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

In the Matter of	)	MM Docket No. 95-154
	)	
CONTEMPORARY MEDIA, INC.	)	
	)	
Licensee of Stations WBOW(AM), WBFX(AM), and WZZQ(FM), Terre Haute, Indiana	)	
	)	
Order to Show Cause Why the Licenses for Stations WBOW(AM), WBFX(AM), and WZZQ(FM), Terre Haute, Indiana, Should Not be Revoked	)	
	)	
CONTEMPORARY BROADCASTING, INC.	)	
	)	
Licensee of Station KFMZ(FM), Columbia, Missouri, and Permittee of Station KAAM-FM, Huntsville, Missouri (unbuilt)	)	
	)	
Order to Show Cause Why the Authorizations for Stations KFMZ(FM), Columbia, Missouri, and KAAM-FM, Huntsville, Missouri, Should Not be Revoked	)	
	)	
LAKE BROADCASTING, INC.	)	
	)	
Licensee of Station KBMX(FM), Eldon, Missouri, and Permittee of Station KFXE(FM), Cuba, Missouri	)	
	)	
Order to Show Cause Why the Authorizations for Stations KBMX(FM), Eldon, Missouri, and KFXE(FM), Cuba, Missouri, Should Not be Revoked	)	
	)	
LAKE BROADCASTING, INC.	)	File No. BPH-921112MH
	)	
For a Construction Permit for a New FM Station on Channel 244A at Bourbon, Missouri	)	

Appearances

Howard J. Braun, Jerold L. Jacobs, Shelley Sadowsky and Michael D. Gaffney on behalf

of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc.; and James W. Shook, Jamila Bess Johnson and Roy W. Boyce on behalf of the Mass Media Bureau.

DECISION

Adopted: June 22, 1998 ; Released: June 25, 1998

By the Commission:

I. INTRODUCTION

1. This Decision affirms the Initial Decision, 12 FCC Rcd 14254 (ALJ 1997) ("I.D."), of Administrative Law Judge Arthur I. Steinberg (ALJ). The I.D. revoked the licenses and construction permits held by Contemporary Media, Inc. ("CMI"), Contemporary Broadcasting, Inc. ("CBI"), and Lake Broadcasting, Inc. ("Lake") (collectively, "Licensees"), and denied Lake's application for a new station, because of violations of law relating to repeated sexual abuse of children by the stations' sole owner and misrepresentations by the Licensees.

2. By Order to Show Cause and Notice of Apparent Liability ("OSC"), 10 FCC Rcd 13685 (1995), the Commission specified the following issues for hearing:

> (1) To determine the effect of Michael Rice's convictions on the basic qualifications of CMI, CBI, and Lake.
>
> (2) To determine whether CMI, CBI, and Lake misrepresented to the Commission that, subsequent to his arrest, Michael Rice has been excluded from the management and operation of the CMI, CBI, and Lake radio stations.
>
> (3) To determine, pursuant to Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's Rules, whether Michael Rice has engaged in the unauthorized transfer of control of CMI, CBI, and Lake.
>
> (4) To determine, in light of the evidence adduced under the foregoing issues, whether CMI, CBI, and/or Lake, possess the requisite qualifications to be or remain licensees of their respective radio stations.

The OSC further stated that, if the hearing record did not warrant revocation of the Licensees' authorizations, it would be determined whether an order of forfeiture should be issued pursuant to Section 503(b) of the Act.

3. The I.D. concluded that, although there was no unauthorized transfer of control, Michael Rice's felony convictions and the Licensees' misrepresentations and lack of candor regarding his role at the stations constituted separate and independent grounds for disqualification of the Licensees. In view of this conclusion, the ALJ determined that all of the Licensees' authorizations should be revoked, and that issuance of a forfeiture was therefore unwarranted. The Licensees except to the ALJ's adverse conclusions under the violations of law and misrepresentation issues and to the revocation of its licenses and construction permits; at most, the Licensees argue that a monetary forfeiture under the misrepresentation issue would have been adequate. The Mass Media Bureau supports the I.D. in all respects. The Licensees also seek oral argument. This request is denied because we do not believe such argument would materially assist our resolution of this proceeding.

II. VIOLATIONS OF LAW ISSUE

Background

4. Michael Rice is the sole shareholder of CMI, which is the licensee of Stations WBOW(AM), WZZQ(AM) (formerly WBFX(AM)), and WZZQ(FM), Terre Haute, Indiana. CBI, which is a wholly-owned subsidiary of CMI, is the licensee of Station KFMZ(FM), Columbia, Missouri, and the permittee of Station KAAM-FM, Huntsville, Missouri. Rice also owns all the issued shares of stock in Lake, other than treasury shares; Lake is the licensee of Station KBMX(FM), Eldon, Missouri, the permittee of unbuilt Station KFXE(AM), Cuba, Missouri, and an applicant for a new FM station in Bourbon, Missouri. Rice is also a member of the Board of Directors and President and Treasurer of all three corporate licensees The CMI and CBI Boards consist of three persons. The Lake Board consisted of two persons until March 13, 1997, when the second Board member resigned from his position, leaving Rice as the only Board member. I.D., ¶¶ 4-9; Licensees Exh. 1; Order, 97M-49, released April 4, 1997.

5. In November 1990, Rice was arrested in St. Charles County, Missouri for criminal conduct involving sexual acts with a teenager. He was formally charged in an Information issued April 1, 1991, and the Information was subsequently amended on January 6, 1993 and July 5, 1994. In the Second Amended Information, Rice was charged with eight counts of deviate sexual assault of individuals who were between fourteen and sixteen years of age, and four counts of sodomy of individuals who were under fourteen years of age. The alleged activities took place between December 1985 and October 1990. On August 11, 1994, Rice was convicted 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, all of which are felonies. The misconduct for which Rice was convicted involved five children. Rice was sentenced to a total of eighty-four years in prison, but, because the sentences were to run concurrently, his maximum imprisonment was to be eight years. He was incarcerated on September 30, 1994. I.D., ¶¶ 10-11, 13-14; Bureau Exh. 1, Attachments 1-3.

6. In an effort to mitigate the impact of Rice's criminal convictions, the Licensees introduced other evidence, as follows. No other principal of the Licensees, nor any of the Licensees' stations, were involved in Rice's misconduct. I.D., ¶22; Licensees Exh. 1. With the exception of minor forfeitures involving a logging violation and an improperly prepared quarterly issues/programs list involving CMI's WBOW(AM) and WZZQ(FM), the Licensees have no prior record of Commission rule violations. I.D., ¶16; Licensees Exh. 1. In addition, four individuals who knew Rice submitted statements attesting to Rice's character and reputation in the broadcast industry. None of the statements indicated specific familiarity with Rice's felony convictions. I.D., ¶¶ 18-21; Licensees Exh. 5. On April 3, 1991, two days after Rice was formally charged in the criminal case, he was voluntarily hospitalized at the Barnes Hospital, St. Louis, Missouri, for in-patient psychiatric treatment, where he remained for approximately six months. In view of the criminal charges, the respective Boards of Directors of the Licensees adopted resolutions in 1991 providing that Rice would have "no managerial, policy, or consultative role in the affairs" of the stations. I.D., ¶29; Licensees Exh. 1.

7. In the I.D., the ALJ reviewed the Commission's policy on character qualifications in broadcast licensing, as set forth in Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179 (1986), recon. denied, 1 FCC Rcd 421 (1986), appeal dismissed sub nom. NABB v. FCC, No. 86-1179 (D.C. Cir. June 11, 1987) ("1986 Character Policy Statement"), modified, 5 FCC Rcd 3252 (1990) (subsequent history omitted) ("1990 Character Policy Statement"), and concluded that all but one of the factors the Commission deems relevant in determining the weight to be accorded Rice's felony convictions militate against the Licensees. The ALJ found that Rice's misconduct was extremely serious, intentional, repeated, and took place within the time frame the Commission deems relevant to character inquiries. Moreover, the ALJ found that the Licensees' attempt to isolate Rice from any role in station affairs was not successful because Rice engaged in management-level activities after his release from the hospital in October 1991. The I.D. also concluded that the statements of Rice's character witnesses were not entitled to great weight because they did not address the impact of his criminal convictions on his reputation. Although the Licensees had a good record of compliance with the Commission's rules, the ALJ found that this factor alone did not outweigh the other factors he considered. In addition, the ALJ found that, whereas Rice's criminal activities did not appear to affect the operation of the Licensees' broadcast stations, nevertheless, there was a nexus between Rice's criminal behavior and the Licensees' truthfulness because the record established, under the misrepresentation issue, that the Licensees misrepresented facts to the Commission regarding the extent of Rice's role in managing the stations during the time the criminal proceedings were pending. In the ALJ's view, the Licensees' deception was a direct result of Rice's criminal activities because there would have been no need to submit false reports to the Commission had the misconduct not occurred. The ALJ concluded that the Licensees lacked the paramount character traits of truthfulness and reliability, and, in consequence, were not qualified to retain their authorizations.

