and his mental and emotional state at the time of the alleged offenses in late 1990. **Lake Exh. 3, p. 1.**

23. Dr. Duncan prepared a Psychological Evaluation of Mr. Rice, dated September 18, 1991, which was admitted into evidence as **Lake Exh. 3, App. B.** Mr. Rice was seen on four occasions between July 5 and August 10, 1991, for a total of eight hours. Half of the interviews were conducted by Dr. Duncan and half by Dr. Hively, Ph.D., her office partner (together “The Hivelys”). **Lake Exh 3, p.1.**

24. The Hivelys did not see Mr. Rice again until August 22, 2014 – 23 years later – when he was examined in their Chesterfield office at the request of his attorney, Mr. Jacobs, for a total of 9 hours between August 22 and September 27, 2014. Their Psychological Report on Mr. Rice, dated November 22, 2014, was admitted into evidence as **Lake Exh. 3, App. C.** It is very unusual to see a patient at the onset of psychological problems and then 23 years later, and this long passage of time provided them with additional insights in measuring Mr. Rice’s progress since 1991 and his current psychological state. **Lake Exh. 3, p. 1.**

25. Dr. Duncan testified that in Mr. Rice’s case, their psychological evaluation was essentially a risk assessment. So in accordance with prevailing ethical and professional psychological standards of the American Psychological Association, the evaluation included:

1. Relevant and thorough objective testing
2. Direct interview and observation
3. Thorough review of relevant historical documents
4. Collection of information from contemporary collateral sources
5. Objective assessment of risk of reoffending. **Lake Exh. 3, p.1.**

26. The Enforcement Bureau presented as its key witness, Dr. Kimberly Weitzl,

whose credentials and direct case testimony are contained in **Bureau Exh. 1**. The Hivelys criticized Dr. Weitzl's evaluation of Mr. Rice in December 2015 as greatly deficient in several respects: she spent only 1.5 hours examining Mr. Rice and did no objective psychological testing (item 1 above). She did not thoroughly review recent historical documents or collect information from contemporary collateral sources (items 3 and 4 above). She completed the STATIC 99 (which is a historical summary and not a direct psychological test), and she disagreed with the normed results. She also disputed the favorable results of the risk assessments performed by others on Mr. Rice, opining without objective evidence that the "Moderate Low" risk of reoffending found in those assessments was an "underestimate." Therefore, Dr. Duncan concluded that Dr. Weitzl's evaluation was totally unacceptable professionally and should be given no weight. **Lake Exh. 3, pp. 1-2**. According to Dr. Duncan, Dr. Weitzl's opinion appears to be based on her years of working with sex offenders and her personal bias against the population. **Id., p. 2**. The Presiding Judge should conclude that no weight should be given to Dr. Weitzl's biased and defective testimony against Mr. Rice.

27. The Bureau also presented parole officer Tammie Gremminger as a risk assessment expert, which Lake hotly disputed. Ms. Gremminger's entire career has been in the probation and parole area, which does not constitute "law enforcement," unlike sworn police officers, and she appeared at the hearing in personal capacity – not as a representative of any Missouri law enforcement agency. She pontificates (Bur. Exh. 2, para. 17) that "Mr. Rice still poses a substantial risk to the community of re-offense," but she reaches this conclusion without examining or testing him, without speaking to

him, without having even seen him in the last 15 years, and relying on scurrilous and erroneous facts contained in her Department's files and records. Her testimony clearly violates FRE Rule 703 and should be disregarded. The Hivelys also testified (**Lake Exh. 3, p. 2**) that Ms. Gremminger's testimony was entitled to no weight because she never interviewed Mr. Rice at all, and her report was based solely upon old hearsay reports. She has a chronic job history of recommending probation revocation for sex offenders. **Id.**

