

changed his mind (Tr. 472). Hanks testified that, being a disk jockey, he "can have the tendency to exaggerate," and he admitted that he "exaggerate[d] the statement about Mike Rice's change of mind." (Tr. 471; *see also* Tr. 463-64.) Hanks further testified: "Regarding the other statements that have been made [by him at the hearing], I do not believe that I have exaggerated anything. I have tried to answer [the questions] as honestly and straightforward [sic] as possible." (*Id.*)

103. Testimony of John Rhea.¹² John Rhea served as the general manager of CMI stations WBOW(AM) and WZZQ(FM), Terre Haute, Indiana, beginning on December 30, 1991. He was terminated on December 16, 1992. (Tr. 478-79.) As general manager, his duties were to run the sales department and oversee the general operation of the radio stations. His duties did not include oversight of the programming of the stations. That was the responsibility of Hanks, the CMI/CBI group program director, who was located in Columbia, Missouri. (Tr. 479-80.)

104. Rhea was hired by Cox for the general manager position. (Tr. 479.) During the hiring process, Rhea testified, Cox "alluded to the fact" that she had taken over as the chief operating officer of the company, that the stations were owned by an absentee owner, that the man's name was Mike Rice, and that Rice had been ill. (Tr. 481-82.) Rhea stated that Cox did not, at that time, tell him the nature of Rice's illness. (Tr. 482.)

105. Rhea also testified that, at the time of his hiring, Cox never told him about Rice's "situation," *i.e.*, that Rice was under indictment for "child molestation." (Tr. 498-99.) Rhea stated that he was upset when he first learned about Rice's indictment from a salesman approximately six weeks after he (Rhea) was hired. Rhea stated that he would not have taken the general manager position had he known about the indictment "on the front end" because he had maneuverability and other job options at the time. (Tr. 498-99.)

106. Cox disputed Rhea's version of the hiring process. According to Cox, she did inform Rhea about Rice's indictment when she hired him, and told him that some employees might resign as a result. She stated that Rhea voiced no reservation about taking the position at all, and that Rhea pursued her for the position because he was then out of a job. (Tr. 576-78.)

107. During the time that Rhea worked for CMI as general manager, he assumed that because Rice owned the stations "[h]e was the boss." (Tr. 501.) However, Rhea also testified that during his tenure with CMI, in his mind, Rice remained an absentee owner. (Tr. 506-07.) Rhea stated that the first time he learned that Rice was to have been insulated from station management was when he talked to Bureau counsel about a month and a half before testifying in this proceeding. (Tr. 502.) Rhea stated that he was not informed by Cox that Rice had been excluded from the management of the stations. (Tr. 499.)

¹² *See also* paragraphs 118-20, 123, 126, 130, and 131, *infra*.

108. At the time of his termination from CMI, Rhea had worked for approximately 20 years in various general manager positions. (Tr. 523.) He testified that his termination was a career setback for him, and that he had animosity toward Cox at the time he was terminated. (Tr. 523-24.) Rhea testified that he was informed that a reason for his termination was that the numbers for WBOW were not what they should have been, but he felt that, "[t]o a certain degree," the negative publicity concerning Rice's "situation" contributed to the station's numbers decreasing. Rhea testified that "if [he] want[ed] to blame someone" for his termination, he would blame Rice "a little bit." (Tr. 521-22.)

109. When asked generally whether there were any complaints lodged against him by station personnel during his tenure at WBOW and WZZQ, Rhea responded: "Not really." Then, when asked specifically whether he had been accused of "some unauthorized contact with some of the female employees," Rhea responded: "I was. I was." (Tr. 515.) He explained, however, that the accusations had no factual basis (Tr. 527), that he did not agree with the accusations, and that he had felt wrongfully accused (Tr. 516). Cox was the individual who brought the accusations to Rhea's attention. (Tr. 517, 527-29.) The allegations against Rhea were not submitted formally to the stations in writing, no lawsuit was ever filed in connection with the allegations, and no criminal charges were ever brought against Rhea with respect to the accusations. (Tr. 527.) The complaints were made in late April 1992 and Rhea continued his employment with CMI until the middle of December 1992. (Tr. 529.) At the time of Rhea's termination, neither Cox nor Rice mentioned the complaints, and Rhea did not think he was fired because of the complaints. (Tr. 531.)

110. Rhea is no longer a station general manager and is now a senior sales representative for a station in the Memphis, Tennessee, market. (Tr. 476.) He explained this change in his career as a result of the diminished need for radio station general managers around the country caused by the FCC allowing duopolies, *i.e.*, multiple ownership of radio stations in the same market. (Tr. 530.)

111. Rhea testified that, during the time he was the general manager of the Terre Haute stations, Rice was involved in programming and personnel decisions at the stations.¹³ With respect to programming, Rhea testified that approximately six weeks after he became the general manager, Rice "popped in" and took him to lunch. At the end of their conversation, Rhea stated, Rice told him he was not too happy with the musical sound of WBOW. Rice asked Rhea for his opinion about what he thought should be done. Rhea described the meeting as "no big deal. Very cordial." (Tr. 482-83, 509.) A month or so later, Rice and Rhea had another lunch at which there were further discussions about the programming of WBOW. (Tr. 483, 509.)

¹³ In addition, Rice owned the building in which the Terre Haute radio stations were located. At Rice's direction, Rhea showed portions of this building to prospective tenants. Rice also made Rhea responsible for ensuring that the building was cleaned up. (Tr. 501.)

112. According to Rhea, sometime later, Rice asked him to obtain information about the cost of the Satellite Music Network. After doing so and sending the information to Cox, Rhea stated that he received a call from her informing him that the satellite music service was too expensive. (Tr. 502-03, 525.) Rhea testified that Cox told him that Rice thought the station could be programmed "cheaper" by bringing in his (Rice's) own music. (Tr. 502-03.) In this connection, Rhea testified that he had also spoken to Rice about this matter. (Tr. 526.) Rhea conceded, however, that notwithstanding what Rice's views were concerning the Satellite Music Network, he (Rhea) had no reason to believe that Cox did not make her own accounting assessment as to the fact that it was too costly. (Tr. 526.)

113. Rhea further testified that Rice was involved in the decisions to hire and/or fire several station employees including Chip Ramsey (Tr. 486-87), Steve Holler (Tr. 488-90), Mike Steel,¹⁴ and Mark Savage.¹⁵ Rhea testified that Ramsey was already working as the program director of WBOW when he became the general manager of the station. Rhea stated that Rice told him that Ramsey had worked for him before, that he did not like him then, and that he still did not like him. Rhea concluded from Rice's statement that Ramsey's job was on the line. (Tr. 483-84, 486.) Rhea testified that at the conclusion of the college baseball season he received instructions from Cox to fire Ramsey. (Tr. 487, 510-11.) Ramsey could not be fired earlier because of a contract the station had with Indiana State University which called for Ramsey to do the play-by-play of their baseball games. (Tr. 486.) Rhea testified that he knew Ramsey was going to be fired and that it was "just a matter of waiting until the baseball season was over." (Tr. 487.) Rhea also testified that he "knew how Mike [Rice] felt about him [Ramsey], that Mike wanted him out of there." (*Id.*) Rhea fired Ramsey as he was instructed to do. (Tr. 510-11.)

114. According to Cox, although Rice did not like Ramsey, Rice neither directed her to fire Ramsey nor suggested that he be fired. (Tr. 573.) Cox stated that she did not discuss the firing with Rice before she ordered Ramsey terminated. (Tr. 591.) Cox testified that she directed the firing of Ramsey because there had been a change in the WBOW format that Ramsey was not happy about, and his attitude was reflected in his work. Cox denied that her decision to have Ramsey fired was affected by Rice's dislike for him. (Tr. 573.)

115. Steve Holler was an announcer for WBOW. He was the son of the station's office manager. He had been living in Florida and wanted to return to Indiana. He had "some small amount of experience as a jock . . . [but it was known that he] was a rookie." (Tr. 487-88.) Rhea stated that he decided to employ Holler after speaking with Cox and determining that there would be no problem in doing so. (Tr. 488.)

¹⁴ See paragraphs 118-22, *infra*.

¹⁵ See paragraphs 123-28, *infra*.

116. In the summer of 1992 (Tr. 489), on the first day Holler was on the air, Rice was coincidentally working at the AM transmitter site and had heard Holler's on-air performance. Rhea testified that Rice telephoned him and said: "I want him off the radio. He isn't worth a damn. Get him off the radio." (Tr. 488.) Rhea stated that he was "really upset" about this because it was Holler's first day on the job and, Rhea felt, he should have been given a chance. (*Id.*) Rice later came to the station and Rhea "confronted him." Rhea told Rice: "You're not giving him a chance. He just started." (Tr. 489.) According to Rhea, Rice responded: "I don't give a damn. Get him off the station." (*Id.*) Later that day Cox called Rhea and told him to "[g]et rid of" Holler. (*Id.*) Cox subsequently sent the appropriate paper work and Rhea fired Holler. (Tr. 489-90.)