8. In their exceptions, the Licensees argue that the Commission's character policy is

arbitrary and capricious as applied in this case. Specifically, the Licensees maintain that the Commission's policy of examining the impact of any felony conviction on an applicant's qualifications is unlawful here because there is no connection between Rice's sexual misconduct and the operation of the broadcast stations, or any relationship between the misconduct and the Licensees' propensity to be truthful and comply with the Commission's rules. In this regard, the Licensees contend that the 1986 Character Policy Statement improperly attributes wrongdoing by a controlling stockholder to the corporate licensee, contrary to precedent requiring that a licensee's qualifications be determined on the basis of its record, not misconduct in its principal's private life. Also, the Licensees challenge the ALJ's conclusion linking Rice's criminal behavior to misrepresentation because the Commission's character policy contemplates that any such connection be related to the nature of the misconduct itself. Even if the Commission's character policy is lawfully applied here, the Licensees argue that the ALJ erroneously evaluated the mitigation evidence, and should have found that the non-seriousness of the crimes, the absence of involvement in Rice's misconduct by other corporate principals, the Licensees' record of FCC compliance, Rice's rehabilitation and his reputation in the broadcast community, and the Licensees' remedial efforts sufficed to overcome the impact of Rice's criminal misconduct.

Discussion

9. The purpose of the Commission's character inquiry is to determine whether the public interest would be served by grant of continued operations of the Licensees before us. See 47 U.S.C. §§308(b), 309(a); 1986 Character Policy Statement, 102 FCC 2d at 1180. In the 1986 Character Policy Statement, we expressed our concern with non-FCC "misconduct which demonstrates the proclivity of an applicant or licensee to deal truthfully with the Commission and to comply with our rules and policies." Id. at 1190-91. In determining whether a licensee possesses the character traits of truthfulness and reliability that we consider relevant to its ability to operate a broadcast station in accordance with our rules and policies, we indicated that specific consideration would be given to adjudicated fraud, criminal misconduct involving false statements or dishonesty, and broadcast-related antitrust violations. Id. at 1195. We also stated 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 . . . ." Id. at 1205 n.60.

10. In the 1990 Character Policy Statement, 5 FCC Rcd at 3252, we significantly expanded our earlier policy regarding the range of non-FCC misconduct we would consider by stating that a licensee's propensity to comply with the law generally is relevant to the Commission's public interest analysis and that evidence of any felony conviction, not just those that involve fraud or untruthfulness, is pertinent to our evaluation of a licensee's character. We stated that a licensee's willingness to commit felonies, which are serious crimes, bears on our confidence that it will conform to our rules and policies. We also recognized that not all

convictions for serious crimes are equally probative. Thus, in weighing the impact of a felony conviction on a licensee's requisite propensity to obey the law, we said we would consider traditional mitigating factors, including the willfulness, frequency, currentness, and seriousness of the misconduct, the participation of managers or owners, the licensee's remedial efforts, the overall record of compliance with FCC rules and policies, and evidence of rehabilitation. Id.

11. We do not agree with the Licensees that our character policies are arbitrary and capricious as applied in this case. As explained above, we now consider all felony convictions to be relevant to our determination of whether grant of an application will serve the public interest under 47 U.S.C. § 309(a) because any felony conviction reflects on an applicant's propensity to obey the law generally, a trait which is predictive of its reliability as a licensee and willingness to adhere to our rules and policies. 1990 Character Policy Statement, 5 FCC Rcd at 3252. In addition, even before we broadened the scope of our policy to include all serious crimes, we made plain our view that egregious misconduct would, by its very nature, be prima facie evidence that an applicant lacked the requisite character traits of reliability or truthfulness. 1986 Character Policy Statement, 102 FCC 2d at 1205 n. 60. Thus, contrary to the Licensees' contention, where it is determined that the misconduct in question involves either a felony conviction or egregious wrongdoing, the Commission may lawfully apply its character policies and find a lack of character qualifications without specifically finding a connection between the non-FCC criminal misconduct and the applicant's broadcast activities, and where the criminal behavior is egregious, as it is here, it is also not necessary to find a specific relationship to the applicant's truthfulness. See South Carolina Radio Fellowship, 6 FCC Rcd 4823 (1991) (controlling principal's drug conviction "is itself sufficient basis" for license revocation); Williamsburg County Broadcasting Corp., 5 FCC Rcd 3034, 3035 & n. 4 (1990) (same case) (where criminal misconduct is egregious, we need not find a nexus between behavior and proclivity to be truthful or comply with rules); accord, Richard Richards, 10 FCC Rcd 3950, 3955 (Rev. Bd. 1995). We continue to believe these policies are appropriate and are appropriate specifically as applied in this case. The violations here are extremely serious and do, we believe, give us reason to be concerned about the propensity of the Licensees to comply with the Communications Act and FCC rules and policies, and to be truthful in their dealings with us.

12. We also disagree with the Licensees that the arbitrariness of the Commission's policy is demonstrated by its inconsistent holdings in other cases involving sexual misconduct. In Hara Broadcasting, Inc., 8 FCC Rcd 3177 (Rev. Bd. 1993), cited by the Licensees, the Review Board did not add an issue to explore a felony conviction for sexual misconduct where the arrest and conviction preceded the Commission's expansion of its character policy to cover all felonies and there was no showing whatever with respect to any of the factors the Commission deems relevant in examining an applicant's past behavior. Significantly, as well, Hara did not involve the repeated and long-term sexual abuse of children at issue here. The Licensees also cite The Kravis Co., 11 FCC Rcd 4740 (1996), where the Commission renewed the station licenses without discussion of any character questions. The ALJ in the instant case took official notice

(I.D., ¶157 & n. 21) of a 1991 letter from counsel in Kravis advising the Commission that its principal had been charged with sex crimes, but that no conviction or judgment of guilt had been entered against him because he was placed on probation for four years pursuant to the state's deferred judgment procedure. According to the letter, the charges would be expunged upon successful completion of the probation. The Licensees have made no showing that this did not occur or that there was any adjudication or conviction for the Commission to consider.

13. The Licensees also erroneously contend that our policies are arbitrarily applied here because they result in "automatically" attributing Rice's misconduct to them, contrary to The Petroleum v. Nasby Corp., 11 FCC Rcd 3494 (1996), and Wilkett v. ICC, 710 F.2d 861 (D.C. Cir. 1983). The distinction the Licensees seek to draw between the individual and themselves is illusory, however, because Rice is the sole owner of the Licensees as well as an officer and director of all three corporations, and has never given up these roles. By contrast, in Nasby, the wrongdoer, a minority stockholder, divested his ownership and resigned his corporate positions. Moreover, to make certain that the connection was completely severed, the Commission there remanded the proceeding for a specific determination of whether he could potentially influence the licensee's affairs if the license were renewed.[1] See also Faulkner Radio, Inc., 88 F.C.C. 2d 612, 618 (1981) (renewal conditioned on total exclusion of wrongdoer from station operations). Wilkett involved reversal of an ICC denial of a trucking company's application for expanded authority where the applicant's owner had engaged in criminal activity, including conspiracy to distribute a controlled substance. The court found that there was no record of company misdeeds and that the ICC had disregarded its own standards in past cases for evaluating carrier fitness. In this case, however, as described below, we have carefully weighed each of the factors traditionally considered in evaluating an applicant's character in order to assess the proper impact of Rice's criminality. Furthermore, we have previously stated that we do not view Wilkett as meaning that a conviction for drug trafficking is irrelevant to a broadcaster's qualifications, particularly since this crime falls into the category of egregious misconduct. See Williamsburg County Broadcasting Corp., 5 FCC Rcd at 3035; see also Commission Clarifies Policies Regarding Licensee Participation in Drug Trafficking (Public

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[1]As the Review Board stated in the same proceeding:

> Were Nasby an individual applicant owned and controlled exclusively by [the wrongdoer], there would be little doubt that his criminal activities catalogued in the record before us would require the denial of its applications.