28. Finally, as to Ms. Gremminger, an incident arose on December 12, 2016, in which the Bureau filed a scurrilous, unsupported, and diversionary Motion containing a tale of alleged witness intimidation ("someone claiming to represent Mr. Rice had threatened to pursue legal action against Ms. Tammie Gremminger if she continued to participate in the Commission's hearing process"), which lacked all of the specifics necessary to give the tale any credence and which also diverted attention away from the question of the existence *vel non* of Ms. Gremminger's alleged credentials. Lake was not told when the Bureau learned of the alleged intimidation; who told the Bureau about it; the identity of the alleged intimidator; when the alleged intimidation occurred; when Ms. Gremminger contacted legal counsel at the Missouri Department of Corrections and was instructed to have no further contact with the Bureau until the Department of Corrections completed its investigation; who told her to cease contact with Bureau; who was conducting the investigation at the Department of Corrections; when the investigation began; and when it was expected to conclude.



29. Lake moved to strike the Motion on December 13, 2016, but the Presiding Judge denied that Motion (FCC 16M-37, released December 22, 2016) and ordered Mr. Rice to provide an affidavit or declaration that neither he nor anyone else at his direction, on his behalf, or to his knowledge contacted Ms. Gremminger or the Missouri Department of Corrections in an effort to threaten her continued involvement in this case. That same day (December 22), Mr. Rice filed the requested declaration.

30. Even before the Presiding Judge ruled, the Bureau was already backing away from its tale of witness intimidation. In a December 15, 2016 Letter to the Missouri Department of Corrections, the Bureau's Acting Deputy Chief Keith Morgan, wrote:

“[W]e would like to be in a position to provide our Administrative Law Judge with confirmation that your legal department is in fact reviewing Ms. Gremminger's continued participation in the FCC proceeding....In addition...**we would like to be able to explain the reasons why any such review is being conducted....** (Letter attached to Bureau's December 19, 2016 Opposition to Lake's Motion to Strike (emphasis added)).

31. By email memo dated January 10, 2017, the Bureau informed the parties that counsel for the Department of Corrections had responded to the Bureau's letter, requested that the Bureau “should send Ms. Gremminger a subpoena before contacting her further...[and] did not provide any further details regarding why we have lost contact with her”. The Bureau also stated that it had prepared two subpoenas which the Presiding Judge signed and were forwarded to the Department of Corrections.

32. In its February 3, 2017 Status Report, the Bureau summarized (at Paras. 3 and 4) the materials that it received from the Department of Corrections: “a list of the cases in which Ms. Gremminger has testified in the last four years....and a list of the certifications and training she has completed”. The Bureau also stated that “Ms. Gremminger also reported that she has been cleared by her office to participate in the FCC hearing as provided for in the Bureau’s subpoena”.

33. In its February 15, 2017 Supplemental Status Report, para. 4, the Bureau stated that its “additional investigation into this matter has not led to any additional information suggesting Mr. Rice’s involvement in this incident. Accordingly, the Bureau sees no reason to divert the parties’ and the Presiding Judge’s attention away from preparing for hearing to address what is now a non-issue.”

34. Not satisfied with this semi-admission by the Bureau that Ms. Gremminger had sent the Presiding Judge and Lake on a wild goose chase in December and had impugned Mr. Rice’s character in the process, Lake requested a prehearing conference to explore the facts and circumstances surrounding the witness intimidation canard against Mr. Rice.

35. That prehearing conference took place on February 16, 2017, and the Presiding Judge stated at that time (Tr. 129), “Based on the declaration of your client, okay, I’m not going to hold any of this against him...he starts from the get-go as an honest agent.” Lake and Mr. Rice were delighted to be exonerated by the Judge in this fashion, but a dark cloud remains over Ms. Gremminger’s credibility for whatever role she played in advancing this mischief. The

Presiding Judge undertook to ask Ms. Gremminger searching questions at hearing about this matter, Tr. 141, but that did not happen. Because of this “fake news” episode, Lake urges that Ms. Gremminger has lost all credibility in this proceeding, given her involvement in this scandalous matter. She is not a law enforcement officer, does not qualify as a risk assessment expert, and has lost all credibility because of her role in the witness intimidation canard against Mr. Rice.