117. According to Cox, she did not want to hire Holler because, if he had problems, there was the potential for losing his mother, who was an excellent employee. (Tr. 574.) Cox further testified that Rhea never wanted to hire Holler in the first place because his mother worked for the station but Rhea "didn't have the guts not to hire him nor to really say you're not good, I'm going to fire you." (Tr. 248.) Cox also testified that Rhea was not opposed to firing Holler, that it was Rhea who ultimately decided to fire him, and that Rhea told her he was going to fire Holler. Cox did not know whether Rice had instructed Rhea to fire Holler. (Tr. 248-49.)

118. Testimony Relating to the Employment of Mike Steel. Mike Steel was the program director of WZZQ for about two or three months beginning in February or March 1992. (Tr. 263-64, 405, 484.) According to Rhea and Hanks, Rice was involved in the hiring and firing of Steel.¹⁶

119. In February 1992, WZZQ's program director resigned. (Tr. 555.) Subsequently, Rhea testified, at a luncheon meeting, Rice told Rhea that he (Rice) knew an announcer whom he thought they might be able to get for the WZZQ program director position. The announcer was Steel. (Tr. 483-84, 509-10.) Hanks also testified that Rice discussed hiring Steel with him. Hanks stated that Rice told him that he had heard Steel on a radio station in Warrenton, Missouri, that Rice said he had gotten in touch with Steel, and that the two had met and talked and discussed programming philosophies. Hanks could not recall whether Steel initiated the contact with Rice, or whether Rice initiated the contact with Steel. Hanks stated that Rice "really liked" Steel's "concept of promotions" and the fact that Steel came from a Top 40 background. Hanks testified that Rice told him that he had asked Steel to come to work in Terre Haute and be a program director there. According to Hanks, Rice said that Cox would take care of the hiring. (Tr. 405-06.) Rhea testified that, some time after the lunch meeting with Rice, he (Rhea) received a call from Cox telling him to find a motel room for Steel, who was coming to work for the station. (Tr. 484, 510.) Cox did not tell Rhea during that call that Steel was being hired at Rice's direction. (Tr. 510.)

¹⁶ Both Hanks and Rhea testified that they had not seen or spoken to each other since they left the Licensees' employment. (Tr. 472, 505-06.) Each was subpoenaed to appear and testify at the hearing. (Tr. 361, 475.)

120. During the time Steel was employed at WZZQ, he changed the station's reporting status in the trade publication R&R from Album Oriented Rock (AOR) to Top 40. (Tr. 406-07.) According to Hanks, Rice was "furious" at Steel for making this change and, in a telephone conversation, told Hanks that he (Rice) wanted Steel "gone immediately." (Tr. 407.) Rhea, too, testified that Rice was "livid" and "went ballistic" over the status change. (Tr. 485.) Rhea further stated that Cox told him that Rice wanted Steel "out of there immediately." (*Id.*) Both Hanks and Rhea testified that Cox also had a strong negative reaction to, and was upset by, the change Steel had made. (Tr. 444-45, 511-12.) Rhea testified that he fired Steel at the instruction of Cox (Tr. 485, 511, 512) and Rice (Tr. 511). According to Rhea, Cox "overnighted" Steel's termination papers and check to him (Rhea). (Tr. 485.)

121. The testimony of Cox relating to the employment of Steel differed from that of Hanks and Rhea. Cox stated that she learned about Steel from another announcer. The station where Steel worked was going "digital," and a lot of employees were being let go. She had heard Steel on the air and asked Rice if he knew Steel because Rice knew a lot of people in the broadcast industry. Rice was familiar with Steel's name. (Tr. 263.) Cox did not recall precisely how she contacted Steel, but she did recall his dropping off his résumé at her office. Cox stated that she then called Steel in for an interview and decided to hire him. (Tr. 264.) She also testified that Rice did not direct her to hire Steel, nor did she get Rice's approval to hire Steel. (Tr. 555.) However, Cox admitted that she did not know, and would have no way of knowing, whether Rice had any conversations with others at WZZQ regarding the hiring of Steel. (Tr. 586.)¹⁷

122. Cox testified that after she learned about the R&R reporting change, she telephoned Rhea and asked: "[W]hat the hell is going on here?" (Tr. 265.) She stated that in her conversation with Rhea, she told him she was "extremely upset" about the reporting change, and Rhea told her that he did not think "it was that big of a deal, but that he would take care of it." (Tr. 568-69.) Cox assumed that by taking care of it, Rhea meant that he would reverse the reporting change. (Tr. 569.) Cox further testified that she did not instruct Rhea to fire Steel. On the contrary, Cox stated that Steel was not fired; he resigned. (Tr. 560.)¹⁸

¹⁷ Similarly, Cox testified that Hanks and Rice were social friends, and that Hanks, among other things, visited Rice's home. (Tr. 550, 580.) When asked whether there could have been a business reason for Hanks' visit(s), Cox responded: "No . . ." (Tr. 580.) However, Cox admitted that she was not present when Hanks visited Rice's home, that she did not know what they discussed, and that she was speculating that the discussion was social. Further, Cox testified that, after April 1991, Hanks and Rice had telephone conversations, and that some of them may have taken place after hours. Cox admitted that she did "not always" know what was discussed in these after-hours telephone conversations. (Tr. 581-82.) Moreover, Cox testified that, although the Licensees had no policy requiring new hires of on-air personalities to be cleared with Rice, she did not know whether Hanks in fact cleared such new employees with Rice before hiring them. (Tr. 552, 599.) In this regard, Cox stated that Hanks "very well could have" cleared new hires with Rice because he (Hanks) was very indecisive. (Tr. 599-600.)

¹⁸ In its reply findings and conclusions, the Bureau requests that Cox's testimony that Steel resigned be stricken. For the reasons stated on the record at Tr. 639, the Bureau's request is denied.

123. Testimony Relating to the Termination of Mark Savage. Mark Savage (also known as Mike Bianchi) was the program director of WZZQ from April to November 1992, at which time he was fired. Savage was hired by Rhea, who considered him an "excellent" employee. (Tr. 490-91, 569.) According to Rhea and Hanks, Rice was involved in the firing of Savage.

124. Hanks testified that in late October or early November 1992, he, Rice, and Cox drove to Terre Haute from St. Peters, Missouri, for the express purpose of firing Savage. According to Hanks, Savage was not doing well in maintaining the station's format. Every time Hanks would "tweak [or] fine tune" WZZQ's format, Savage "would start veering back off focus again." (Tr. 378-81.) Hanks stated that Rice complained to him about this and told him that he (Rice) had decided that it was time to get rid of Savage. When Rice told him this, Hanks asked if he should "start a search" for a replacement. According to Hanks, Rice replied: "Yeah, I'll do a little looking around too." (Tr. 380-81.)

125. Hanks testified that when they reached Terre Haute, he, Rice, and Cox met in Rhea's office. Hanks stated that he, Rice, and Rhea stayed in Rhea's office and talked while Cox, alone, went downstairs to Savage's office to fire him. (Tr. 382.) According to Hanks, during the conversation in Rhea's office, when Cox was out of the room, Rice, referring to the firing of Savage, said: "You know, I can't do that anymore. Janet [Cox] has to do that." (Tr. 383; *see also* Tr. 378-79, 386.)

126. Rhea recalled the events in question differently. Rhea testified that Rice and Cox came to Terre Haute together to fire Savage. He was not sure whether Hanks also came at that time. Rhea stated that he, Cox, and Rice met in an office Rice maintained in the building, and that Rice said to him: "You and Janet [Cox] go down there and get him [Savage] out of here." (Tr. 493.) According to Rhea, he and Cox then fired Savage. "[Rhea] spoke the words and [Cox] passed out the paper work." (Tr. 493-94.) After Savage was fired, Rhea testified, he told Rice that he was not happy about it and Rice, who was "gloating," replied that firing Savage "ought to give you [Rhea] a sense of power." (Tr. 494.)