10 FCC Rcd 6029, 6031 (Rev. Bd. 1995). See also 1986 Character Policy Statement, 102 FCC 2d at 1218 (Commission will treat wrongdoing by corporate managers who are controlling stockholders as though they were sole proprietors or partners). Our policy is not arbitrary, but is intended to treat applicants consistently with respect to character qualifications without regard to the legal form in which they do business. Id. at 1217.

Notice), 4 FCC Rcd 7533 (1989) (Commission regards drug trafficking as a matter of the gravest concern and notes that that the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853a, permits judicial denial of federal benefits to persons convicted of drug offenses). Although each case must be decided on its own facts, it is well established that, where appropriate, the misconduct of one individual may result in the disqualification of the applicant. See FCC v. WOKO, 329 U.S. 223 (1946); Center for Study and Application of Black Development, 11 FCC Rcd 1144 (1996), aff'd by judgment sub nom. Iowa Acorn Broadcasting Corp. v. FCC, No. 96-1066 (D.C. Cir. October 22, 1997).

14. Furthermore, we disagree with the Licensees that the evidence of mitigation in this case overcomes the impact of the felonious criminal activity disclosed in the record. As the ALJ concluded, all but one of the factors we traditionally consider weigh against the Licensees. First and foremost, Rice's misconduct was extremely serious, involving numerous acts of sexual abuse and sexual assault on children ranging from under fourteen to sixteen years of age. Specifically, Rice was convicted of twelve felonies involving the abuse of five children over a five year period. By any standard, these were heinous crimes characterized by moral turpitude. Indeed, we believe they may fairly be described as egregious crimes falling in the category of those that "shock the conscience" and summon almost universal disapproval. As the United States Court of Appeals for the Second Circuit recently explained in a case involving New York's "Megan's Law":

> The seriousness of the harm that sex offenders' actions cause to society and the perception, supported by some data, that such offenders have a greater probability of recidivism than other offenders have recently combined to prompt the enactment of numerous laws across the country directed specifically toward persons convicted of crimes involving sexual conduct. Studies have shown that sex crimes are widespread . . . and that their impact on both the victim and society as a whole is devastating, see, e.g., [Brief of Amicus Curiae United States] at 5-6 (citing John Briere & Marsha Runtz, Childhood Sexual Abuse: Long-Term Sequelae and Implications for Psychological Assessment, 8 J. Interpersonal Violence 312, 324 (Sept. 1993) (noting that molested children are likely to develop severe psychosocial problems) and Alpine Kohn, Shattered Innocence, Psychology Today, Feb. 1987 at 54, 58 (noting that sexually abused boys are more likely than non-abused boys to become sex offenders themselves, and that sexually abused girls are more likely than non-abused girls to have children who are abused)).

Doe v. Pataki, 120 F.3d 1263, 1266 (2nd Cir. 1997).

15. We reject completely the Licensees' claim that the seriousness of the crimes is somehow lessened by the fact that Rice was not sentenced to the maximum term; there is no evidence that the sentencing judge agreed with this assessment in ordering Rice to serve

concurrent sentences or that an eight year sentence is itself an insignificant prison term. In addition to their seriousness, the crimes were willful, repeated over an extended period of time, as recent as five years prior to designation for hearing,[2] and committed by the individual who continues to be the sole owner, president, treasurer, and a member of the Boards of the Licensees. Furthermore, as will be discussed in detail under the misrepresentation issue, infra, the Licensees did not remedy the situation, as they claimed, by separating Rice from participation in station affairs after the charges were brought against him. In fact, as indicated, Rice has never relinquished any portion of his ownership control or resigned, and he has not been removed from his officer and director positions with the Licensees. Moreover, he was active in personnel and programming matters and performed consultative work for the stations following his hospitalization. The Licensees' evidence of rehabilitation is also insufficient. Three of the character statements submitted on Rice's behalf make no mention of his felony convictions, and the fourth indicates unfamiliarity with the criminal proceeding. The statements address only his competence as a broadcaster. Although the Licensees point out that Rice did not commit further criminal acts after his arrest in November 1990, this does not in itself prove rehabilitation because he has been hospitalized or in prison for approximately half the time since then.[3] The fact that the Licensees have had a good overall record of FCC rule compliance is not alone sufficient to mitigate the overwhelming negative weight of all the other evidence. For the same reason, we disagree with the Licensees that the ALJ erred in disallowing evidence of the stations' good standing and reputation in the community. See Cosmopolitan Broadcasting Corp., 75 FCC 2d 423, 425 n. 3 (1980) (meritorious programming cannot mitigate serious misconduct); KQED, Inc., 3 FCC Rcd at 2827 (Commission will not consider meritorious programming evidence in cases involving intentional wrongdoing or moral turpitude). Contrary to the Licensees' claim, the 1986 Character Policy Statement does not state that misrepresentation is the only area in which past program performance is not considered as

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[2]The crimes were well within the ten year limitation applied by the Commission. See 1986 Character Policy Statement, 102 FCC 2d at 1229. Also, Rice's convictions were one year prior to designation. The Commission generally awaits a local court adjudication before it assesses the impact of the criminality on the licensee's character. See 1990 Character Policy Statement, 5 FCC Rcd at 3252.

[3]In this regard, we reject the Licensees' exception to the ALJ's failure to find that Rice has undergone treatment and to admit evidence that Rice is required by law to participate in a special rehabilitation program in prison before his release. We agree with the ALJ that this evidence does not establish current rehabilitation. The Licensees' reliance on Alessandro Broadcasting Co., 99 FCC 2d 1, 11 n. 13 (Rev. Bd. 1984) (subsequent history omitted) is inapposite. There, unlike this case, the applicant's crime was an isolated event that was remote in time; the applicant was completely rehabilitated under local law, as evidenced, among other things, by the issuance of a certificate of rehabilitation by the state court; his civil liberties were restored; he had character references from people familiar with his crime; and no predictive nexus was found between his crime and his fitness to be a licensee.

mitigating evidence. Id. at 1211 n. 79.

16. In sum, we conclude that our character policies are validly applied to the Licensees, and that the preponderance of record evidence warrants the conclusion that Rice's convictions involving the repeated sexual abuse of children adversely affect their qualifications to remain Commission licensees. As we also concluded with respect to a broadcaster's recent conviction for drug trafficking, we believe that these felony convictions are "egregious crimes against society" that demonstrate a "callous disregard for the welfare of fellow citizens." See Williamsburg County Broadcasting Corp., 5 FCC Rcd at 3035. As such, the record below destroys our confidence that the Licensees "would well serve the public through exercise of the wide and important discretion that this agency entrusts to licensed broadcasters." See South Carolina Radio Fellowship, 6 FCC Rcd at 4823-24. Rice is the sole owner of the Licensees as well as a corporate officer and director, and the Licensees were unable to make any significant showing of mitigation. We affirm the ALJ's conclusion that the convictions constitute an independent basis for disqualification.[4]

III. MISREPRESENTATION ISSUE

Background

17. This issue concerns whether the Licensees' statements that, subsequent to his arrest, Rice was completely excluded from any involvement in the management and operation of the radio stations were misrepresentations. The issue was based on filings by the Licensees, beginning in 1991, relating to the criminal charges and the Licensees' asserted efforts to insulate Rice from station affairs. Specifically, in a "Statement Pursuant to Section 1.65 of the Commission's Rules" filed June 14, 1991, Lake made the following statement, which CBI repeated in another Section 1.65 filing on June 21, 1991:[5]

> Since Mr. Rice's hospitalization on April 3, 1991, he has had absolutely no managerial, policy, or consultative role in the affairs of the [Licensees] in which he has ownership interests and officer positions . . . In other words, pending a resolution of the referenced criminal charges, Mr. Rice is being completely

[4]Because of the egregious nature of Rice's crimes and the absence of significant mitigation, it is unnecessary to consider whether there is other evidence implicating the Licensees' propensity for truthfulness in order to resolve the violations of law issue adversely to them. See South Carolina Radio Fellowship, 6 FCC Rcd at 4824 (conviction for drug trafficking is "itself sufficient" for revocation; however, evidence of misrepresentation to the court and other misconduct reinforces adverse implication of conviction).