36. Dr. Duncan’s overall conclusion was that, based on all available objective psychological information, Mr. Rice has been successfully rehabilitated and his probability of reoffending is very low. Since his incarceration, he has undergone a significant amount of counseling devoted not only to relapse prevention but also to mood stabilization. These efforts have been successful. Since his release from prison in 1999 – 18 years ago – there have been no events that tarnish his reputation in the community. Based on “these facts, our testing, our analysis of the relevant materials, and our contact with collateral sources,” Dr. Duncan finds no psychological basis for barring Mr. Rice from maintaining a broadcast license again. According to Dr. Duncan, Mr. Rice has paid his debt to society, and is not a danger to himself or to others. He represents the epitome of the term “rehabilitation.” Id. Dr. Duncan’s testimony in favor of Mr. Rice should be fully credited, and it dramatically outweighs the faulty testimony of Dr. Weitzl and Ms. Gremminger.

**b. Lake is qualified to be a Commission Licensee (Issue No. 2)**

37. Lake is a Missouri for-profit corporation, which was incorporated on December 7, 1987. In this hearing proceeding, it is seeking to become the licensee of FM Translator Station W238CE, Montgomery, Alabama. In the 1990’s, Lake was the licensee of Station

KBMX(FM), Eldon, Missouri, and the permittee of KFXE(FM), Cuba, Missouri. In *Contemporary Media, Inc.*, 13 FCC Rcd 14437(1998), the license and construction permit were both revoked. On October 3, 2001, Lake shut down its operation of Station KBMX. Lake has not operated any broadcast facility since that date. **Lake Exh. 2, p. 1.**

38. Lake has continued to remain in good standing as a Missouri corporation. **Lake Exh. 2, App. A.** Its President, Secretary, sole director, and 100% stockholder is Michael S. Rice. *HDO* Issue No. 2 explores whether Lake is qualified to become a Commission licensee and what effect the previous misrepresentation and lack of candor of Lake would have on Lake's current request to become a Commission licensee. Since late 2001, Lake has not operated a broadcast station, but it receives tower rentals from lessees on towers owned by Lake. It also files annual registration reports with the Missouri Secretary of State. **Lake Exh. 2, App. B** (Lake's Feb. 21, 2017 Annual Registration Report). Thus, there is no way for it to demonstrate that it has taken steps to rehabilitate itself from the adverse findings and conclusions in *Contemporary Media, Inc., supra*. Paradoxically, while Mr. Rice is the physical embodiment of Lake, as its President, sole director and 100% owner, Lake was previously disqualified independently of Mr. Rice, and Mr. Rice was not held accountable for Lake's misconduct.

### **III. PROPOSED CONCLUSIONS OF LAW**

39. Now that Lake is attempting to reenter broadcasting, it is very relevant to know whether Mr. Rice, as its President, sole director, and 100% owner, is qualified to again be a Commission licensee. Mr. Rice's rehabilitation is fully described in Lake Exhs. 1 and 3 and in the above Findings of Fact. Lake asserts that the Commission should conclude that both Lake and

Mr. Rice are qualified to be Commission licensees, and that they can both be relied upon to be truthful, candid, and forthcoming in their dealings with the Commission and will comply in all other respects with the Commission's Rules, regulations, and policies. **Lake Exh. 2, p.1.**

40. It is vitally important to put this case into a proper historical context. Mr. Rice's criminal misconduct occurred between 1985 and 1990, he was arrested in 1990, his criminal trial occurred in 1994, and he began an 8-year prison term in September 1994. Mr. Rice obtained early release from prison on December 29, 1999, after serving just over five years of his sentence. He is now 76 years old. On October 3, 2001, Mr. Rice shut down his five broadcast stations, pursuant to Commission Order. In August 2002, he completed parole and was fully restored to all rights of citizenship, including the right to vote.