127. Cox testified that she drove to Terre Haute to terminate Savage and that she had his severance pay check with her. According to Cox, neither Rice nor Hanks accompanied her on this trip. (Tr. 238-40.) At one point, Cox testified that it was Rhea's idea to fire Savage. (Tr. 239.) At another point, however, Cox testified that she thought it was Hanks who wanted Savage fired because "[h]e was difficult to get along with." (Tr. 570.) Cox was of the opinion that Hanks felt threatened by Savage because Savage "was maybe more talented than [Hanks] was . . . [and that Hanks] never wanted to have anybody who was a better talent than he was." (Tr. 570-71.) Cox stated that she learned from Savage, Hanks, and Rhea that there were conflicts between Savage and Hanks. Cox testified that Savage resented the input of Hanks because Savage felt he was more qualified than Hanks since he (Savage) had worked in larger markets and with more consultants. (Tr. 571-72.) Further, according to Cox, earlier on in his tenure at WZZQ, Savage resigned, only to "rescind[]" his resignation later. (Tr. 572; *see also* Tr. 589-90.)

128. Cox testified that Rice neither directed her to fire Savage nor told her that he wanted Savage fired. (Tr. 570.) Cox stated that Savage was fired for "multiple" reasons. Not only was Savage having problems following the format, but he also had personal problems which kept him from working longer than a 40-hour week, which was required for a program director. In addition, because of some of the changes in the format, Cox stated that she was concerned that "improper things . . . were going on." (Tr. 571.)

129. Testimony Relating to the Termination of John Rhea. Hanks testified that after the firing of Savage, he drove Rice and Cox back to St. Peters, Missouri. Hanks stated that while he was driving, he overheard Rice tell Cox that he was not pleased with Rhea's lack of motivation of the sales staff who, Rice thought, "were a couple of losers." (Tr. 386-87.) Rice told Cox: "[Y]our guy has got to go." (Tr. 387.) Hanks understood that by "your guy" Rice was referring to Rhea and to the fact that Cox had recruited and hired him. (*Id.*) Hanks stated that he felt "weird," "strange," and "uncomfortable" listening to this conversation, but he was in a position where he could not help but hear everything that was going on. (Tr. 387-88.) Hanks believed that Rice noticed his discomfort because Rice said to him: "Oh, we have these little meetings all the time," or words of a similar nature. (Tr. 388; *see also* Tr. 390.)

130. Subsequently, on December 16, 1992 (Tr. 478), Rice and Cox returned to Terre Haute, entered Rhea's office and sat down. According to Rhea, he asked them: "Who are we all taking out today? Who are you all shooting today?" Rice replied: "You." Rhea then asked why and Rice replied: "Change in direction." (Tr. 496.) After Rice left the room, Rhea asked Cox why he was being let go. According to Rhea, Cox told him it was because of Rice's displeasure with WBOW's financial figures. (Tr. 497.)

131. Cox testified that it was her decision to fire Rhea. She made this decision, she stated, because the station was not performing up to her expectations, there were both revenue and personnel problems (Tr. 234), Rhea told her "numerous things . . . that were not true" (Tr. 249), and his references had not told the truth when she called them (Tr. 238). Cox further testified that Rice accompanied her on this trip to Terre Haute in order to be a witness to Rhea's firing. In this connection, Cox stated that it was recommended to her that there always be two individuals present at the termination of an employee, especially one in a management position. (Tr. 232, 235-37, 335.) Rhea agreed that it was "probably" better to have a third-party witness to an employee's termination. (Tr. 524-25.) Cox did not know if Rice did or did not make a statement to Hanks, during one of the trips Hanks, Cox and Rice made to Terre Haute, about Rice having "meetings" with her. Cox did not pay attention to their conversations at all times. (Tr. 241-42.)

132. Letters Written by Michael Rice. The record in this proceeding contains four letters written by Rice relating to the Licensees. (Bur. Ex. 1, pp. 24, 26, 30; Bur. Ex. 9.) The first letter was addressed to Dale A. Palmer, KZZT Radio, Moberly, Missouri, was written on "Contemporary Media Broadcasting Group" letterhead, and was dated April 29, 1993. (Bur. Ex. 1, p. 24.) Therein, Rice stated that he was "[f]ollowing up" on Palmer's telephone calls to Cox.

Rice informed Palmer that "we do not want to sell the bare CP. [sic] for the Huntsville, MO. station." Rice also stated:

We have had three other bona fide inquiries to purchase the station after it is built. . . .

. . . .

However, with the quickly changing industry, we are always interested in business arrangements that are mutually beneficial to all concerned.

Soon, we will begin our plans to construct KTDI and locate our main studio location in Moberly, and a second studio at Macon, Mo.

If you or your associates would be interested in purchasing the station once it is built and on the air, or have some other arrangements in mind, feel free to contact us.

If you have any further thoughts or ideas, please let me or Janet [Cox] know.

(*Id.*)

133. The second letter was addressed to Jerrell A. Shepherd, KRES Radio, Moberly, Missouri, was written on "Contemporary Media Broadcasting Group" letterhead, and was also dated April 29, 1993. (Bur. Ex. 1, p. 26.) Therein, Rice stated that he was "[f]ollowing up" on Shepherd's telephone call to him. Again, Rice stated that "we do not want to sell the CP. [sic] for the Huntsville, MO. station." Rice also wrote:

Contemporary Broadcasting, Inc. does not have the CP for sale, as was told to you by [a] Broker/equipment salesman

. . . .

We have had three other bona fide inquiries to purchase the station after it is built. . . .

. . . .

However, with the quickly changing industry, we are always interested in business arrangements that are mutually beneficial to all concerned. This is why I suggested you consider a swap of the Lebanon, Mo. property for the Huntsville, Mo. property.

. . . .

If you have any further thoughts or ideas, please let me know.

(*Id.*, underlining in original, italics added.)

134. The third letter was addressed to Shepherd, was written on a "Contemporary Media Broadcasting Group" Fax Line Transmittal Sheet, and was dated August 3, 1994. (Bur. Ex. 1, p. 30.) It was written in response to a letter, dated July 20, 1994, from Shepherd to Rice wherein Shepherd stated:

I would like to repeat my offer to buy the Huntsville, Missouri C.P. I will pay you the maximum the FCC will allow. . . .

I'm quickly available if you decide you would like to unload.

(*Id.* at 28.) In his August 3, 1994, response, Rice wrote:

I do not recall you ever making an offer to buy KAAM (FM) Huntsville, MO.

You did inquire several times, and I wrote you a letter stating that Contemporary Media does not sell CP,s [sic] but we would be open to a discussion with you over trading KAAM . . . for KIRK and KJEL, Lebanon that your company has been attempting to "unload" for years.

That letter I wrote to you went unanswered, so I figured due to your personal situation you were not interested in expansion.

We fully intend to build KAAM, Huntsville, and operate the station, and at this time none of our stations are for sale.

(*Id.* at 30.)

135. The fourth letter was addressed to Cox, was written on paper with no letterhead, and was dated November 13, 1995. (Bur. Ex. 9.) Therein, Rice stated that the letter was a "follow-up [sic] on our phone call today." Rice further stated:

It seems that we should install a concrete pad as Cloyd [Cox's husband] suggested to set the new building on top of . . . [sic] we need to be sure that Tom Holmes installs grounding material that will tie the building into the tower ground, and the other buildings at the time the building is placed on the pad. The grading should be done so water and snow does not come inside the door.

I think that you need to have a stearn [sic] talk with Ken [Kuenzie] & Dennis [Klautzer]. It is time for them to stay way away from KBMX, and let the manager manage. Dennis should direct any input to you or Dan [Leatherman].

If this does not happen, and you get more reports of incidents, we will have to change the locks and keep them out of the station.

I'm afraid that if Dennis and Ken continue, we WILL LOSE the present manager.

One way we can keep morale up is to keep purchasing new equipment such as remote gear, promotional items, vans, etc., so that we give an image of progress, not a dead-end station.

....

I think we need to be very positive in running the stations, and fair with everyone, but in the past we have been too nice, as in the case of Paul Hanks.

You need to make sure that Mary and Selina do almost all of the bookkeeping and office work, so that you can be free to do what you do best, managing the corporations.

(*Id.*; Tr. 309-10, 597.)

136. Cox testified that she did not consider Rice's November 13, 1995, letter to be a directive to do the things mentioned. Rather, Cox stated, she considered this letter as one "written by an individual whose whole life is the radio . . . [a]nd he is s[i]tting at an institution with nothing to do but idle time." (Tr. 311, 313-14.) She also remarked: "[O]nce he went to prison what [else] does he have to think about?" (Tr. 341.) Cox further testified that, in his November 13, 1995, letter, Rice was making comments about certain things that happened a long time ago which she considered to be "kind of off the wall." (Tr. 311.)

