

FEDERAL MAIL ROOM

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

2001 APR 20 A 11: 20

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 92-214
Table of Allotments,)	RM-8062
FM Broadcast Stations.)	RM-8144
(Columbia, Bourbon, Leasburg,)	RM-8145
Gerald, Dixon and Cuba, Missouri))	RM-8146
)	RM-8147

**MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)**

Adopted: April 16, 2001

Released: April 20, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it for consideration two separate Petitions for Reconsideration ("reconsideration") of the Report and Order ("R&O"), 10 FCC Rcd 12624 (1995), in this proceeding. The reconsiderations were filed by Lake Broadcasting, Inc. ("Lake"), licensee of Station KBMX(FM), Eldon, Missouri, permittee of Station KFXE(FM), Cuba, Missouri, and an applicant for a new FM broadcast station on Channel 244A at Bourbon, Missouri, and by Central Missouri Broadcasting, Inc. ("CMB"), counterproponent for Channel 243A at Dixon, Missouri, in this proceeding.¹ We will dismiss as moot Lake's reconsideration petition given that Lake's license for Station KBMX (FM) and its construction permit for Station KFXE(FM) have been revoked with finality.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). We shall deny the reconsideration filed by CMB.

2. **Background.** The Commission issued a Notice of Proposed Rule Making ("Notice"), 7 FCC Rcd 6230 (1992), in response to a petition filed by The Greenfield Group seeking the substitution of Channel 244C1 for Channel 244C3 at Columbia, Missouri, and modification of its construction permit for Station KCMQ(FM) to specify operation on Channel 244C1 (RM-8062).² The Notice also proposed the substitution of Channel 297A for vacant Channel 244A at Bourbon, Missouri, or the deletion of the vacant channel if no interest was expressed in retention of a channel in Bourbon. CMB counterproposed the allotment of Channel 243A at Dixon, Missouri, as a first local service (RM-8146).

¹ The petitions for reconsideration were put on Public Notice on January 26, 1996, Report No. 2119.

² An assignment of license from the Greenfield Group to Zimmer Radio of Mid-Missouri, Inc. was granted on July 15, 1993, and consummated on August 11, 1993 (BALH-921015EB).

Lake counterproposed the substitution of Channel 297C3 for Channel 271A at Cuba, Missouri, and retention of Channel 244A at Bourbon (RM-8147). Counterproposals were also filed by Jeff Weinhaus ("Weinhaus") for an allotment at Leesburg, Missouri (RM-8144) and by Tony Knipp for an allotment at Gerald, Missouri (RM-8145). Weinhaus and Knipp withdrew their respective counterproposals in compliance with Section 1.420(j) of the Commission's Rules.

3. The R&O granted Greenfield's request to substitute Channel 244C1 for Channel 244C3 at Columbia, Missouri, and modify the license for Station KCMQ(FM) accordingly. To accommodate the upgrade at Columbia, alternate Channel 231A was substituted for vacant Channel 244A at Bourbon, Missouri, as Lake filed an application for Channel 244A during the comment cycle in this proceeding which removed the basis for deletion of the channel. In response to CMB's counterproposal, we allotted Channel 221A at Dixon, Missouri. Finally, we denied Lake's request to modify its construction permit for Station KFXE(FM), Cuba, to specify operation on Channel 297C3 in lieu of Channel 271A. Since Zimmer Radio of Mid-Missouri, Inc. stated its intention to file an application for non-adjacent Channel 297C3 at Cuba, the channel was allotted to Cuba and made available for application. There were no additional equivalent channels that could be allotted to Cuba in order to satisfy Lake's request for the non-adjacent upgrade.

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 ("OSC"), 10 FCC Rcd 13,685 (1995), as to why Lakes'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 on Channel 244A at Bourbon, Missouri, should not be denied.³ The OSC also directed that all pending rulemaking/reallocation 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 in this proceeding. 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.

13 FCC Rcd 14,460 (1998), recon. denied, 14 FCC Rcd 8790 (1999). As related above, the

³ The OSC also applied to licenses held by Contemporary Media, Inc. for Stations WBOW(AM), WBFX(AM) and WZZQ(FM), all Terre Haute, Indiana; to the license held by Contemporary Broadcasting, Inc. for KFMZ(FM), Columbia, Missouri; and to its construction permit for KAAM-FM, Huntsville, Missouri.