[5]Section 1.65, 47 C.F.R. §1.65, requires that applicants report substantial and significant changes in their applications within thirty days.

> insulated and excluded from any involvement in the managerial, policy, and day-to-day decisions involving any of the . . . stations and . . . construction permits held by the [Licensees].

I.D., ¶¶ 32-33; Bureau Exh. 1. The June 14, 1991 statement also made reference to the 1990 Character Policy Statement. Id. Similarly, on August 1, 1991, in connection with an extension of construction permit application for its Huntsville, Missouri station, CBI informed the Commission that "Mr. Rice continues to be hospitalized and to have absolutely no managerial, policy, or consultative role in the affairs of [CBI]." On December 3, 1991, CBI repeated that "Rice continues to have no managerial, policy, or consultative role in the affairs of [the Huntsville station]. . . ." I.D., ¶¶ 34-35; Bureau Exh. 1.

18. On May 14, 1992, in order to "update the Commission on the status of Mr. Rice's criminal proceedings," CBI stated:

> There has been no change in Mr. Rice's status with [CBI] or in the status of the proceedings against him. . . . Mr. Rice is no longer hospitalized, but he continues to be treated by his physician as an outpatient, and he continues to have no managerial or policy role in the affairs of the [Licensees] in which he has ownership interests and corporate positions . . . .

I.D., ¶36; Bureau Exh. 1.

19. On September 30, 1994, the Licensees informed the Commission of Rice's conviction and sentencing. They also stated:

> [CBI/Lake] has previously reported to the Commission that since Mr. Rice's pre-trial hospitalization on April 3, 1991, he has been excluded from involvement in the customary managerial, policy, and day-to-day decisions and operations of [CBI/Lake's] licensed stations and construction permits. . . . [CBI/Lake] wishes to advise the Commission that the exclusion policy will continue throughout Mr. Rice's period of incarceration.

I.D., ¶38; Bureau Exh. 1. The Licensees additionally stated that they were aware the Commission could commence a revocation proceeding against a licensee because of a principal's felony conviction, but requested ninety days to file a brief arguing that a revocation proceeding should not be instituted as a result of Rice's conviction. Id.

20. After formal charges were brought against Rice in early 1991, the Licensees adopted corporate resolutions providing that Rice should have "no managerial, policy, or consultative role in the affairs" and daily operations of the Licensees' stations. The corporate resolutions also made Janet Cox, a management employee, Chief Executive Officer, and gave her authority

to supervise management and day-to-day operation of the stations. Cox also visited the stations to inform the staffs that she had assumed her new position, that Rice was hospitalized, and that he would not be involved in the operation of the stations. She did not tell the staffs of the corporate resolutions or that Rice was to be excluded from station activities after he left the hospital. Following Rice's release from the hospital in October 1991, Cox authorized him to provide consulting and engineering assistance to the Licensees. To reflect this change, she stated that the Licensees modified their reports to the Commission beginning with the May 14, 1992 report by deleting the statement that Rice would have no "consultative" role. She did not know why a direct statement alerting the Commission to Rice's changed status was not made. The Licensees did not adopt any corporate resolutions authorizing Rice to do consultative work. I.D., ¶¶ 30-31, 43-44, 46, 54.

21. A number of management-level station employees testified as to whether, apart from his consultative role, Rice was also involved in management or operation of the stations following his release from the hospital. Leon Paul Hanks, an employee of KFMZ(FM), Columbia, Missouri, since August 1985, was made program director of the station in February 1989 and group program director of the CMI/CBI (Terre Haute, Indiana and Columbia, Missouri) stations in late 1991 or early 1992, after Rice was released from the hospital. He was terminated on August 5, 1994. Hanks testified that Rice was involved in programming and personnel decisions at the Terre Haute stations. It was Hanks' belief that he was compelled to follow Rice's suggestions or directions about programming and personnel because Rice was the station owner and his boss. Hanks stated that his primary responsibility as group program director was to keep the formats of KFMZ and WZZQ consistent with what Rice wanted. As group program director, he reported directly to Rice, and regularly updated him on how things were going at the stations. His first assignment from Rice after becoming group program director was to visit WZZQ to go through its music and refine its format. He and Rice discussed the format of WZZQ, problems involving the station's program director, the playlists of KFMZ and WZZQ, and Rice's complaints that the stations were adding too many new songs. Hanks also sent Rice copies of memos Hanks sent to the program directors. I.D., ¶¶ 81, 86-88, 101.

22. Moreover, Hanks testified that Rice was involved in the hiring and firing of station employees, as follows. Hanks stated that, in May or June 1992, Rice directed him to "get rid of" Janice Pratt, an announcer, because her on-air voice was hurting ratings; that Hanks did not feel it was appropriate to tell Pratt she was being fired for that reason; and that Hanks eventually fired her for persistent tardiness. Rice instructed Hanks to "get rid of" Bob Kinneson, another announcer, because he was bringing down Saturday night ratings, but Hanks did not fire Kinneson because the latter resigned to work for another station. Rice complained to Hanks about KFMZ announcer Sean Madden and said he "needed to be let go," but Madden quit to take another job before Hanks could fire him. In August 1993, Rice told Hanks to "get a replacement" for Jeff Davis, who worked evenings at KFMZ, and Hanks carried out the instruction. Rice approved Hanks' suggestion that Ben Jacobs be moved from KFMZ to WZZQ

as program director; but after Jacobs made personnel changes at WZZQ which Rice did not approve of, Rice told Hanks that Jacobs "has got to go"; and Jacobs was fired a week or two later, although Hanks did not do it or know who did. Rice discussed with Hanks hiring Mike Steel, an announcer Rice had spoken to and was impressed with, to be program director of WZZQ in early 1992; Rice offered the job to Steel and said Cox would take care of the hiring; but, after Steel took the job and changed WZZQ's reporting status in a trade publication from Album Oriented Rock to Top 40, Rice became "furious" and told Hanks he wanted Steel "gone immediately." Rice complained to Hanks that Mark Savage, WZZQ program director from April to November 1992, was not maintaining the station's format and decided to get rid of him; and Rice, Cox, and Hanks drove to Terre Haute for the express purpose of firing Savage. After Savage was fired, on the drive back to company headquarters, Rice told Cox he was displeased with the job performance of John Rhea, who was then the general manager of WBOW(AM) and WZZQ(FM), and told Cox that Rhea "has got to go." I.D., ¶¶ 89-91, 94, 96, 98-99, 118-120, 123-24, 129.

23. John Rhea, the general manager of WBOW(AM) and WZZQ(FM) from December 30, 1991 until he was terminated on December 16, 1992, also testified that Rice was involved in programming and personnel decisions at the Terre Haute stations. He further stated that Rice, as the owner of the building in which the stations were located, also directed Rhea to show it to prospective tenants and to keep it clean. Rhea assumed that Rice, as the stations' owner, "was the boss." Although he understood from Cox that Rice was an "absentee owner," he said Cox did not tell him Rice was to be excluded from management. With respect to programming, Rhea stated that, six weeks after he became general manager, Rice told him he was unhappy with the musical sound of WBOW, and they had a further discussion about the programming of WBOW a month later. Sometime thereafter, Rice asked Rhea to obtain information about the cost of the Satellite Music Network. Rhea did so and sent the information to Cox, who told Rhea that Rice thought the station could be programmed "cheaper" by bringing in Rice's own music. Rhea also spoke to Rice about the matter I.D., ¶¶ 103, 107, 111-112.