CONCLUSIONS OF LAW

137. This proceeding was designated for hearing to determine the effect of Michael Rice's criminal convictions on the basic qualifications of the Licensees (Issue 1), to determine whether the Licensees misrepresented facts to the Commission (Issue 2), to determine whether there was an unauthorized transfer of control of the Licensees (Issue 3) and, ultimately, to determine whether the Licensees have the requisite qualifications to be or to remain Commission licensees (Issue 4). The findings establish, and it is concluded, that, while there was no unauthorized transfer of control, Rice's felony convictions and the Licensees' misrepresentation and lack of candor in certain reports submitted to the Commission must result in disqualification. Accordingly, it is ultimately concluded that the Licensees lack the requisite qualifications to be or to remain licensees of their respective radio stations, that the captioned licenses and permits must be revoked, and that the captioned application must be denied.

Issue 1: The Felony Convictions of Michael Rice

138. This issue was specified in order to determine the effect of Michael Rice's criminal convictions on the basic qualifications of the Licensees. As was stated in the *OSC*, "Rice's conviction for serious and multiple felonies clearly requires that his misconduct must be considered in evaluating [CMI, CBI, and LBI's] qualifications to remain a Commission licensee." *OSC* at para. 9.

139. The facts surrounding Issue 1 are undisputed. Michael Rice is the sole shareholder, as well as the President and Treasurer, of CMI, CBI, and LBI. He is also a member of the Board of Directors of CMI, CBI, and LBI. In this regard, CMI and CBI each have a three-person Board, whereas LBI has a two-person Board. Since March 1997, Rice has been the only member of the LBI Board; the other position has been vacant. Pursuant to the bylaws of each corporation, Rice, as the sole shareholder, has the power to elect its Board of Directors.

140. On August 31, 1994, Rice was convicted in the State of Missouri of four counts of sodomy, six counts of deviate sexual assault in the first degree, and two counts of deviate sexual assault in the second degree. Each of these convictions constituted a felony. It was stipulated in the criminal proceeding that if certain witnesses were called to testify they would have testified that Rice put his mouth or hands on the witnesses' genitals. The offenses for which Rice was convicted took place between December 1985 and October 1990, and involved five children.

141. Rice was sentenced to eight years in prison for each of the four sodomy counts, seven years in prison for each of the six deviate sexual assault in the first degree counts, and five years in prison for each of the two deviate sexual assault in the second degree counts. Rice's sentences, totalling 84 years, were to run concurrently. Therefore, the maximum time Rice would have to be imprisoned was eight years. Rice was incarcerated at the Farmington Correctional Center, Farmington, Missouri, on September 30, 1994.

142. At the heart of Issue 1 is the application to the facts outlined above of the Commission's policy statements on character qualifications in broadcast licensing. The key pronouncements made by the Commission in this regard are contained in *Character Qualifications*, 102 FCC 2d 1179 (1986) (subsequent history omitted) ("*1986 Character Policy Statement*"), and the *1990 Character Policy Statement*, 5 FCC Rcd 3252 (1990).¹⁹

143. The *1986 Character Policy Statement* concluded, *inter alia*, that the non-FCC behavior of concern to the Commission was that which would allow the agency to predict whether an applicant has or lacks the character traits of "truthfulness" and "reliability." 102 FCC

¹⁹ The Licensees contend that the *1986* and *1990 Character Policy Statements* are arbitrary, capricious, and unlawful. Such a determination, however, would be far beyond the delegated authority of the Presiding Judge. Cf. *Anax Broadcasting, Inc.*, 87 FCC 2d 483, 486 (1981); *Goodlettsville Broadcasting Company, Inc.*, 8 FCC Rcd 57, 58 (Rev.Bd. 1992).

2d at 1195. With respect to criminal convictions, the Commission stated that inquiry would be focused only on felony convictions "involving false statement or dishonesty," such as perjury, criminal fraud, and embezzlement, on the theory that such convictions were relevant in predicting the propensity of an applicant to be truthful and reliable in its dealings with the Commission. *Id.* at 1196-97 and 1196 n.40. The Commission further stated that criminal convictions not involving fraudulent conduct might be relevant if there was a "substantial relationship between the criminal conviction and the applicant's proclivity to be truthful or comply with the Commission's rules and policies." *Id.* at 1197.

144. The Commission also stated in the *1986 Character Policy Statement* that it would ordinarily refrain from taking any action on non-FCC misconduct prior to adjudication by another agency or court. 102 FCC 2d at 1204-05. Nevertheless, the Commission acknowledged that:

there may be circumstances in which an applicant has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation. . . . Such misconduct might, of its own nature, constitute *prima facie* evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee, and might be a matter of Commission concern even prior to adjudication by another body.

Id. at 1205 n.60.

145. The *1986 Character Policy Statement* listed several mitigating factors to be taken into consideration in determining the weight to be accorded the acts of misconduct. These factors were: the willfulness of the misconduct, the frequency of the behavior, the currentness of the misconduct, the seriousness of the misconduct, the nature of any participation of managers and owners, the efforts made to remedy the wrong, and the applicant's record of compliance with the Commission's rules and policies. 102 FCC 2d at 1227-28.²⁰ The Commission noted that some of these factors were "good evidence" as to whether rehabilitation had occurred, but stated that no separate rehabilitation inquiry appeared necessary, "although findings regarding rehabilitation would not be inappropriate." *Id.* at 1228-29. The Commission also imposed a strict 10-year limitation on relevant character inquiries. *Id.* at 1229.

²⁰ The *1986 Character Policy Statement* also considered misconduct by corporate entities, and discussed the factors which would be taken into consideration in mitigation of such misconduct. Included among those factors were: whether the effect of the misconduct could be tempered by the removal of the individual responsible for the wrongdoing, whether the alleged wrongdoer was actively and actually involved in the day-to-day operations and activities of the stations, whether the licensee took action to remove the wrongdoer before or after the Commission became aware of the misconduct, and the efforts made by the licensee to prevent recurrences of the wrongdoing. 102 FCC 2d at 1218-20. The Commission further stated: "While the impact of the individual's actions on daily broadcast operation may have been limited, the involvement of the individual in broadcast activity may raise a character question and warrant[] at least some exploration." *Id.* at 1220.

146. In the *1990 Character Policy Statement* the Commission revisited its earlier pronouncement because it had taken an overly narrow view of the range of misconduct relevant to licensing decisions. The Commission stated that it believed that a propensity to comply with the law generally was relevant to its public interest analysis, and that an applicant or licensee's willingness to violate other laws and, in particular, to commit felonies, bore on the Commission's confidence that an applicant or licensee would conform to FCC rules and policies. Consequently, the Commission held that evidence of any felony conviction would be relevant in evaluating an applicant or licensee's character. Because of the serious nature of all felonies, the Commission continued, any such conviction provided an indication of an applicant or licensee's propensity to obey the law. 5 FCC Rcd at 3252.

147. While the *1990 Character Policy Statement* broadened the range of relevant non-FCC misconduct to embrace any felony conviction, the Commission recognized that not all such convictions were equally probative. Therefore, the Commission stated that it continued to believe that the mitigating factors specified in the *1986 Character Policy Statement*, listed above, must be taken into consideration. To this list, however, the Commission added the factor of rehabilitation. 5 FCC Rcd at 3252. With respect to rehabilitation, the Commission stated that it would consider whether the applicant has not been involved in any significant wrongdoing since the misconduct occurred, how much time has elapsed since the misconduct, the applicant's reputation for good character in the community, and meaningful measures taken by the applicant to prevent the future occurrence of misconduct. *Id.* at 3254 n.4.

148. An analysis of the factors that the *1986* and *1990 Character Policy Statements* deemed relevant in determining the weight to be accorded Rice's felony convictions reveals that all but one of those factors militate against the Licensees. First, it is abundantly clear that Rice's misconduct was extremely serious and was of a nature that is so egregious as to shock the conscience and evoke almost universal disapprobation. Thus, Rice was convicted of 12 felonies involving the sexual abuse of five children, and Rice was sentenced to serve a lengthy prison term. The Licensees argue that, in ordering Rice to serve only 8 out of a potential 84 years in prison, the judge in the criminal proceeding found sufficient reason for leniency and that this mitigates the seriousness of Rice's misconduct. This argument is rejected as complete speculation. There is simply no evidence relating to the reasons why the judge in the criminal proceeding ordered Rice's sentences to run concurrently. In any event, it can hardly be contended that eight years is not a significant prison sentence.

149. Second, the record does not reflect that Rice's misconduct was other than willful and intentional. Third, Rice's misconduct was repeated, as evidenced by his conviction of 12 felonies, and his misconduct took place over an extended, five-year, period of time.

