

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

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

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

**SECOND SUPPLEMENT TO JOINT STATUS REPORT  
AND  
REQUEST FOR RULING ON BURDENS OF PROOF**

Lake Broadcasting, Inc. (“Lake”) by its counsel, hereby provides a second supplement to its December 8, 2014 “Joint Status Report” in this proceeding. In Paras. 7-8 of its December 8, 2014 Report, Lake stated that it had retained the services of a Missouri criminal law expert, Carter Collins Law, Esq., who was preparing a report analyzing the Missouri sex offender program and registry, explaining how it applies to Mr. Michael Rice and contrasting it with the law and facts in Washington State and in the *David Titus* Decision. Ms. Law has now completed her report, and it is attached hereto, along with Exhibits A through J. Lake believes that Ms. Law’s report (and any testimony that she may give at hearing related thereto) will be sufficient to resolve any legal questions raised by the *David Titus* case as they apply to Mr. Rice.

1. On December 14, 2014, Lake filed a “Response to Enforcement Bureau’s Comments on the Commission’s *Titus* Decision” (“Response”) because the Bureau had not

afforded Lake an opportunity to review and comment on the Bureau's December 8, 2014 "Comments on the Commission's *Titus* Decision" ("Comments") before they were filed. In its Response, Lake strongly disagreed with several burden of proof positions stated by the Bureau in its Comments:

- Lake maintained that the *Titus* decision does not establish "a very high bar for a licensee or applicant who is an adjudicated sex offender to demonstrate that he has been rehabilitated and is qualified to be or remain a Commission licensee" (Comments, Para. 3). Rather, *Titus* states, at note 54, that "once a party having the burden of proof comes forward with a *prima facie* and substantial case, that party will prevail unless its case is discredited or rebutted".
- Lake challenged the Bureau's view, quoting language from note 60 of the *Hearing Designation Order* ("*HDO*") herein, to the effect that the crimes of which Mr. Rice was convicted may have been "so egregious" that he can be deemed qualified to be a licensee "only in the most extraordinary and compelling of circumstances". Lake urges that the Bureau's position is erroneous in two critical respects: (1) "egregious" is a wholly subjective term, and the Bureau will not be able to show that Mr. Rice's convictions qualify as such under Missouri law or as a general matter; and (2) the licensing standard of "only in the most extraordinary and compelling of circumstances" goes beyond the 1986 and 1990 *Character Policy Statements*, neither of which contains any such language. That pseudo-standard has been made out of whole cloth in the *HDO* and does not represent an accurate or judicially sustainable standard for Commission licensure in this proceeding.

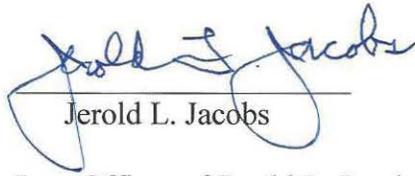
The shrillness of the Bureau's positions on these matters has shaken Lake's confidence that the normal burden of proof by a preponderance of the evidence applies in this proceeding. Instead, it

appears that for Lake to fulfill its burden of proof under Paragraph 28 of the HDO, it will be held to some higher standard than preponderance of the evidence to demonstrate that Mr. Rice has been rehabilitated and that he and Lake are qualified to be Commission licensees. Therefore, Lake respectfully requests that the Presiding Judge should rule on the proper burdens of proof in this proceeding at this time -- before the evidentiary hearing actually begins.

2. Lake appreciates that, normally, questions of law are not addressed until proposed findings of fact and conclusions of law are filed by the parties after the hearing has taken place and the record has been closed. However, Lake submits that the current situation is extraordinary and requires a prehearing ruling. While Lake is confident that it can easily demonstrate Mr. Rice's rehabilitation and qualifications to be a licensee by a preponderance of the evidence, the "very high bar" and "most extraordinary and compelling of circumstances" evidentiary standards that the Bureau supports in its Comments would make a mummery of the hearing and ensure that Mr. Rice and Lake cannot win, no matter what evidence they adduce. Simply stated, "so egregious" and "extraordinary and compelling" are artificial stumbling blocks, which are intended by the Bureau to prevent Mr. Rice and Lake from obtaining a fair hearing and a fair result, regardless of the evidence. Without a prior ruling from the Presiding Judge that those pseudo-standards will not be applied in this case, Patrick Sullivan and Lake Broadcasting, Inc. may refuse to go forward to hearing.

3. Lake recognizes that the Presiding Judge may feel obliged to certify to the Commission, pursuant to Section 1.115 of the Rules, the above questions of proper burdens of proof.

Respectfully submitted,



Jerold L. Jacobs

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Dated: February 4, 2015

Attachments: Report and Exhibits

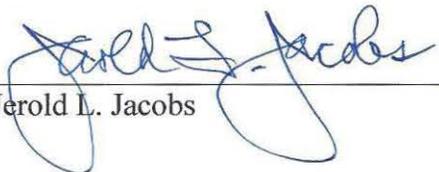
**CERTIFICATE OF SERVICE**

I, Jerold L. Jacobs, hereby certify that on this 4th day of February, 2015, I filed the foregoing "Second Supplement to Joint Status Report and Request for Ruling on Burden of Proof in This Proceeding" in ECFS and caused a copy to be sent via First Class United States Mail and via e-mail to the following:

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Jerold L. Jacobs