

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

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In the Matter of)	
)	MM Docket No. <u>89-120</u>
Amendment of Section 73.202(b),)	RM-6701
Table of Allotments,)	RM-6999
FM Broadcast Stations.)	RM-7000
(Northwye, Cuba, Waynesville,)	RM-7001
Lake Ozark and Eldon, Missouri))	

MEMORANDUM OPINION AND ORDER

(Proceeding Terminated)

Adopted: April 04, 2001

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Released: April 13, 2001

By the Chief, Allocations Branch:

1. The Commission has before it a petition for reconsideration of its *Report and Order* ("R&O") in this proceeding, 7 FCC Rcd 1449 (1992), filed by Lake Broadcasting, Inc. ("Lake"), licensee of Station KBMX(FM), Channel 270A (101.9 MHz), Eldon, Missouri, and permittee of Station KFXE(FM), Channel 271A (102.1 MHz), Cuba, Missouri.¹ We will dismiss as moot Lake's reconsideration petition given that Lake's license for Station KBMX(FM) and its construction permit have been revoked with finality. The U.S. Supreme Court denied certiorari in Lake's appeal of the revocation of its licenses and construction permits. *See Contemporary Media, Inc., et al., v. Federal Communications Commission*, 214 F. 3d 187 (D.C. Cir. 2000), *cert. denied*, 532 U.S. ____ (2001).

2. The Commission issued a *Notice of Proposed Rulemaking and Order to Show Cause* ("Notice") in this proceeding, 4 FCC Rcd 4900 (1989), in response to a petition for rulemaking (RM-6701) filed by CTC Communications, Inc. ("CTC"). It had proposed the allotment of Channel 271A to Northwye, Missouri as its first local aural service. To accommodate its proposal, CTC requested that Channel 274A (102.7 MHz) be substituted for Channel 272A (102.3 MHz) at Waynesville, Missouri and Channel 297A (107.3) be substituted for Channel 271A at Cuba. Lake filed a counterproposal (RM-7001) to the *Notice*, seeking an upgrade of Station KBMX(FM) by substituting Channel 270C1 for Channel 270A, and modification of its station's authorization. To accommodate the upgrade, Lake requested substitution of Channel

¹ Public notice of the petition for reconsideration was given on April 8, 1992 (Report No. 1884).

297A for Channel 271A at Cuba. In addition, two other counterproposals were filed in this proceeding.²

3. The *R&O* granted the allotment of Channel 274A to Lake Ozark and dismissed CTC's proposal on the grounds that Northweye did not constitute a community for allotment purposes. In addition, the *R&O* denied the Eldon and Waynesville counterproposals because their service improvements constitute a lower allotment priority than a first local transmission service at Lake Ozark.³

4. Subsequent to Lake's filing of its reconsideration petition, however, Michael Rice, holder of all issued stock in Lake and its president, was convicted of the felonies of deviate sexual assault and sodomy of minors and sentenced to a total of eight years. Accordingly, the Commission issued an *Order to Show Cause and Notice of Apparent Liability* ("*Show Cause Order*"), 10 FCC Rcd 13,685 (1995), as to why Lake's license for Eldon Station KBMX(FM) and its construction permit for unbuilt Cuba Station KFXE(FM) should not be revoked, and why its pending application for a new FM Station at Bourbon, Missouri (File No. BPH-921112MH) should not be denied.⁴ The *Show Cause Order* also directed that all pending allocation rulemaking requests that had been filed by Lake were to be held in abeyance. Therefore, we refrained from taking action regarding Lake's petition for reconsideration of its denial. In considering the facts adduced at a hearing, however, the Commission affirmed the decision of an Administrative Law Judge [12 FCC Rcd 14,254 (1997)] and stated that,

the misconduct in this case was extremely serious, involving egregious criminal acts by 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.

² Herrin Broadcasting, Inc. filed a counterproposal (RM-7000) requesting the allotment of Channel 274A to Lake Ozark, Missouri to provide a 1st local service. Pulaski County Broadcasters, licensee of Station KJPW-FM, filed a counterproposal (RM-6999) to upgrade its Station KJPW-FM, Waynesville, by substituting Channel 274C3 for Channel 272A, and to modify the station's license accordingly.

³ The allotment criteria are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters, with co-equal weight given to priorities (2) and (3). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

⁴ The *Show Cause Order* also applied to licenses held by Contemporary Media, Inc. for Stations WBOW(AM), WBFX(AM), and WZZQ(FM), all at Terre Haute, IN; to the license held by Contemporary Broadcasting, Inc. for KFMZ(FM), Columbia, MO; and to its construction permit for KAAM-FM, Huntsville, MO.

13 FCC Rcd 14,437, 14,460 (1998), *recon. denied*, 14 FCC Rcd 8790 (1999). As related above, the Commission's actions were affirmed by the U.S. Court of Appeals for the D.C. Circuit, and the U.S. Supreme Court denied certiorari.

5. In light of these developments, Lake's petition for reconsideration in this proceeding will be dismissed as moot because Lake's authorizations for the Eldon and Cuba stations have been revoked. As a result, the only allotment made in this proceeding is Channel 274A at Lake Ozark.

6. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by Lake Broadcasting, Inc., IS DISMISSED AS MOOT.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact J. Bertron Withers, Jr., Mass Media Bureau, (202) 418-2188.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**