150. Fourth, all of the misconduct occurred within the 10-year period the Commission deems relevant to character inquiries, *i.e.*, the 10 years before designation for hearing. In this regard, the Licensees note that there is no evidence of any misconduct by Rice subsequent to October 1990, and that nearly seven years have passed since the last event giving rise to his convictions. While this is undoubtedly true, it carries very little weight. This is so because Rice

was arrested in November 1990 (the month following the last incident) for criminal charges involving sexual acts with a teenager, and formal criminal proceedings were initiated against him. Therefore, Rice knew at the time of his arrest that, as the subject of a formal criminal proceeding, all of his subsequent conduct would be carefully scrutinized. As a result, the fact that Rice committed no further criminal acts while the "spotlight" was on him is not entitled to much credit. Cf. *RKO General, Inc.*, 35 FCC 2d 100, 103 (1972) (probative value of evidence of programming occurring after notice is given that a renewal application is in jeopardy is small). In addition, since Rice has been incarcerated for almost three of the nearly seven years which have passed since the last event leading to his conviction, he presumably had no opportunity to commit any further acts of misconduct.

151. Fifth, the individual guilty of the misconduct, Rice, is the sole shareholder, and is an officer and director, of CMI, CBI, and LBI. Indeed, Rice is the only remaining director of LBI. Pursuant to the bylaws of each corporation, Rice, as the sole shareholder, has the power to elect its Board of Directors. Sixth, the Licensees' efforts to remedy the wrong, namely, their attempt to isolate Rice from having any "managerial, policy, or consultative role" in the affairs or operations of the stations, was not completely successful. As will be discussed in connection with Issue 2, the evidence establishes that, after his release from the hospital in October 1991, Rice did consultative work for the Licensees, was involved in at least some of the personnel and programming decisions of the Licensees' stations, and engaged in other management-level activities.

152. The Licensees place great weight on the Boards of Directors' resolutions which, they claim, insulated Rice from the affairs and operations of the stations. It is clear, however, that such weight is misplaced since those resolutions were largely ineffective or were ignored. As noted above, Rice was involved in some personnel and programming decisions and engaged in management-level activities at the time he was supposed to have been insulated. Further, Rice was permitted to perform consultative work for the Licensees in direct contravention of the very resolutions upon which they rely. When asked why no corporate resolutions were passed authorizing Rice's consultative activities, Janet Cox, the Chief Executive Officer, Vice President, Secretary, and a director of CMI and CBI, and the Vice President of LBI, testified that the corporations were informally structured and that Rice had a lot going on in his life at that particular time. However, the Licensees may not be given credit for the adoption of formal corporate resolutions without also suffering the consequences for ignoring those resolutions, or for acting informally, when it suited their purposes to do so. In addition, it is not apparent what the other matters going on in Rice's life had to do with the failure of the Boards to adopt resolutions authorizing his consultative work. The initial resolutions were adopted without Rice's participation and, at the time the consultative activities were undertaken, CMI, CBI, and LBI had other Board members who could have acted.

153. In contrast to the factors discussed above, the lone mitigating factor in the Licensees' favor is their collective good record of compliance with the Commission's rules and policies. However, this favorable factor does not, in and of itself, outweigh the other factors which all militate against the Licensees.

154. The Licensees argue that they should not be penalized for Rice's felony convictions because there is no evidence connecting his misconduct to their record of compliance with the Commission's rules and policies or to their propensity to be truthful in their dealings with the Commission. While it does not appear that Rice's criminal activities affected the broadcast operations of the Licensees' stations, the same may not be said of the Licensees' proclivity to deal truthfully with the Commission. In other words, there is a nexus between Rice's criminal conduct and the truthfulness of certain representations the Licensees made to the Commission. Specifically, as will be discussed under Issue 2, the evidence establishes that the Licensees misrepresented facts and lacked candor in reporting to the Commission the nature and extent of Rice's role in the management, operations, and affairs of their stations during the time the criminal proceedings were pending. This misrepresentation and lack of candor was a direct result of Rice's criminal misconduct. Had there been no such misconduct, the Licensees would have had no need to submit to the Commission reports which misrepresented facts and lacked candor. Therefore, Rice's criminal activities began a chain of events which ultimately led to the Licensees' deception.

155. In the 1986 and 1990 *Character Policy Statements*, the Commission placed paramount importance and controlling significance on the predictive value of conduct demonstrating whether an applicant or licensee possessed the character trait of "truthfulness." The evidence establishes that the Licensees lack this trait and that they cannot be relied upon to deal with the Commission in a fully truthful, candid, and forthright manner. It is also clear that the evidence of deception may be traced back to Rice's criminal activities. Consequently, it must be concluded that CMI, CBI, and LBI are not basically qualified to be or to remain Commission licensees. *E.g., Leflore Broadcasting Co., Inc.*, 65 FCC 2d 556 (1977), *aff'd*, 636 F.2d 454 (D.C.Cir. 1980); *Sea Island Broadcasting Corporation of S.C.*, 60 FCC 2d 146 (1976), *aff'd*, 627 F.2d 240 (D.C.Cir. 1980), *cert. denied*, 449 U.S. 834 (1980).

156. The cases cited by the Licensees in support of their position that disqualification is not warranted are all distinguishable from the instant case. In both *Hara Broadcasting, Inc.*, 8 FCC Rcd 3177, 3179 (Rev.Bd. 1993), and *The Petroleum V. Nasby Corporation*, 9 FCC Rcd 6072 (ALJ 1994), *aff'd in part and modified in part*, 10 FCC Rcd 6029 (Rev.Bd. 1995), *recon. granted in part*, 10 FCC Rcd 9964 (Rev.Bd. 1995), *remanded*, 11 FCC Rcd 3494 (1996), *summary decision*, FCC 97D-04 (ALJ March 24, 1997), the applicant or licensee's general proclivity to deal truthfully with the Commission was not in question. That is not the case here, where there has been a demonstrated misrepresentation and lack of candor resulting from the criminal misconduct. In addition, the wrongdoer in *Nasby* divested all of his stock in the licensee and resigned his director and officer positions, thereby eliminating any potential for influence over the licensee's affairs. Here, however, Rice is the sole stockholder, as well as an officer and director, of CMI, CBI, and LBI. He has the power to elect their Boards of Directors and is, therefore, in a strong position to influence the operations of those corporations. Indeed, the record reflects that Rice did influence some personnel and programming decisions as well as engage in management-level activities.

157. In *Capitol City Broadcasting Company*, 8 FCC Rcd 1726, 1732-33 (Rev.Bd. 1993), no criminal charges were adjudicated or even sought against the applicant, and there was no reason to suspect the applicant of trying to mislead any agency including the Commission. Here, there have been felony convictions against Rice, and misrepresentation and lack of candor are involved. In *The Kravis Company*, 11 FCC Rcd 4740 (1996), unlike the instant case, there was no final adjudication of guilt and the representations of the licensee were not at issue. See Attachment A of the Licensees' proposed findings and conclusions (official notice taken).²¹ Further, the Commission's ruling made no mention of the criminal misconduct so it is not clear that it was even considered. In *Wilkett v. ICC*, 710 F.2d 861 (D.C.Cir. 1983) (subsequent history omitted), there was no record of "company misdeeds" and the carrier's fitness was at issue only because the sole proprietor had been convicted of nontransportation-related crimes. 710 F.2d at 863. Here, there is a record of "company misdeeds" stemming from the criminal misconduct of the sole shareholder, namely, the Licensees' misrepresentation and lack of candor.

158. The Licensees contend that Rice should be treated by the Commission as having been rehabilitated because he has an excellent reputation in the community, he has not been involved in any misconduct for nearly seven years, and remedial measures were taken to insulate him from the operation and affairs of the stations. These assertions do not establish rehabilitation. The statements of Rice's character witnesses are not entitled to great weight inasmuch as they fail to address the impact of Rice's criminal convictions on his reputation. The statements of Sellmeyer, Thompson, and White made no reference at all to Rice's felony convictions, and the statement of Butler acknowledged that he was not familiar with Rice's criminal activities. Moreover, even assuming that Rice has an excellent reputation for good character, consideration of the remaining rehabilitation factors does not favor Rice. As discussed earlier, very little weight is warranted for the time period which has elapsed since Rice's last act of misconduct, and the Licensees did not effectively isolate Rice from the management, operations, and affairs of their stations.²²

159. *Alessandro Broadcasting Company*, 99 FCC 2d 1 (Rev.Bd. 1984) (subsequent history omitted), cited by the Licensees in support of their argument, is distinguishable. In that case, the applicant had been "completely rehabilitated under local law, as evidenced by the issuance of a Certificate of Rehabilitation by the Superior Court of California," his civil rights had been restored, and no "predictive nexus" was found between the applicant's past crime and his current and future fitness to be a Commission licensee. 99 FCC 2d at 11 n.13. The facts of the instant case are not even remotely similar to those in *Alessandro*.

²¹ Attachment A consists of the May 21, 1991, letter to the Commission from counsel for The Kravis Company reporting on the status of a criminal proceeding involving the company's president and sole stockholder.