41. Over the last four years, Mr. Rice has spent tens of thousands of dollars in the current effort to become relicensed. This is a matter of principle for him – redeeming his good name. That is the point of winning this case – not obtaining ownership of a mere \$1000 FM translator station.

42. As the *HDO*, supra, states (Para. 21) and the Presiding Judge acknowledged (Finding 13), the crucial question in this case is whether Mr. Rice has been rehabilitated. More precisely, the *HDO* states, id., that the principal reason for designating for hearing Lake's assignment application is to determine whether Mr. Rice "has been rehabilitated to an extent that the Commission is confident Rice will refrain from engaging in the kind of behavior for which he was convicted [in a Missouri state criminal proceeding in 1994]; Rice and/or LBI [Lake] can be relied upon to be truthful, candid, and forthcoming in their dealings with the Commission; and Rice and/or LBI will comply in all other respects with the Commission's Rules, regulations, and policies". Moreover, and most importantly, Para. 27 of the *HDO* states that "the Presiding

Administrative Law Judge shall not...relitigate any of the findings of fact and/or conclusions of law contained in any order or opinion relating to the state court proceeding in which Michael S. Rice was determined to be a convicted felon or in any order or opinion relating to the Commission proceeding in which Michael S. Rice and/or the broadcast companies in which he held an interest were previously determined to be unqualified”.

43. However, on November 6, 2014, the Commission released a *Decision* in the *David Titus* case, FCC 14-177, and on November 20, 2014, the Presiding Judge issued an *Order*, FCC 14M-35, requesting the parties to brief him on the impact of that *Decision* on the issues in our case. In the *David Titus* case, the Judge had found Mr. Titus qualified to be a licensee after criminal sexual misconduct and imprisonment, but the Commission reversed the Judge and disqualified Mr. Titus. The Bureau filed Comments on December 8, 2014 that were shrill and mistaken in asserting that the *Titus* case was controlling in this proceeding, going so far as to assert (at Para. 7) that if the Bureau could conclusively determine that Mr. Rice was a risk to his community, the *Titus* decision would allow the Judge to expedite the trial or even grant summary decision against Lake. Genuinely frightened by these extreme pronouncements, on February 4, 2015 Lake requested a ruling by the Judge on the burden of proof in this proceeding. The Judge properly issued an *Order*, FCC 15M-8, on March 4, 2015, confirming that the *Titus* case had not changed the burden of proof in our case, which would continue to be “a preponderance of the evidence”.

44. However, the Bureau poisoned the waters with its Comments, adding a measure of strong contentiousness to the rehabilitation analysis in this proceeding, and the Judge began to voice off-the-record concerns about not being reversed as he was in *Titus*. What followed were a number of rulings by the Judge in discovery matters (*e.g.*, FCC 15M-22, rel. June 11, 2015),

which bent over backwards to let the Bureau have its way, such as requiring Mr. Rice to disclose his Federal income tax returns from 2010 to 2014, so that the Bureau could better understand Mr. Rice's work activities – utter nonsense.

45. But the most serious error occurred in the Judge's *Order*, FCC 15M-26, released August 4, 2015, where the Judge completely eviscerated Paragraph 27's holding in the *HDO* that the Judge should not allow relitigation of Mr. Rice's previous criminal convictions. Under the guise of allowing the Bureau's psychologist, Dr. Weitzl, to inquire into Mr. Rice's "mental state" prior to his imprisonment, the Judge eventually permitted the Bureau to include in the hearing record, over counsel's several objections, a number of 20-or-more-year-old untested written reports (**Bureau Exhibit 4**) concerning alleged sexual misconduct by Mr. Rice prior to his incarceration. These documents were allowed by the Judge to be quoted by Dr. Weitzl and Tammy Gremminger at hearing and in their direct case exhibits and were relied upon for the "truth" of their scurrilous statements about Mr. Rice, even though they were admitted into evidence only as "business records" of the Missouri Department of Corrections.