Commission's actions were affirmed by the U.S. Court of Appeals for D.C. Circuit, and the U.S. Supreme Court denied certiorari.

5. **Lake's Petition for Reconsideration.** In its petition for reconsideration, Lake seeks to raise two arguments. First, it alleges that we should not have opened up a filing window for Channel 297C3 at Cuba. Instead, Lake alleges that its Cuba construction permit should have been upgraded on non-adjacent Channel 297C3 because the other expression of interest for this channel has been abandoned. Second, Lake argues that opening up Channel 297C3 for general application prejudiced Lake's reconsideration petition in MM Docket 89-120 because it precludes granting the Eldon Station a C1 upgrade. We will dismiss both of these arguments as moot because the authorizations for the Eldon and Cuba stations have been revoked and because we recently dismissed Lake's reconsideration petition in MM Docket No. 89-120. *See MO&O*, DA No. 01-930, released April 13, 2001. The first argument is also moot because an application (BPH-19960207MB) has been filed by Reichel Broadcasting Company for Channel 297C3 at Cuba. Under those circumstances, a non-adjacent upgrade for the Cuba construction permit from Channel 271A to Channel 297C3 is not possible.

6. **CMB's Petition for Reconsideration.** In its petition for reconsideration, CMB objected to the allotment of Channel 221A at Dixon, Missouri, in lieu of Channel 243A. CMB argued that the allotment of Channel 221A at Dixon was contingent on the outcome of MM Docket 89-120 in which Lake Broadcasting, Inc. requested the substitution of Channel 221A for Channel 272A at Waynesville, Missouri, to accommodate the allotment of Channel 270C1 at Eldon, Missouri. The R&O in Docket 89-120 allotted Channel 274A to Lake Ozark, Missouri, making no substitutions at Waynesville, which made Channel 221A available for allotment at Dixon. CMB states that it is the licensee of Station KTXV(FM), Jefferson City, Missouri, and is familiar with Dixon and its economic potential. The allotment of Channel 243A at Dixon, with the ability to locate the transmitter east of the city, would permit the station to draw on a larger and more stable audience and economic base while providing a first local service to Dixon. It is CMB's opinion that the location of Channel 221A on the west side of the community as opposed to the allotment of Channel 243A on the east side of the community makes the project not economically viable.

7. We shall deny CMB's petition for reconsideration. Contrary to CMB's contention, Channel 221A is equivalent to Channel 243A at Dixon for allotment purposes. The Commission considers channels of the same class to be equivalent unless showings have been made that a station cannot be constructed for reasons such as environmental consequences or hazards to air navigation. *See Vero Beach, Florida*, 3 FCC Rcd 1049 (1988), *rev. denied*, 4 FCC Rcd 2184, 2185 (1989). CMB provided no evidence that Channel 221A is an unusable channel at Dixon. CMB failed to show any overriding public interest benefit in the allotment of Channel 243A over Channel 221A at Dixon. Further, the Commission does not generally protect a petitioner's proposed site in a rule making proceeding where the channel would be available for application or auction by multiple parties with no guarantee that the petitioner will ultimately become the licensee. In this instance, Channel 221A can be allotted to Dixon

at a less restrictive site than Channel 243A.⁴ In any event, the filing of an application by American Broadcasting Financial Corporation appears to remove the question of viability of Channel 221A at Dixon (BPH-19970527MC). Moreover, the dismissal of Lake's petition for reconsideration as moot in MM Docket 89-120 removes the contingency of the channel with another Commission proceeding.

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

9. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by Central Missouri Broadcasting, Inc. IS DENIED.

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

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2181.

FEDERAL COMMUNICATIONS COMMISSION

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

⁴ Channel 221A was allotted to Dixon with a site restriction 6.8 kilometers (4.2 miles) west of the community. The proposed site for Channel 243A at Dixon is 13.9 kilometers (8.6 miles) northeast of the community.