24. Rhea testified that Rice was also involved in specific hiring and firing decisions, as follows. He stated Rice told him he did not like Chip Ramsey, WBOW's program director; that Rice "wanted him out of there"; that his firing was delayed only because the station had a contract with Indiana State University for Ramsey to broadcast their baseball games; and that Rhea carried out Cox's instruction to fire Ramsey. Rhea hired Steve Holler as an announcer for WBOW; after Rice heard Holler on his first day on the air he told Rhea, "I want him off the radio"; Rice repeated this direction after Rhea protested: and Rhea fired Holler after Cox told him later that day to "[g]et rid of" Holler. Rice told Rhea he was interested in Mike Steel for the program director position at WZZQ; after Steel was hired, Rice became "livid" and "went ballistic" because Steel changed the station's reporting status to Top 40; Cox told Rhea that Rice wanted Steel "out of there immediately"; and Rhea fired Steel at the instruction of Cox and Rice. Rhea stated that Rice and Cox came to Terre Haute to fire Mark Savage; that Rice said to Rhea, "You and Janet go down there and get him out of here"; and that Rhea and Cox

then fired Savage. Rhea stated that Cox and Rice returned to Terre Haute in December 1992 and entered Rhea's office; Rice told Rhea he was being fired because of a "change in direction"; and, after Rice left the room, Cox said Rhea's firing was because Rice was displeased with WBOW's financial figures. I.D., ¶¶ 113, 115-16, 119-120, 126, 130.

25. Cox testified that Rice was not involved in personnel and programming decisions at the stations, did not fire any announcer, program director, or general manager, and does not make policy or managerial decisions concerning day-to-day operations of the stations. Specifically, Cox said it was Hanks, not Rice, who criticized Sean Madden's performance and wanted him fired; Rice did not tell her that Ben Jacobs should be fired, but she did not know what Rice may have said to anyone else; she decided to hire Mike Steel and did not get Rice's approval to do so, but did not know what Rice said to others at WZZQ about hiring Steel; she did not tell Rhea to fire Steel after the reporting change in the trade publication, and Steel was not fired but resigned; she believed it was either Rhea or Hanks who wanted Mark Savage fired, she alone went to Terre Haute to terminate Savage, and Rice did not direct her to fire Savage; she directed the firing of Chip Ramsey but not because she knew Rice disliked him, and Rice did not tell her to fire Ramsey; it was Rhea who decided to fire Steve Holler, but she did not know if Rice had instructed Rhea to do so; she decided to fire John Rhea, and Rice accompanied her to Terre Haute only to serve as a witness. I.D., ¶¶ 64-66, 68, 95, 100, 114, 117, 121-22, 127-28, 131.

26. Daniel Leatherman, the general manager of KBMX(FM) from September 1990 to March 1996, testified that KBMX personnel did not report to Rice and that Rice was not involved in hiring or firing station employees. I.D., ¶¶ 69, 74. Kenneth Brown, the general manager of WZZQ(AM) (formerly WBFX(AM)), WZZQ(FM), and WBOW(AM) since April 1993, testified that he has received no written or oral communications from Rice concerning the stations' programming, personnel, or operations. I.D., ¶ 78. Similarly, Richard Hauschild, who has been an employee of KFMZ since October 1988, and the general manager and sales manager since June 1991, testified that he has received no correspondence or telephone calls from Rice regarding any aspect of station policy, management, or daily operations since becoming general manager. I.D., ¶¶ 75-76. Hauschild also testified with regard to the firing of specific station employees. He stated that, six months before Janice Pratt was dismissed, he told Hanks she should either correct her problems or be dismissed; that Rice never told him to get rid of Pratt and Hanks never told him that Rice directed him to fire Pratt; but that he was not privy to all the conversations between Rice and Hanks and did not know whether Rice told Hanks to do something. He stated that Hanks fired Bob Kinneson at Hauschild's suggestion; that Hanks did not tell him Rice wanted Kinneson fired; that, so far as he knew, Rice was not involved in Kinneson's firing, but that he did not know if Rice spoke to Hanks about it. He stated that Rice did not make critical comments to him about Sean Madden's performance, and Hanks did not tell him that Rice did not like Madden. He said that Hanks never told him that Rice wanted Jeff Davis fired, but he did not know whether Rice directed Hanks to fire Davis. I.D., ¶¶ 92-93, 95, 97.

27. In addition to the witness testimony summarized above, there is documentary evidence pertinent to the misrepresentation issue. In 1993, Rice faxed six memoranda to Leatherman. The first five dealt with the purchase of an outdoor sign for KBMX, the construction of a storage building, the purchase of a water cooler, the repair of the newsroom telephone, pressure washing the air conditioner condenser units, and construction of a storage room in the studio building. Leatherman took care of the projects that were the subjects of the memos. He stated that the memos did not relate to broadcast operations, but had to do with Rice's interest as owner and landlord of the KBMX facilities in the station's physical plant. I.D., ¶ 70; Bureau Exh. 8. In the sixth memo, Rice asked Leatherman if KBMX needed some sound effects CDs. Leatherman responded to the memo by talking to Cox, who told him they did not need any more music. Leatherman stated that Rice's memo was a follow-up to Rice being told by Dennis Klautzer, then a 20% shareholder in Lake and its corporate secretary, that KBMX needed more sound effects CDs. I.D., ¶ 71; Bureau Exh. 11.

28. The record also contains four letters written by Rice pertaining to the Licensees. The first, written on "Contemporary Media Broadcasting Group" stationary, and dated April 29, 1993, is addressed to Dale A. Palmer, KZZT Radio, Moberly, Missouri. It states:

> Following up on your telephone calls to Janet Cox, we do not want to sell the bare CP for the Huntsville, MO station. . . 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 know.

I.D., ¶ 132; Bureau Exh. 1, p.24.

29. Similarly, in another letter dated April 29, 1993 on "Contemporary Media Broadcasting Group" stationary, Rice wrote to Jerrell A. Shepherd, KRES Radio, Moberly, Missouri, as follows:

> Following up on your telephone call to me this week, we do not want to sell the CP for the Huntsville, MO station. Contemporary Broadcasting, Inc. does not have the CP for sale, as was told to you by broker/equipment salesman Chris Kreger. . . . 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.

I.D., ¶ 133; Bureau Exh. 1, p. 26.

30. In response to a July 20, 1994 letter from Shepherd to Rice stating "I would like to repeat my offer to buy the Huntsville, Missouri CP," Rice wrote to Shepherd on August 3, 1994 on a "Contemporary Media Broadcasting Group" Fax Line Transmittal Sheet as follows:

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

I.D., ¶ 134; Bureau Exh. 1, p. 30.

31. On November 13, 1995, Rice wrote a letter to Cox as follows:

> It seems that we should install a concrete pad as Cloyd suggested to set the new building on top of . . . 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 stern talk with Ken and Dennis. It is time for them to stay away from KBMX, and let the manager manage. . . . 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. . . . 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. . . 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.

I.D., ¶135; Bureau Exh. 9. Cox testified that she did not regard Rice's letter as a direction to her to do the things mentioned, but thought of it as a letter written by someone in prison "whose whole life is the radio . . . and . . . with nothing to do but idle time." Tr. 311, 313-14.

32. The ALJ concluded that the Licensees both misrepresented facts and lacked candor in their reports to the Commission. First, the ALJ found that the Licensees never directly disclosed Rice's consultative activities, but, in fact, represented in their May 14, 1992 pleading

that "[t]here has been no change in Mr. Rice's status." In this regard, the ALJ rejected as lacking in candor Cox's testimony that the deletion of the word "consultative" from this and subsequent pleadings was intended to inform the Commission of Rice's new role. In addition, the ALJ found that Rice was involved in at least some of the programming matters and personnel decisions of the Licensees, that he engaged in determinations as to whether or not to sell or trade a station or construction permit, and that he directed the group program director and two of the general managers of the Licensees' stations to perform certain tasks. The Licensees did not inform the Commission of these activities, the ALJ found, but misrepresented in their September 30, 1994 letter that Rice had been "excluded from involvement" in the management and operation of the stations and construction permits since April 1991. The ALJ specifically found that Rice was involved in programming matters at WFMZ, WZZQ, and KBMX(FM), directed Hanks and Rhea in personnel decisions involving the firing of certain employees at their stations, and assigned projects to Leatherman at his station In reaching these conclusions, the ALJ credited the testimony of Hanks and Rhea over that of Cox, Hauschild, Brown, and Leatherman. The ALJ rejected the Licensees' claim that Hanks and Rhea were "disgruntled" employees out to "get" them, and that their testimony was therefore not credible. The ALJ further found that the documentary evidence supported the testimony of Hanks and Rhea. In addition, the ALJ found that Cox had actual knowledge of Rice's consultative activities as well as his involvement in at least some programming and personnel matters and management-level activities. Moreover, the ALJ stated, Rice himself knew of his participation in the Licensees' affairs, but made no attempt to disclose it, even though he was the stations' sole owner. The ALJ concluded that the Licensees were motivated to deceive the Commission because they wanted to forestall a Commission inquiry into the criminal allegations against Rice and their impact on the Licensees' character qualifications. Had the Licensees disclosed Rice's specific consultative and management activities, the ALJ held, the Commission would have known that he was not "completely insulated and excluded," or that he had no role in station affairs, as the Licensees had reported on numerous occasions.

