

Federal Communications Commission

DA 01-1017

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

2001 APR 25 P 3:43

In the Matter of )  
)  
Amendment of Section 73.202(b), ) MM Docket No. 91-352  
Table of Allotments, ) RM-7866  
FM Broadcast Stations. )  
(Ava, Branson and )  
Mountain Grove, Missouri) )  
)

DENIED

**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 a Petition for Reconsideration ("reconsideration") of its Report and Order ("R&O"), in this proceeding, 10 FCC Rcd 13035 (1995), 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.<sup>1</sup> 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petition given that Lake's license for Station KBMX (FM) and its construction permit for station KFXE(FM) have been revoked with finality.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).

2. The Commission issued a Notice of Proposed Rule Making and Order to Show Cause ("Notice") 6 FCC Rcd 7214 (1991), in response to a petition filed by Turtle Broadcasting Co. of Branson ("Turtle"). Turtle proposed the substitution of Channel 292C2 for Channel 292C3 at Branson, Missouri, and modification of its construction permit for Station KRZK(FM) to specify operation on Channel 292C2. The Notice also proposed the substitution of Channel 223A for Channel 293A at Mountain Grove, Missouri, and the modification of the license for Station KCMG-FM and the substitution of Channel 221A for Channel 222A at Ava, Missouri, and modification of the license for station KKOZ-FM. The Report and Order ("R&O") granted the requested substitutions at Branson, Ava and Mountain Grove, Missouri.

3. Lake's reconsideration petition alleges that the R&O erroneously allotted Channel 221A to Ava, Missouri, which if affirmed, would foreclose Lake's ability to upgrade Station KBMX to Channel

<sup>1</sup> The petition for reconsideration was put on Public Notice on January 26, 1996, Report No. 2119.

270C1 at Eldon as proposed in MM Docket No. 89-120, 7 FCC Rcd 1449 (1992) and 4 FCC Rcd 4900 (1989). Lake further argues that there is no public interest justification for taking any actions in this proceeding which will predetermine the outcome of Docket 89-120 in a manner that will be permanently detrimental to Lake's aspirations to obtain a Class C1 upgrade for Station KBMX at Eldon. Lake contends that this proceeding should be held in abeyance pending the outcome of the proposed allotment of Channel 221A at Waynesville, Missouri, in Docket 89-120.

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.<sup>2</sup> 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 Commission's actions were affirmed by the U.S. Circuit Court of Appeals in 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 and because we recently dismissed Lake's petition for reconsideration in MM Docket No. 89-120. See MO&O, DA No. 01-930, released April 13, 2001.

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

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<sup>2</sup> The OSC also applied to licenses held by Contemporary media, Inc. for Station 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.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.
8. 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**