²² The Licensees' request to take official notice of the material contained in Attachment B of their proposed findings and conclusions is denied. The fact that Rice will enter and complete a special rehabilitation program before he is released from prison is not probative evidence of rehabilitation at this point in time. See *Memorandum Opinion and Order*, FCC 96M-202, released September 5, 1996.

Issue 2: Misrepresentation Issue

160. This issue was specified in order to determine whether the Licensees misrepresented to the Commission that, subsequent to his arrest, Rice had been completely excluded from any involvement in the management or operation of the CMI, CBI, and LBI radio stations. The issue was based upon reports filed by the Licensees, beginning in 1991, relating to the criminal charges pending against Rice and the Licensees' efforts to insulate him from the management, operations, and affairs of its radio stations. *OSC* at paras. 14-15.

161. In the *1986 Character Policy Statement*, 102 FCC 2d at 1210, the Commission emphasized that the trait of "truthfulness" was one of the key elements of character necessary to operate a broadcast station in the public interest. If the Commission cannot believe and rely on its licensees' reports, it cannot maintain the integrity of its processes. *Tri-State Broadcasting Co., Inc.*, 5 FCC Rcd 1156, 1173 (Rev.Bd. 1990). Consequently, a licensee's intentional deception of the Commission by the submission of either false information or incomplete and misleading information is viewed as a "serious breach[] of trust." *1986 Character Policy Statement*, 102 FCC 2d at 1211. Where the submission of false or inaccurate information results from an intent to deceive, the remedy may be total disqualification, even if the facts concealed do not appear to be particularly significant. *Standard Broadcasting, Inc.*, 7 FCC Rcd 8571, 8573-74 (Rev.Bd. 1992), and cases cited therein.

162. The findings establish, and it is concluded, that the Licensees both misrepresented facts and lacked candor in their reports to the Commission. Specifically, in an exhibit attached to a May 14, 1992, FCC Form 307 application, the Licensees asserted that there had been "no change" in Rice's status with CBI. This was a false statement of fact and therefore a misrepresentation. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). In that same exhibit, the Licensees concealed pertinent facts and were not fully informative or completely forthcoming with respect to the true nature and extent of the activities being undertaken by Rice on behalf of, and with the knowledge of the Licensees. This constituted a lack of candor. *Id.* In their September 30, 1994, letter the Licensees repeated their earlier statements that, since his hospitalization, Rice has been "excluded from involvement" in the management and operations of the Licensees' stations and construction permits. This, too, was a false statement of fact and a misrepresentation. *Id.* The findings also establish, and it is concluded, that the Licensees' deception was intentional.

163. In light of these determinations, it must be further concluded that the Licensees cannot be relied upon to deal with the Commission in a fully truthful, candid, and forthright manner. Therefore, they lack the requisite qualifications to be or to remain Commission licensees, and their authorizations must be revoked. *E.g., Leflore Broadcasting; Sea Island Broadcasting.*

164. Initially, it must be noted that the phrase "lack of candor" does not appear in the specific language of Issue 2; the issue speaks only in terms of misrepresentation. The phrasing

of this issue, however, does not preclude a conclusion that the Licensees lacked candor. *KQED, Inc.*, 3 FCC Rcd 2821, 2826 (1988) (*dictum*). In this regard, in *Fox River*, 93 FCC 2d at 129, the Commission stated that, although misrepresentation and lack of candor can be distinguished in their manifestations, both "represent deceit; they differ only in form." Further, the *OSC* placed the Licensees on specific notice that the truthfulness of the representations contained in their reports was at issue, they were provided with a full and fair opportunity to litigate that issue (whether it was termed a "misrepresentation" or a "misrepresentation/lack of candor" issue), and they were not prejudiced by surprise. See *Maria M. Ochoa*, 7 FCC Rcd 6569, 6571 (Rev.Bd. 1992), *aff'd*, 8 FCC Rcd 3135, 3136 (1993), *recon. denied*, 9 FCC Rcd 56, 57-58 (1993), *aff'd*, 98 F.3d 646 (D.C.Cir. 1996) (Table); see also Tr. 638. Moreover, there are no facts which would have been adduced under a "misrepresentation/lack of candor" issue which were not adduced under the existing issue.

165. Turning to the facts, on June 14, June 21, August 1, and December 3, 1991, LBI and CBI informed the Commission that, since his hospitalization in April 1991, Rice has had "no managerial, policy or consultative role" in the affairs of the Licensees. On two of those occasions (June 14 and June 21, 1991), LBI and CBI further represented that, until the criminal charges were resolved, Rice was being "completely insulated and excluded from any involvement in the managerial, policy, and day-to-day decisions" involving the Licensees' stations and construction permits. In their September 30, 1994, letter the Licensees again represented that, since his hospitalization, Rice "has been excluded from involvement" in the management and operations of their stations and construction permits.

166. It is undisputed that in early 1992 Rice began doing work for the Licensees' stations, and the Licensees began using him in a consultative capacity. However, the Licensees did not disclose Rice's changed role to the Commission. On the contrary, in their May 14, 1992, exhibit, the first report submitted after Rice began his consultative and work activities, the Licensees misrepresented and concealed material facts. Specifically, the Licensees made a false statement of fact by representing that there had been "no change in Mr. Rice's status with [CBI]" when there had indeed been a change. The Licensees also concealed from the Commission the highly significant fact that Rice began to have a consultative role in the Licensees' affairs. Nowhere in the May 14 exhibit, or in any other submission, did the Licensees directly inform the Commission of Rice's consultative activities.

167. The Licensees argue that they did inform the Commission of Rice's consultative role, and that they did so by omitting the word "consultative" from the pertinent portion of their exhibit. In other words, the Licensees claim, since they had previously stated that Rice had "no managerial, policy, or consultative role," and their May 14, 1992, exhibit stated that Rice had "no managerial or policy role," the elimination of the word "consultative" was a "modifi[cation]" which "more accurately" described Rice's changed role. Cox also testified that by excluding the word "consultative," the Licensees were "trying to . . . be as truthful as possible with the FCC." This argument, as well as Cox's testimony, must be rejected.

168. First, the Licensees' contentions are belied by the very document they claim contained the disclosure, namely, the exhibit to their May 14, 1992, application. There, in the first sentence of the paragraph in question, the Licensees stated: "There has been no change in Mr. Rice's status with [CBI.]" (Emphasis added.) Second, if the Licensees had wanted to be "as truthful as possible" with the Commission, common sense and logic dictate that they would, at some point in time, have told the Commission directly and without obfuscation about Rice's consultative role. The record reflects, however, that Rice's activities were never directly reported, and Cox's strained and illogical testimony about having "modified" the Licensees' reports to "more accurately" describe Rice's changed role so as "to be as truthful as possible with the FCC" lacks credibility.²³ In this connection, the Presiding Judge notes that Cox appeared to be a very strong-minded, "straightforward," no-nonsense, take-charge, type of person. She was all business and answered the questions asked of her directly, bluntly, and without much embellishment or equivocation. Given the nature of her personality and testimony, the Presiding Judge has no doubt that if Cox had wanted the Commission to know that Rice was engaging in consultative activities, a clear statement to that effect would have been submitted, and the Commission would have known in no uncertain terms exactly what Rice was doing.²⁴ The fact that no such statement was ever submitted to the Commission indicates that the Licensees had no intention of disclosing Rice's changed role.

169. In view of the Licensees' conduct, the only way for the Commission to have discovered that the word "consultative" was left out of the exhibit would have been to compare, paragraph-by-paragraph, sentence-by-sentence, phrase-by-phrase, and word-by-word, at least five different multi-page reports filed by the various components of the Licensees in connection with separate matters over the course of nearly a year. Even if the omission of the single word "consultative" had been detected, the Commission still would not have known of Rice's consultative activities because the Licensees also represented in the same paragraph of the same exhibit that there had been "no change" in Rice's status with the Licensees. The Commission does not have the time, budget, or manpower to engage in such extensive efforts to discover the truth, or to play a game of "hide-and-seek" with those it regulates. *Standard Broadcasting, 7 FCC Rcd at 8573 n.7*. As the Court of Appeals stated in *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1139 (D.C.Cir. 1985):

[A]pplicants before the FCC are held to a high standard of candor and forthrightness. The Commission must license more than 10,000 radio and television stations in the public interest, and therefore relies heavily on the completeness and accuracy of the submissions made to it. *RKO General, Inc. v. FCC*, 670 F.2d 215, 232 (D.C.Cir. 1981), *cert. denied*, 456 U.S. 927 . . . (1982). Thus, "applicants . . . have an affirmative duty to inform the Commission of the

²³ It may also be concluded that Cox's testimony was itself a lack of candor.