33. In their exceptions, the Licensees deny that they inadequately reported Rice's activities to the Commission or that their reports contained false information. With respect to Rice's consultative work, the Licensees argue that their Section 1.65 reports were made in good faith and that Rice's activities were not so significant as to render the reports untruthful since there was no meaningful change in Rice's status. The Licensees also except to the conclusion that Rice was involved in some programming, personnel, and management-level activities after April 1991 and that the Licensees were aware of such involvement. They maintain that Rice did not partake in normal management functions after his release from the hospital, such as station budget and sales activities. Although Rice may have made unsolicited comments to Cox, Hanks and Rhea, the Licensees state, Cox made management decisions independent of what Rice may have said. In this regard, the Licensees state there is no evidence that Hanks or Rhea communicated their purported conversations with Rice to Cox. The Licensees also contend that the ALJ improperly gave more weight to the testimony of Hanks and Rhea than to that of the other witnesses, even though both were disgruntled former employees and there was no reason

to discredit the others. Specifically, the Licensees state that Hanks filed a discrimination suit against CMI and was heard by Hauschild to say he wanted to "get" the Licensees, and Rhea admitted to some animosity toward both Rice and Cox because of his termination. The Licensees also dispute the ALJ's reliance on corroborating evidence such as the fax messages Rice sent to Leatherman, and argue that these memoranda mainly reflect Rice's role as landlord. Likewise, the Licensees state that Rice's actions, as a shareholder, in rejecting preliminary inquiries about sale of a construction permit do not rise to the level of day-to-day policy or management of the stations. The Licensees also contend that there is no evidence that Rice's alleged comments to Hanks and Rhea about personnel matters actually dictated the decisions that were made. Finally, the Licensees submit that there is no evidence of any intent to deceive the Commission because the Licensees modified their Section 1.65 reports to make them more accurate, and they had no knowledge of Rice's alleged directives to station employees.

Discussion

34. After careful review of the record, we conclude that the Licensees misrepresented and lacked candor in reporting to the Commission that, subsequent to his arrest, Rice was completely excluded from any further involvement in the management and operation of the Licensees' radio stations. The record reflects that, in their communications to the Commission, the Licensees did not merely fail to state the full facts; instead, their representations were affirmatively misleading. We agree with the ALJ's detailed assessment of the hearing testimony, which is supported by his evaluation of witness credibility based upon his demeanor observations, and by corroborating documentary evidence. The preponderance of record evidence clearly supports a conclusion that the Licensees were not truthful. The duty of candor requires applicants to be fully forthcoming as to all facts and information that may be decisionally significant to their applications. See Swan Creek Communications v. FCC, 39 F.3d 1217, 1222 (D.C. Cir. 1994); RKO General, Inc. v. FCC, 670 F.2d 215, 229 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 and 457 U.S. 1119 (1982). Broadcasters are held to "high standards of punctilio" and must be "scrupulous in providing complete and meaningful information" to the Commission. See Lorain Journal Co. v. FCC, 351 F.2d 824, 830 (D.C. Cir. 1965). The requirement for absolute truth and candor from those appearing before the Commission is bedrock because the Commission must rely heavily on the completeness and accuracy of the submissions made to it by applicants who, in turn, have an obligation to provide the Commission with the facts needed to carry out its statutory mandate. Intentional deceit with regard to matters of decisional significance may be disqualifying. See Swan Creek Communications v. FCC, 39 F.3d at 1222; RKO General, Inc. v. FCC, 670 F.2d at 232; Sea Island Broadcasting Corp. v. FCC, 627 F.2d 240, 243 (D.C. Cir.), cert. denied, 449 U.S. 834 (1980).

35. First, with regard to Rice's consultative activities after his release from the hospital, totally apart from his involvement in numerous programming and personnel matters at the stations discussed below, the Licensees were not fully forthcoming in disclosing Rice's consultative role to the Commission. Cox's testimonial claim that the Licensees informed the

Commission of Rice's new role by removing the word "consultative" from their May 14, 1992 report is belied by the Licensees' contrary assertion in the same report that "there has been no change in Mr. Rice's status." Despite this obviously misleading characterization, the Licensees did not attempt to further clarify the matter in any future report to the Commission, or modify its corporate resolutions to formally authorize Rice's admitted consultative role. We agree with the ALJ that Cox's testimony that the Licensees were trying to be "as truthful as possible" (tr. 292) in this regard was itself lacking in candor since they never directly informed the Commission of Rice's consultative activities in any of their reports. We also reject the Licensees' exception that their May 1992 report was truthful because 47 C.F.R. §1.65 requires that only significant changes be disclosed. In view of the Licensees' previous reports that Rice would have absolutely no role or involvement in the affairs of the stations, we do not agree that a change resulting in Rice being involved in any manner in the operations of the stations could be considered so insignificant as not to reflect on the continuing accuracy and completeness of the information furnished by the Licensees. Finally, in this regard, although the Licensees urge that Rice's consultative work at the stations was recommended by his psychiatrist for his rehabilitation, even if so, this fact has no bearing whatsoever on the impact of the Licensees' failure to be candid in disclosing these activities.

36. Turning to Rice's involvement in programming matters, there is testimony from two former management officials who were in knowledgeable positions detailing Rice's activities. Both believed that Rice, as the stations' sole owner, was their boss. Hanks, the group program director of the CMI/CBI stations from late 1991 or early 1992 to August 1994, reported directly to Rice about the stations' programming, visited WZZQ and reviewed its music at Rice's request, regularly discussed with Rice specific programming problems at WZZQ and WFMZ, as well as Rice's complaints about the stations' formats and song lists, and sent Rice memos that Hanks addressed to the stations' program directors. In addition, Rhea, the general manager of WZZQ and WBOW from December 1991 to December 1992, discussed WBOW's programming with Rice, and complied with Rice's specific request that he obtain information about the cost of the Satellite Music Network. Although Cox denied that Rice was involved in programming matters after 1991, and Brown and Hauschild said they had no communications from Rice regarding programming at their stations, they did not testify with respect to the specific instances recalled by Hanks and Rhea, and there is no evidence to contradict the latters' accounts. Indeed, Brown's tenure as general manager of the CMI stations post-dated the particular incidents described above. Moreover, there is also undisputed documentary evidence of Rice's involvement in programming at Lake's Eldon, Missouri station, KBMX(FM), in the form of a fax letter he sent to Leatherman, the station's general manager, asking to be told if the station needed more sound effects CDs. Rice acted on the basis of information given him by Klautzer, a Lake shareholder and corporate officer, that such CDs were needed, and Leatherman complied with Rice's request by responding to Cox. Clearly, in this regard, if Rice were completely excluded from involvement in day-to-day station affairs, as the Licensees represented, there would have been no reason for a Lake corporate principal to inform him of a problem affecting daily operations of one of the stations or for the station's general manager to follow up on Rice's

instructions. We conclude that the record amply supports the ALJ's finding that Rice was involved in programming activities at the Licensees' radio stations.