46. The Bureau's witness testimony by Dr. Weitzl and Tammy Gremminger and its documentary exhibits focus almost exclusively on Mr. Rice's life prior to his release from prison in December 1999. The avowed purpose of this testimony was to measure the degree of Mr. Rice's rehabilitation, but the testimony fell woefully short of doing so and is entitled to very little weight.

47. While the Hivelys examined Mr. Rice for almost 10 hours in 2014, Dr. Weitzl's examination lasted only 1 1/2 hours, Tr. 581, during which time Dr. Weitzl asked almost no questions about Mr. Rice's post-incarceration activities. Tr. 620-21. Upon cross-examination, Dr. Weitzl summarized her entire risk

assessment of Mr. Rice with the matter-of-fact and shocking mantra: “Once a pedophile, always a pedophile”. Tr. 632. In other words, according to Dr. Weitzl, rehabilitation of Mr. Rice is not possible, given the clinical diagnoses that were made of Mr. Rice’s mental condition pre-incarceration. In her cross-examination, Dr. Duncan successfully undercut the probity of Dr. Weitzl’s attacks on Mr. Rice’s rehabilitation. For all of these reasons, Dr. Weitzl’s testimony against Mr. Rice should be rejected as biased and defective.

48. Similarly, Tammy Gremminger never even spoke to Mr. Rice, and rendered her risk assessment of him (Bur. Exh. 3) based exclusively on pre-incarceration “business records” (Bur. Exh. 4) of her Probation and Parole Office. Tr. 494. Lake vigorously opposed the admission of Bureau Exh. 4, and Lake now asks the Presiding Judge to reverse this ruling and exclude Exh. 4.

49. Ms. Gremminger claims (Bur. Exh. 2, Para. 8) that “the files and records I reviewed are kept in the regular course of business at the Missouri Department of Corrections” and are, therefore, covered by the business records exception to the Hearsay Rule. However, the language to which Lake objects in the Bureau’s Exhibits and Testimony is only admissible as part of business records of the Department and NOT to prove the truth of the facts asserted therein. Since it is clear that the only reason that the Bureau is proffering the subject exhibits and language in question is to taint the hearing record with scurrilous hearsay statements and reports about Mr. Rice that have never been tested in court and will not be presented in this proceeding by their original authors, Lake strongly objected to their admission as exhibits and asks the Presiding Judge to reconsider and reverse



that decision now. *See Paddack v. Christensen*, 745 F.2d 1254, 1262 (9<sup>th</sup> Cir. 1984); *U.S. v. Lundy*, 809 F.2d 392, 395 (7<sup>th</sup> Cir. 1987) (a court must insure that an expert witness is testifying as an expert and not merely as a conduit through which hearsay is brought before the jury). Ms. Gremminger's testimony should be rejected as not being expert testimony, not being credible, and not entitled to any weight.

50. Lake submits that the rehabilitation issue should be judged by examining Mr. Rice today and seeing what he has been doing for the last 18 years since his release from prison. The evidence shows that he has never re-offended and is a productive member of society. These are the things that count. The Bureau wastes its time by harping on things that happened 25 or more years ago. The future is NOW, and Mr. Rice and Lake are fully rehabilitated and have earned the right to be relicensed. Mr. Rice is fully rehabilitated, is involved in civic and religious activities, does occasional broadcast engineering work, is in moderately good health but suffers from diabetes and hypertension, and has obtained six letters of reference from long-time acquaintances and business associates who all express awareness of his prior history, describe their current neighborhood or business relationship, and variously state their beliefs that Mr. Rice is honest, is respected in his community, is a changed man, has achieved extraordinary rehabilitation and good standing in his St. Charles area, and fully complies with all Commission and FAA regulations.