²⁴ When asked by the Presiding Judge why a direct statement to the effect that Rice began engaging in limited or sporadic engineering tasks for the stations was not included in the reports filed with the Commission, Cox answered: "I don't know."

facts it needs in order to fulfill its statutory mandate." *Id.* Indeed, not only does the Commission "refuse to tolerate deliberate misrepresentations," *Nick J. Chaconas*, 28 F.C.C.2d 231, 233 (1971); *see also FCC v. WOKO, Inc.*, 329 U.S. 223, 227 . . . (1946); *WMOZ, Inc.*, 36 F.C.C. 202, 237-39 (1964), it may also premise a finding of lack of candor on omissions as well. *RKO General, Inc. v. FCC*, 670 F.2d at 230. As the [Review] Board . . . has stated, the "core" of a finding of lack of candor is an "'omission . . . [a] failure to be completely forthcoming in the provision of information which could illuminate a decisional matter.'" *Coastal Bend Family Television, Inc.*, 94 F.C.C.2d 648, 658 (Rev.Bd. 1983) (quoting *Fox River Broadcasting, Inc.*, 88 F.C.C.2d 1132, 1137 (Rev.Bd. 1982).

170. Apart from Rice's consultative role, the evidence establishes that, after his release from the hospital in October 1991, Rice was also involved in at least some of the programming matters and personnel decisions of the Licensees, rejected offers to purchase one of the Licensees' construction permits, invited an offer to purchase a station once it went on the air, suggested the trade of specific broadcast properties, and directed the group program director and two of the general managers of the Licensees' stations to perform certain tasks. All of these endeavors were management-level activities and some, such as programming and personnel matters, affected the daily operations of the stations. Yet the Licensees never informed the Commission of Rice's actions. Rather, the Licensees misrepresented in their September 30, 1994, letter that Rice had been "excluded from involvement" in the management and operations of its stations and construction permits since April 1991.²⁵

171. The record reflects that, after his release from the hospital, Rice was involved in the programming of WFMZ and WZZQ. Rice had listened to WZZQ and believed that the station had strayed from the central focus of its format. Rice asked Leon Paul Hanks, the Licensees' group program director, to visit the station to go through its music. As group program director, Hanks reported directly to Rice and gave him regular updates on how things were going at the stations. Hanks and Rice discussed programming matters over the telephone on a frequent basis, including problems with the program director at WZZQ and whether new songs added to the playlist were consistent with the station's format. If Rice heard something on the air he did not like, he notified Hanks, who was expected to take care of it. Rice was also sent copies of memos that Hanks addressed to the stations' program directors. Rice regularly checked KFMZ and WZZQ's new song reports in the trade publication R&R and complained to Hanks when too many new songs were added.

²⁵ Even assuming that Rice had no involvement in personnel and programming matters and that he did not engage in management-level activities, disqualification would still be warranted on the basis of the Licensees' deception with respect to Rice's consultative role. As the Supreme Court stated in *WOKO*, 329 U.S. at 227: "The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones."

172. In addition, Rice became involved in a programming matter at KBMX(FM). After being told by LBI shareholder Dennis Klautzer that the station needed more sound effects CDs, Rice sent general manager Daniel Leatherman a fax asking Leatherman to let him know if the station needed such CDs. Leatherman complied with Rice's request by responding to Cox. Rice also discussed programming matters with John Rhea, the general manager of WBOW(AM) and WZZQ(FM), and asked Rhea to obtain information about the cost of the Satellite Music Network. Rhea carried out Rice's instructions.

173. Cox testified that Rice had no involvement in programming decisions after April 1991. Richard Hauschild and Kenneth Brown, the current general managers of several of the Licensees' stations, testified that they had no communications with Rice regarding programming. However, neither Cox, Hauschild, nor Brown was questioned about any of the specific matters discussed in the preceding two paragraphs, and their testimony does not, therefore, undermine the facts which form the basis for the conclusion that Rice was involved in at least some programming matters after his hospitalization.

174. The evidence establishes that, after he was released from the hospital, Rice was involved in some of the personnel decisions of the Licensees. Rice directed Hanks to fire (*i.e.*, get a replacement for, get rid of, or let go) Janice Pratt, Bob Kinneson, Sean Madden, and Jeff Davis. Rice also informed Hanks that Ben Jacobs, Mike Steel, and Mark Savage should be fired. In addition, Hanks overheard a conversation in which Rice told Cox that John Rhea should be let go. Jacobs, Savage and Rhea were ultimately terminated, and Steel was either fired or resigned. Similarly, Rice directed Rhea to fire Steve Holler, Steel, and Savage.²⁶ Further, Rice approved moving Jacobs to the position of WZZQ program director after it had been suggested by Hanks. The record also reflects that Rice was involved in some manner in the hiring of Steel.

175. The evidence of Rice's involvement in personnel matters was challenged by Cox and Hauschild. However, it is clear that neither Cox nor Hauschild had any personal knowledge of Rice's conversations with, or directives to, Hanks and Rhea. In this connection, both Cox and Hauschild admitted that they had no way of knowing whether Rice directed anyone else to do something or whether Rice had a conversation about a particular matter with someone else. Cox further admitted that Hanks "very well could have" cleared new hires with Rice.

176. The only individual with personal knowledge of the disputed facts who could have rebutted the testimony of Hanks and Rhea was Rice himself. But Rice did not testify in this proceeding, although it appears that such testimony could have been arranged. Given these circumstances, the failure to call Rice "give[s] rise to the strongest inference against [the Licensees] which the opposing evidence permits." *Dow Chemical Co. (U.K.) v. S. S. Giovannella D'Amico*, 297 F.Supp. 699, 701 (S.D.N.Y. 1969); *see also A. C. Becken Co. v. Gemex Corporation*, 314 F.2d 839, 841 (7th Cir. 1963).

²⁶ Although Rhea attributed the termination of Chip Ramsey to Rice's dislike for him (Ramsey), there is no direct evidence that Rice ordered Ramsey's firing.

177. The record reflects that, after his release from the hospital, Rice rejected offers to purchase one of the Licensees' construction permits, invited an offer to purchase a station, and suggested the trade of specific broadcast properties. In April 1993, Rice sent letters to two individuals informing them that the Licensees did not want to sell the construction permit for their Huntsville, Missouri, station. One letter was written as a follow-up to telephone calls made to Cox, and the other was a follow-up to a telephone call to Rice. One letter also invited the recipient to contact the Licensees if he was interested in purchasing the station once it was built and on the air. The other also contained a reference to a suggestion made by Rice to "swap" radio station properties with the recipient. In July 1994, Rice received another offer to purchase the Licensees' Huntsville permit. In his August 1994 response, Rice related that CMI did not sell construction permits but stated that the Licensees "would be open to a discussion with you over trading" the Huntsville permit for two of the recipient's stations.

178. The Licensees contend that these letters did not relate to management, policy, or day-to-day decision making in connection with the operation of the stations. This argument is without merit. Suffice it to say, the determination as to whether or not to sell or trade a station or construction permit is the ultimate management-level decision, and demonstrates the extent of authority retained by Rice over the Licensees despite his purported exclusion from involvement in their affairs.

179. The evidence establishes that, after he was released from the hospital, Rice directed the group program director and two of the general managers of the Licensees' stations to perform particular tasks. As discussed above, Hanks, the group program director, was told by Rice to fire certain employees of the Licensees, and was expected to take care of programming problems which Rice brought to his attention. Likewise, Rhea, the general manager of WBOW(AM) and WZZQ(FM), was directed by Rice to fire certain employees, and was asked by Rice to compile information about the cost of the Satellite Music Network. In addition, Rhea was directed by Rice to show portions of a building Rice owned to prospective tenants, and Rice made Rhea responsible for assuring that the building was cleaned up. Further, Rice assigned several projects to Leatherman, the general manager of KBMX(FM). These dealt with the purchase of an outdoor sign, the construction of a storage building, the acquisition of a water cooler, the repair of the newsroom telephone, pressure washing the air conditioner condenser units, construction for the conversion of a shower stall into a storage room in the studio building, and determining whether the station needed some sound effects CDs. Leatherman took care of all the projects that Rice assigned to him.

180. The Licensees contend that, with the exception of the sound effects CDs, the tasks Rice gave to Leatherman were not related to the daily operations of KBMX but had to do with Rice's concerns as a landlord with the station's physical plant. While this is certainly arguable, it is not decisionally significant. This is so because the evidence clearly shows that Rice gave orders to Leatherman, the general manager of one of the Licensees' stations, and that Leatherman carried out those orders. Leatherman admitted that Rice supervised his activities to the extent reflected in the assignment and completion of these projects. Rice also gave orders to Rhea, another general manager, and to Hanks, the group program director. Rice's ability and authority

to direct the activities of such high level employees of the Licensees is unquestionably a management-level activity and prerogative. However, the Licensees did not tell the Commission that Rice had engaged in management-level activities. On the contrary, the Licensees told the Commission that Rice had been "excluded from involvement" in the management and operations of its stations and construction permits after his release from the hospital. This was not a truthful representation.

181. In reaching the conclusion that Rice's involvement was not limited to consultative activities, the Presiding Judge has given more weight to the testimony of Hanks and Rhea than to the testimony of Cox, Hauschild, Brown, and Leatherman. The primary theme and overall tenor of the testimony of Hanks and Rhea was that, contrary to the contentions of the Licensees, Rice had more than a consultative role in the affairs of the Licensees' stations and construction permits after he was released from the hospital. The general nature of their testimony was corroborated by the contemporaneous documentary evidence which is included in the record. In this connection, the record contains six memoranda faxed between Rice and Leatherman wherein Rice directed Leatherman's activities. The record also contains three documents wherein Rice rejected offers to purchase one of the Licensees' construction permits, invited an offer to purchase a station once it went on the air, and suggested a station swap. In addition, the record contains a letter Rice wrote to Cox after he was incarcerated giving Cox instructions with regard to specific matters involving the Licensees' stations.²⁷ These contemporaneous documents show that Rice was doing more than consultative work, and that he had not been excluded from having a managerial role in the affairs of the Licensees. This was the gist of the testimony of Hanks and Rhea and such testimony is, therefore, credible. See *TeleSTAR, Inc.*, 2 FCC Rcd 5, 13 (Rev.Bd. 1987) (credibility involves, *inter alia*, the manner in which the testimony "hangs together with other evidence"); *American International Development, Inc.*, 86 FCC 2d 808, 815 (1981) (the existence of corroborative evidence is a factor to be considered in weighing the truth of a witness' testimony).

182. On the other hand, the only contemporaneous documents which are consistent with the testimony of Cox, Hauschild, Brown, and Leatherman are the Boards of Directors' resolutions ostensibly isolating Rice from having any "managerial, policy, or consultative role" in the affairs or operations of the stations. However, these are entitled to no corroborative weight. As discussed above, those resolutions were largely ineffective or were ignored. In other words, despite the specific prohibition contained in those resolutions, Rice was permitted by Cox to assume a consultative role. It is not a very large leap to conclude from the overall record in this proceeding that Rice was permitted (or assumed for himself) a managerial role as well.

183. In assessing the credibility of the witnesses, the interest each has in the outcome of this proceeding was also considered. *The Prattville Broadcasting Co.*, 5 FCC 2d 601, 602 (1966). This evaluation leads to the conclusion that Cox, Hauschild, and Brown have much more

²⁷ Cox's testimony about this letter is rejected as contrary to the plain meaning of the language contained in the letter.

to lose from an adverse resolution of the issues than do Hanks, Rhea, and Leatherman. It does not appear that either Hanks, Rhea, or Leatherman has any pecuniary interest in the outcome of this proceeding. In contrast, Hauschild, the general and sales manager of KFMZ, has been employed with CBI since late 1988. He has no other employment. Except for "small investments," he has no additional sources of income. Similarly, Brown has been employed by the Licensees as the general manager of WZZQ(AM), WZZQ(FM), and WBOW(AM) since April 1993. Obviously, the revocation of the Licensees' authorizations would have a detrimental effect on Hauschild and Brown in that it would result in the loss of their jobs.

184. Cox has been employed by the Licensees since mid-1982 and signed an Employment Agreement with CMI and CBI in June 1991. Pursuant to this agreement, which runs for a term of 10 to 15 years, Cox was to receive an initial base salary of \$57,000, annual cost of living increases, bonuses, health insurance coverage, the use of an automobile, and a number of other perquisites which are outlined in the findings. In 1995, Cox earned either \$56,000 or \$60,000 from the Licensees. In addition, Cox's daughter and son are both employed in managerial positions by the Licensees, and her husband's company, in which she has a part interest, does a small amount of business with the stations. Given these facts, it is evident that the revocation of the Licensees' authorizations would have a very grave impact not only on Cox, but on her son and daughter as well.

185. Cox testified that she and her family have other sources of income, and that if she did not have her employment position with CMI and CBI she could continue to live in the style to which she has become accustomed. Cox's testimony in this regard is rejected as uncorroborated, "inherently improbable and irreconcilable with or contrary to . . . common . . . experience[, and] opposed to all reasonable probabilities[.]" *Prattville*, 5 FCC 2d at 602.

186. The Licensees argue that the testimony of Hanks and Rhea, to whom they refer as former "disgruntled" employees, is "inherently unreliable." With respect to Hanks, the Licensees contend that he had a "confessed desire" to get everything he can from CBI in his pending discrimination lawsuit. In support, the Licensees rely on Hauschild's testimony that Hanks stated off the record at his deposition in his discrimination case that he wanted "to get the station, the company, Mike Rice, and everything the law is going to allow me." However, the pertinent testimony of Hauschild has been rejected. As discussed in the findings, Hanks denied making the off-the-record statements attributed to him and his denial has been fully credited. It cannot be concluded, therefore, that Hanks was out to "get Mike Rice" or "get his stations."

187. The Licensees also point to Hanks' testimony that he "can have the tendency to exaggerate." However, this testimony related to one specific matter, namely, that Rice never changed his mind once it was made up. Hanks admitted that this testimony was "a little over dramatic" and exaggerated, and he altered his testimony. Hanks also stated that he did not believe that any of the other answers he gave at the hearing were exaggerated. Counsel for the Licensees had a full opportunity to test that assertion. Nevertheless, the Licensees do not raise, and the record does not reflect, any other specific exaggerations in Hanks' testimony.

188. The Licensees maintain that Rhea viewed his termination as a career setback and that he therefore harbored animosity towards Rice and Cox. However, a careful review of the germane testimony of Rhea (Tr. 521-22) reveals that he did not blame Rice for his termination at the time it occurred. Rather, Rhea testified on cross-examination that he was told that he was terminated because the station's numbers were not what they should have been. At that point, counsel for the Licensees very skillfully asked Rhea a series of questions which led to Rhea's testimony that he would blame Rice "a little bit" for his termination "if [he] want[ed] to blame someone." (Tr. 522, emphasis added.) Rhea's answer to this hypothetical question does not establish either that he attributed his firing to Rice or that he was biased against Rice. Rhea did testify that, "[a]t the time," he felt animosity toward Cox for his career setback. (Tr. 523-24.) But there was no indication in his testimony that those feelings toward Cox have continued unabated throughout the three-and-one-half-year period between the time of Rhea's firing and his testimony.

189. The Licensees also contend that Rhea's "credibility came into serious question" when he "denied" that there were complaints lodged against him by station personnel during his tenure at WBOW and WZZQ. However, the relevant testimony has been misconstrued. Rhea did not flatly deny that there were complaints. Rather, when asked generally whether there were any "[c]omplaints against [him] by the personnel and by the staff," Rhea responded with an ambiguous: "Not really." (Tr. 515.) However, when asked specifically whether he was "accused of some unauthorized contact with some of the female employees," Rhea responded with an unequivocal: "I was. I was." (*Id.*) On redirect examination by counsel for the Bureau, Rhea explained the circumstances surrounding the complaints, and his belief that they had no merit and were not a factor in his termination. (Tr. 527-29; *see also* Tr. 516.) Under these circumstances, Rhea's ambiguous "Not really" answer does not undermine his overall credibility.²⁸

190. The findings establish, and it is concluded, that the Licensees intended to mislead and deceive the Commission with respect to Rice's actual role in the affairs of the Licensees' stations and construction permits. As discussed earlier, considering the nature of Cox's personality and her testimony, the Presiding Judge has no doubt that if Cox had wanted the Commission to know about Rice's true activities, a clear statement to that effect would have been submitted, and the Commission would have known in no uncertain terms exactly what Rice was doing. The fact that no such statement was ever submitted indicates that the Licensees had no intention of disclosing those activities to the Commission.

191. In addition, there can be no question that Cox had actual knowledge of, at a minimum, Rice's changed role and the fact that he was engaging in consultative activities; it was she who made the decision to allow him to assume that role. Yet the Licensees misrepresented

²⁸ By using the Licensees' rationale, it might also be argued that Leatherman's "credibility came into serious question" when he initially answered "Never" to a question about whether Rice ever supervised any of his activities. (Tr. 173.) However, when it was suggested to him that Rice did supervise his activities to the extent reflected in the faxes from Rice assigning Leatherman certain projects, he responded: "Right." (Tr. 174.) Neither Rhea's "Not Really," nor Leatherman's "Never," raise "serious" credibility concerns.