37. Hanks and Rhea also testified regarding Rice's involvement in numerous decisions to hire and fire station personnel. Specifically, Rice instructed Hanks to fire Pratt, Kinneson, Madden, and Davis; told Hanks that Jacobs, Steel, and Savage should be fired; and Hanks heard Rice tell Cox that Rhea should be fired. Similarly, Rice told Rhea to fire Holler and Savage, indicated that he wanted Ramsey fired, and Rhea was told by Cox that Rice wanted Steel fired. Rhea also testified that he was fired by Rice and Cox. Rice also approved Hanks' suggestion to move Jacobs to WZZQ as program director, and Hanks and Rhea both stated that Rice was involved in the hiring of Steel. Although Cox and Hauschild disputed the accounts given by Hanks and Rhea of these personnel actions and stated that Rice did not tell them he wanted the individuals in question hired or fired, both admitted that they were not privy to conversations Rice may have had with Hanks and Rhea about these employees and did not know what instructions he may have given them. Most of the employees about whom Rice gave directions to Hanks and Rhea in fact were let go. That Cox or Hauschild may have independently ordered the dismissal of some of these employees, or that some ultimately were not fired but resigned, does not undermine the significance of the evidence of Rice's involvement in these matters. In other words, Rice's involvement was inconsistent with the Licensees' representations that he was excluded from the customary management and operation of the stations, regardless of whether other management officials also played a role in these decisions.

38. Insofar as there is a conflict in witness testimony regarding the extent of Rice's involvement in these personnel activities, however, we defer to the credibility findings of the ALJ who observed the witnesses and found Hanks and Rhea to be more believable. An ALJ's credibility findings are "entitled to great weight," Broadcast Assoc. of Colorado, 104 FCC 2d 16, 19 (1986), and his credibility determinations will be upheld unless the findings patently conflict with other record evidence. Milton Broadcasting Co., 34 FCC 2d 1036, 1045 (1972); KQED, Inc., 3 FCC Rcd 2821, 2823 (Rev. Bd. 1988), rev. denied, 5 FCC Rcd 1784 (1990), recon. denied, 6 FCC Rcd 625 (1991), aff'd mem. sub nom. California Public Broadcasting Forum v. FCC, 947 F.2d 505 (D.C. Cir. 1991); see also WHW Enterprises, Inc. v. FCC, 753 F.2d 1132, 1141 (D.C. Cir. 1985) (ALJ's credibility findings may not be upset unless reversal is supported by substantial evidence). In this regard, we disagree with the Licensees that Hanks and Rhea exhibited bias against them and, therefore, should not have been credited. Hanks brought a discrimination suit against the Licensees because he believed his termination was based solely on his health problem, epilepsy. Tr. 364. Hanks adamantly denied Hauschild's assertion that he made an off-the-record comment at a deposition in the suit that he wanted to "get" Rice and the Licensees, and the ALJ, after carefully evaluating Hanks' demeanor, found he was being truthful. I.D., ¶ 84 n. 8. Although the Licensees contend that the ALJ misinterpreted Hanks' demeanor, the law accords deference to the ALJ's witness observations. See Maria M. Ochoa, 8 FCC Rcd 3135 (1993), recon. denied, 9 FCC Rcd 56, recon. dismissed, 10 FCC Rcd 142 (1995), aff'd by judgment, 98 F.3d 646 (D.C. Cir. 1996) (Table) (affirming ALJ credibility

conclusion that witnesses were not biased or seeking to "get back" at applicant). Similarly, the Licensees argue that Hanks admitted to a tendency to exaggerate, but a careful review of his testimony reveals that he admitted exaggerating only when he said that Rice "never" changed his mind once it was made up, and clarified his testimony to say that Rice "occasionally" changed his mind and that he did not exaggerate in any of his other statements. I.D., at ¶ 102. Rhea admitted to some animosity toward Cox "at the time" he was fired because he viewed his termination as a career setback, but, as the ALJ found, there was no evidence that he continued to harbor such feelings when he testified three and a half years later. With regard to his alleged animosity to Rice, Rhea stated only that he was told he was fired because WBOW's numbers were not what they should be, that he felt the negative publicity surrounding Rice's situation contributed to the numbers going down, and that, therefore, "if [he] wanted to blame someone," he would blame Rice "a little bit." Tr. 521-22. We agree with the ALJ that Rhea's hypothetical response does not establish bias. I.D. at ¶ 188. Finally, in weighing witness credibility, we also agree with the ALJ that Cox, Hauschild, and Brown have "more to lose" from an adverse resolution of this proceeding because they are currently employed by the Licensees, whereas Hanks, Rhea, and Leatherman have no pecuniary interest in the outcome. Id. at ¶¶ 183-85. See The Prattville Broadcasting Co., 5 F.C.C. 2d 601, 602 (1966) (interest of witnesses in proceeding is relevant to credibility).[6]

39. The testimony of Hanks and Rhea that Rice's involvement in the operation of the stations extended to more than just consultative work is also supported by contemporaneous documentary evidence in the record. See American International Development, Inc., 86 FCC 2d 808, 815 (1981) (existence of corroborative evidence is factor to be considered in weighing the truth of witness testimony); TeleSTAR, Inc., 2 FCC Rcd 5, 13 (Rev. Bd. 1987) (subsequent history omitted) (credibility involves the manner in which testimony "hangs together with other evidence"). Specifically, Rice sent six fax messages to Leatherman in 1993 directing him to take certain actions at KBMX. Although the Licensees contend that all but one of these memoranda related to Rice's role as landlord, the pattern is the same as that with respect to the other activities of Rice giving instructions to management officials which are then carried out.

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[6]Although the Licensees point to Cox's testimony that she has other sources of income and could maintain her current lifestyle, the ALJ found that she receives a salary of approximately $60,000 from the Licensees, has numerous perquisites including cost of living adjustments, bonuses, health insurance, and use of a car, that both her son and daughter are employed in managerial positions at the stations, and that her husband does business with the Licensees. I.D. ¶ 184. Thus, the ALJ reasonably concluded that she and her family would be seriously impacted by an adverse result. The Licensees also state that Leatherman is no longer employed by them, but the ALJ made this finding, as noted in the text. In any event, as to Rice's involvement in specific personnel matters, Leatherman's testimony does not directly conflict with that of Hanks and Rhea because they testified to Rice's activities at the Terre Haute and Columbia stations, whereas he was employed at the Eldon station.

Similarly, Rice instructed Cox to take certain actions regarding personnel and other station matters in a 1995 letter. And perhaps most corroborative of Rice's involvement in station management are the three letters he wrote in 1993 and 1994 to officials of two radio stations in Moberly, Missouri, rejecting offers to purchase one of the Licensees' construction permits, inviting an offer to purchase a station once it is on the air, and suggesting an exchange of existing stations. In his letter to Dale Palmer of KZZT, Rice stated that he was following up on Palmer's calls to Cox, which clearly implies that Cox apprised Rice of Palmer's purchase offer even though the Licensees had informed the Commission that Rice was "being completely insulated and excluded" from management activities. In this regard, we reject completely the Licensees' argument that the letters are unimportant because they do not relate to day-to-day station management; as the ALJ concluded, the decision as to whether or not to sell a broadcast property "is the ultimate management-level decision." I.D., ¶ 178.

40. Finally, we reject the Licensees' contention that there is no evidence of any intent to deceive the Commission because they lacked knowledge of Rice's involvement in station affairs and updated their Section 1.65 reports to insure their accuracy. In fact, the Licensees' reports, in addition to failing specifically to inform the Commission of Rice's consultative role, also did not tell the Commission of Rice's other activities of which the Licensees were aware. Specifically, with regard to Cox's knowledge of Rice's activities, the record shows that: Rice followed up on Palmer's phone calls to Cox when he responded to Palmer's interest in purchasing one of the construction permits; Rice informed Cox that he wanted Rhea fired, and Cox told Rhea that he was being fired because of Rice's displeasure over the station's financial figures; Cox told Rhea that Rice wanted Steel fired after Steel changed WZZQ's reporting status in a trade publication; after Rice asked Rhea for information about the cost of the Satellite Music Network, Cox told Rhea that Rice thought WBOW could be programmed for less money by bringing in Rice's own music; and Leatherman responded to Cox after Rice asked him about the need for sound effects CDs.. Other station officials also knew of Rice's activities. Thus, Leatherman knew of the six faxes Rice sent him pertaining to various assignments at KBMX; Klautzer communicated to Rice the need for sound effects CDs at one of the stations; and Hanks and Rhea knew of Rice's specific involvement in programming and personnel matters at their stations. In short, although numerous high-level management officials were aware of Rice's activities, the Licensees never modified their reports to the Commission that Rice was "completely insulated and excluded" from involvement in management and operation of the stations and had "no managerial or policy role in the affairs" of the Licensees. We conclude that the Licensees, who were well aware of the Commission's character policies, intended to mislead the Commission in these reports because they wished either to avoid Commission inquiry into Rice's criminal activities or to minimize the impact of those activities on the Licensees' qualifications by representing that he was no longer involved in the affairs of the stations. See Leflore Broadcasting Co., Inc. v. FCC, 636 F.2d 454, 462 (D.C. Cir. 1980) (deceptive intent may be found where there is a false statement together with knowledge of its falsity); Black Television Workshop, 8 FCC Rcd 4192, 4198 n. 41 (1993), recon. denied, 8 FCC Rcd 8719 (1993), rev. denied, 9 FCC Rcd 4477 (1994), aff'd sub nom. Woodfork v. FCC,

70 F.3d 639 (D.C. Cir. 1995) (Table) ("Intent is a factual question that can be inferred if other evidence shows that a motive or logical desire to deceive exists, as is the case here.")