#### **IV. ULTIMATE CONCLUSION**

51. The Applicants have fully met their burdens of proceeding with the introduction of evidence and of proof with respect to all designated issues in

this proceeding. Hence, the Presiding Judge should grant the subject Assignment Application. However, Lake is concerned that footnote 60 of the *HDO* contains language which, if implemented, would turn this proceeding into a farce. While, on the one hand, the *HDO* declares that the proceeding may not relitigate past findings and conclusions, and Para. 21 says that the purpose of this hearing is “to evaluate whether Rice has been rehabilitated to an extent that the Commission is fully confident Rice and/or LBI can be relied upon to be truthful, candid, and forthcoming in their dealings with the Commission; and Rice and/or LBI will comply in all other respects with the Commission’s Rules, regulations, and policies,” footnote 60 could be read as allowing the Presiding Judge to consider whether “crimes involving child sex abuse are so egregious, so utterly shocking to the conscience, and so patently inconsistent with the public interest, that a person so convicted, regardless of when the conviction took place, may be determined to be qualified to be a Commission licensee only in the most extraordinary and compelling of circumstances.” Lake submits that Rice’s and Lake’s rehabilitation based on the evidence in this proceeding meets the footnote 60 test of “extraordinary and compelling circumstances”. Thus, it would be an egregious error to use footnote 60 to deny grant of the pending application.<sup>1</sup>

WHEREFORE, in light of the foregoing, the Applicants respectfully urge that Mr. Michael Rice is fully rehabilitated, that he and Lake Broadcasting, Inc. are

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<sup>1</sup> The word “egregious” is hardly ever found in Commission decisions and is basically undefined. If the Presiding Judge is inclined to invoke footnote 60, Lake urges that he should request briefs on that word and how it could reasonably be applied to the facts in this proceeding.

fully qualified to be a Commission licensee, and that the captioned assignment application should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jerold L. Jacobs", is written over a horizontal line.

Jerold L. Jacobs

Law Offices of Jerold L. Jacobs  
1629 K Street, N.W. Suite 300  
Washington, DC 20006  
(202) 508-3383

Counsel for Patrick Sullivan and  
Lake Broadcasting, Inc.

Dated: May 10, 2018

## CERTIFICATE OF SERVICE

I, Jerold L. Jacobs, hereby certify that on this 10th day of May, 2018, I filed the foregoing "PATRICK SULLIVAN and LAKE BROADCASTING, INC. FINDINGS OF FACT AND CONCLUSIONS OF LAW" in ECFS and caused a copy to be sent via First Class United States Mail and via e-mail to the following:

Hon. Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

[Richard.Sippel@fcc.gov](mailto:Richard.Sippel@fcc.gov)

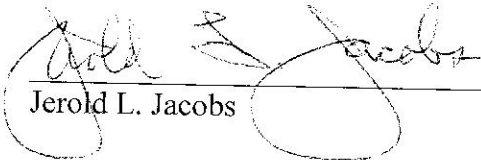
[Patricia.Ducksworth@fcc.gov](mailto:Patricia.Ducksworth@fcc.gov)

[Monique.Grav@fcc.gov](mailto:Monique.Grav@fcc.gov)

[Rachel.Wickenheiser@fcc.gov](mailto:Rachel.Wickenheiser@fcc.gov)

William Knowles-Kellett, Esq. and Gary Oshinsky, Esq.  
Investigations & Hearings Division  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
[William.Knowles-Kellett@fcc.gov](mailto:William.Knowles-Kellett@fcc.gov)  
[Gary.Oshinsky@fcc.gov](mailto:Gary.Oshinsky@fcc.gov)

Pamela Kane, Esq.  
Special Counsel  
Investigations & Hearings Division  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
[Pamela.Kane@fcc.gov](mailto:Pamela.Kane@fcc.gov)

  
Jerold L. Jacobs