

to the Commission that there had been "no change" in Rice's status with CBI, and concealed from the Commission his consultative role in their affairs. The Licensees also had knowledge of, but failed to disclose, Rice's involvement in at least some programming and personnel matters and management-level activities. Despite this, the Licensees misrepresented that Rice had been "excluded from involvement" in the management and operations of their stations. "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting*, 636 F.2d at 462.

192. It is also concluded that the Licensees had a logical reason or motive to mislead and deceive the Commission. Specifically, the Licensees wanted to forestall a Commission inquiry or investigation into the criminal allegations which were pending against Rice, or into the effect those allegations might have upon their character qualifications. In the *1986 Character Policy Statement*, the Commission declared that nonbroadcast misconduct which was "so egregious as to shock the conscience and evoke almost universal disapprobation" might warrant immediate "Commission concern." 102 FCC 2d at 1205 n.60. Rice's alleged misconduct clearly fell within that category.<sup>29</sup> The Licensees had reported to the Commission on numerous occasions that Rice had been, and would continue to be, "completely insulated and excluded" from involvement in the management and operations of its stations and construction permits, and/or that Rice has had "no managerial, policy, or consultative role" in the affairs of the Licensees. Although those statements might have been accurate during the period of time that Rice was hospitalized, they were no longer true when he began his consultative and management-level activities. However, if the Licensees informed the Commission, directly and unequivocally, about Rice's changed role and his consultative and managerial activities, the Commission would have known that Rice was no longer being "completely insulated and excluded." Such a candid disclosure would have risked the very Commission inquiry or investigation that the Licensees were attempting to avert. *See The Lutheran Church/Missouri Synod*, 12 FCC Rcd 2152, 2163 (1997), citing *Black Television Workshop of Los Angeles, Inc.*, 8 FCC Rcd 4192, 4198 n.41 (1993) ("Intent is a factual question that can be inferred if other evidence shows that a motive or logical desire to deceive exists").

193. The Licensees argue that there could be no intent to deceive because Cox had no knowledge of Rice's personnel, programming, or managerial activities, and Cox had a good faith belief that the Licensees' reports were accurate. Even assuming that Cox lacked this specific knowledge, the Licensees' contention is without merit. The Commission had been informed, after Rice began his consultative activities, that there had been "no change" in Rice's status with CBI, and Rice's consultative role had never been directly reported to the Commission. However, it is undisputed that Cox was cognizant of, and had authorized, Rice's consultative activities.

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<sup>29</sup> The Licensees were aware of the *1986 Character Policy Statement* since it had been referred to repeatedly in the *1990 Character Policy Statement*. *See* 5 FCC Rcd at 3252-53. The *1990 Character Policy Statement* was cited in LBI's June 14, 1991, "Statement Pursuant to Section 1.65 of the Commission's Rules" which first reported the pending criminal charges against Rice.

Therefore, since Cox had actual knowledge that Rice's role had indeed changed and that he was engaging in consultative activities, she could not have had a good faith belief that the Licensees' reports were completely accurate.

194. Further, the record reveals that Cox was not as unaware of Rice's undertakings as the Licensees would contend. Thus, Cox knew of Rice's involvement in at least some programming and personnel matters and management-level activities. For example: Rice had sent Leatherman a fax inquiring about sound effects CDs, and Leatherman responded to Cox; Rice had asked Rhea to obtain information on the cost of the Satellite Music Network and Rhea sent that information to Cox, who told him that Rice thought the station could be programmed less expensively by bringing in his (Rice's) own music; Cox stated that Hanks "very well could have" cleared new hires with Rice; Cox questioned Rice about Steel prior to his hiring and, when Steel changed WZZQ's reporting status in R&R, Cox told Rhea that Rice wanted Steel "out of there immediately"; Rice told Cox that he was not pleased with Rhea's motivation of the sales staff and said to her: "[Y]our guy has got to go"; Cox told Rhea at his termination that he was being fired because of Rice's displeasure with the station's financial figures; and Rice stated in his April 1993, letter to Dale A. Palmer that he was following up on Palmer's telephone calls to Cox.

195. Finally, even if Cox did not know the full extent of Rice's participation in the affairs of the Licensees, Rice certainly possessed such knowledge. As the sole shareholder of CMI and CBI, the (then) 67.5 percent shareholder of LBI, and an officer and director of all three corporations, Rice had the ultimate responsibility and duty to ensure that the Licensees' submissions to the Commission were complete, accurate, and truthful. This was especially important here since those reports related to his own activities. However, there is no record evidence that Rice made any attempt whatsoever to live up to his obligations in this regard. Although, as Cox stated, "there were a lot of things going on in Mike Rice's life" at the time, those other things did not render Rice "unable to discern the truth or falsity" of the representations which the Licensees were making concerning his activities. *Pass Word, Inc.*, 76 FCC 2d 465, 506 (1980), *aff'd*, 673 F.2d 1363 (D.C.Cir. 1982).

### Issue 3: Transfer of Control Issue

196. This issue was specified in order to determine whether there was an unauthorized transfer of control of CMI, CBI, and LBI in violation of Section 310(d) of the Act and Section 73.3540 of the Rules. The issue was premised upon the Licensees' representations that Rice had been excluded from all management, policy, and operational functions of the stations. *OSC* at paras. 16-17.

197. The findings establish, and it is concluded, that there was no unauthorized transfer of control of the Licensees' stations. As discussed in connection with the conclusions on Issue 2, Rice was never totally isolated and excluded from the management, operations, and affairs of the Licensees' stations. Therefore, there was no abandonment or transfer of control. Moreover, even assuming that Rice had been completely isolated and excluded, the management and

operations of the stations were being overseen by Cox, who was the Chief Executive Officer of CMI and CBI, the corporate Vice President of CMI, CBI, and LBI, the corporate Secretary of CMI and CBI, and a member of the Boards of Directors of CMI and CBI. Under these circumstances, Issue 3 must be resolved in the Licensees' favor. *Storer Communications, Inc. v. FCC*, 763 F.2d 436, 442 (D.C.Cir. 1985).

#### ULTIMATE CONCLUSION

198. In sum, it has been concluded that, while there was no unauthorized transfer of control, Rice's felony convictions and the Licensees' misrepresentation and lack of candor constitute disqualifying misconduct. Indeed, each comprises a separate and independent ground for the disqualification of the Licensees. Consequently, it must ultimately be concluded that CMI, CBI, and LBI 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.<sup>30</sup>

Accordingly, IT IS ORDERED that, unless an appeal from this Initial Decision is taken by a party, or it is reviewed by the Commission on its own motion in accordance with Section 1.276 of the Rules, the licenses of Contemporary Media, Inc., for Stations WBOW(AM), WBFX(AM), and WZZQ(FM), Terre Haute, Indiana, the license and permit of Contemporary Broadcasting, Inc., for Station KFMZ(FM), Columbia, Missouri, and Station KAAM-FM, Huntsville, Missouri, and the license and permit of Lake Broadcasting, Inc., for Station KBMX(FM), Eldon, Missouri, and Station KFXE(FM), Cuba, Missouri, ARE REVOKED, and the application of Lake Broadcasting, Inc., for a construction permit for a new FM station on Channel 244A at Bourbon, Missouri, IS DENIED.<sup>31</sup>

#### FEDERAL COMMUNICATIONS COMMISSION

Arthur I. Steinberg  
Administrative Law Judge

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<sup>30</sup> Since the hearing record warrants the issuance of an order revoking the Licensees' authorizations, the issuance of an order of forfeiture is not warranted. *OSC* at para. 24.

<sup>31</sup> In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d) of the Rules.