IV. SANCTION

41. We conclude that the appropriate sanction for the misconduct displayed on this record is revocation of the Licensees' existing authorizations and denial of its new station application. In agreement with the ALJ, we find that Rice's felony convictions and the Licensees' misrepresentation and lack of candor with respect to Rice's role at the radio stations subsequent to his arrest constitute separate and independent grounds for disqualification of the Licensees. The Commission has removed broadcast authorizations because of serious misconduct, including violations of law, see South Carolina Radio Fellowship, and misrepresentation or lack of candor, see Leflore Broadcasting Co., Inc. v. FCC, 636 F.2d at 461 ("Ever since the Supreme Court's decision in WOKO (footnote omitted), it has been clear that the Commission may refuse to renew a license where there has been willful and knowing misrepresentation or lack of candor in dealing with the Commission.") Moreover, the totality of the evidence in this proceeding of Rice's criminal acts and the Licensees' deceit convinces us that the Licensees lack the requisite character qualifications to deal truthfully with the Commission and to comply with our rules and policies. See 1986 Character Policy Statement, 102 F.C.C. 2d at 1190-91; 1990 Character Policy Statement, 5 FCC Rcd at 3252; Star Stations of Indiana, Inc., 51 F.C.C. 2d 95 (1975), aff'd sub nom. Star Broadcasting, Inc. v. FCC, 527 F.2d 853 (D.C. Cir. 1975), cert. denied, 425 U.S. 992 (1976).

42. The Licensees claim in their exceptions that revocation of their authorizations would violate the Excessive Fines Clause of the Eighth Amendment.[7] Relying on Austin v. United States, 509 U.S. 602 (1993), which held that a civil forfeiture of property can be subject to the Eighth Amendment if it is imposed as a monetary punishment, the Licensees argue that license revocation would be unduly punitive in this case and an improper exercise of the Commission's discretion. We disagree that revocation here is constitutionally or otherwise inappropriate. Unlike a Commission license revocation proceeding, Austin involved an in rem forfeiture action against the mobile home and auto body shop of the petitioner under 21 U.S.C. §§ 881(a)(4) and (a)(7), which statutes provide for the forfeiture of property used to facilitate drug-related crimes. 509 U.S. at 604. By contrast, 47 U.S.C. §312(a) provides for revocation of a station license or construction permit, inter alia, because of conditions which would warrant denial of a license or permit on an original application, or for willful or repeated violation of any provision of the Communications Act or Commission rule. In other words, the Commission's purpose is not to impose punishment, but it may revoke an authorization where, as here, it finds that the licensee or permittee has not met its statutory obligation to operate its facility in the public interest. See

[7]"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const., Amend VIII.

47 U.S.C. §§307(a), 309(a). A licensed broadcaster is "granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations." Office of Communication of the United Church of Christ v. FCC, 359 F.2d 994, 1003 (D.C. Cir. 1966). Thus, licensees do not own their authorizations but have only the temporary privilege of holding their licenses to operate their stations as public trustees, and a revocation proceeding such as this one does not involve forfeiture or seizure of the physical assets or facilities of the station. See also 47 U.S.C. §§ 301, 304, 309(h).

43. The Commission has broad discretion in its choice of remedies and sanctions. See RKO General, Inc. v. FCC, 670 F.2d at 237; Leflore Broadcasting Co. v. FCC, 636 F.2d at 463; Lorain Journal Co. v. FCC, 351 F.2d at 831. As previously explained, we believe the misconduct in this case was extremely serious, involving egregious criminal acts by the Licensees' sole owner and repeated misrepresentations by the Licensees designed to minimize the effect of Rice's criminal record on their qualifications. Cumulatively, the evidence of misconduct warrants a conclusion that the Licensees lack the requisite character traits of truthfulness and reliability to retain their authorizations. Unlike United Broadcasting Co., 100 F.C.C. 2d 1574, 1584 (1985), cited by the Licensees as support for a lesser sanction, where there was significant evidence mitigating the impact of misconduct at two of the licensee's stations, including the institution of pervasive remedial measures to prevent recurrence, the Licensees produced little evidence to mitigate the impact of Rice's misconduct, their remedial efforts to remove him from day-to-day management and policy activities at the stations were unsuccessful, and their representations in this regard were untruthful. That case also involved the deterrent impact of the Commission's previous denial of license renewal, which situation does not pertain here. See RKO General, Inc., 5 FCC Rcd 642, 644 (1990) (and cases cited therein) (deterrent impact of previous denial may provide basis for conclusion that recurrence of misconduct is unlikely). Moreover, unlike the cited cases, the misconduct here was not isolated or restricted to the operations of any particular station, but involved the criminal actions of the controlling owner of the Licensees and the Licensees' representations to the Commission on behalf of all their stations. We conclude that revocation is appropriate in the circumstances of this case.[8]

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[8]In view of the seriousness of the misconduct and the Licensees' failure to undertake adequate remedial steps, we do not believe forfeiture is the more appropriate sanction. See PCS 2000, L.P., 12 FCC Rcd 1681, 1688-89 (1997) (forfeiture imposed for misrepresentation and lack of candor where applicant took measures expeditiously to remove wrongdoers from all positions of ownership and control). Insofar as the Licensees argue that revocation would adversely affect their station employees, we point out that our order permits the Licensees to keep operating pending the completion of appellate review. See RKO General, Inc., 89 F.C.C. 2d 361, 365 (1982) (Commission considers equity and fairness with respect to station employees in allowing continued operation by disqualified licensee pending appeal).

V. ORDERING CLAUSES

44. ACCORDINGLY, IT IS ORDERED, That the licenses of Contemporary Media, Inc. for Stations WBOW(AM), WZZQ(AM) (formerly WBFX(AM)), and WZZQ(FM), Terre Haute, Indiana, the authorizations of Contemporary Broadcasting, Inc. for Stations KBMX(FM), Eldon, Missouri, and KAAM-FM, Huntsville, Missouri, and the authorizations of Lake Broadcasting, Inc. for Stations KBMX(FM), Eldon, Missouri, and KFXE(FM), Cuba, Missouri, ARE REVOKED, and the application of Lake Broadcasting, Inc. (File No. BPH-921112MH) for a construction permit for a new FM Station on Channel 244A at Bourbon, Missouri, IS DENIED.

45. IT IS FURTHER ORDERED, That the Licensees ARE AUTHORIZED to continue operation of Stations WBOW(AM), WZZQ(AM), WZZQ(FM), KFMZ(FM), and KBMX(FM) until 12:01 A.M. on the ninety-first day following the release date of this Decision to enable the Licensees to conclude the stations' affairs; PROVIDED, however, that if the Licensees seek reconsideration or judicial review of our Decision, they are authorized to continue to operate Stations WBOW(AM), WZZQ(AM), WZZQ(FM), KFMZ(FM), and KBMX(FM) until 12:01 A.M. on the ninety-first day following the release date of any order on reconsideration or the completion of judicial review, whichever is later. Judicial review is completed when the forum which has jurisdiction to review this proceeding issues its mandate: provided, however, that in a case when the mandate issues prior to the expiration of the period for seeking Supreme Court review and the permittee seeks Supreme Court review, judicial review will not be completed until the Supreme Court denies the petition for certiorari or issues a ruling on the merits affirming the denial of the applications, whichever occurs later.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary