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July 3, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: MM Docket No. 91-352 /
Ava, Branson, and
Mountain Grove, Missouri

Dear Ms. Salas:

Transmitted herewith, on behalf of W.R.D. Entertainment, Inc., are an original and four copies of its "Opposition to Petition for Reconsideration" in the above-referenced proceeding.

Should any further information be required concerning this matter, please communicate with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump
Counsel for W.R.D. Entertainment, Inc.

Enclosures

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ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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JUL - 3 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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))	

Directed to: Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

W.R.D. Entertainment, Inc. ("W.R.D."), by its counsel, hereby respectfully submits its Opposition to the Petition for Reconsideration submitted by Lake Broadcasting, Inc. ("Lake") in the above-captioned proceeding on May 15, 2001. With respect thereto, the following is stated:

1. W.R.D. has pending before the Commission an application for construction permit for a new FM station to operate on Channel 293A at Horseshoe Bend, Arkansas, File No. BPH-19970404MO. This application is a "first-come, first-served" application which is not mutually exclusive with any other application. The application as presently filed, however, is short-spaced to the licensed operation of KELE-FM, Mountain Grove, Missouri, on Channel 293A. KELE-FM's channel of operation was changed in the instant proceeding, however, to Channel 223A. *See, Report and Order*, 10 FCC Rcd 13035 (1995) ("*R&O*"), and it is W.R.D.'s understanding that KELE-FM has been operating on the new channel since mid-1997.

Nonetheless, due to Lake's previous petition or reconsideration in this proceeding, filed January

11, 1996, the change in channel did not become final, and W.R.D.'s application therefore has not been granted. Lake's recently filed Petition for Reconsideration again is delaying finality of this long-pending proceeding and grant of W.R.D.'s application. W.R.D. therefore is clearly a party adversely affected by Lake's Petition for Reconsideration and thus has standing to submit this Opposition. Furthermore, the delay in bringing this proceeding to a final conclusion has serious adverse effects on the public interest in that it has delayed the institution of a new radio service, and in this case a first local transmission service, to the community of Horseshoe Bend.

W.R.D.'s application has been pending since April 1997, and the deadline for filing petitions to deny its application passed on December 2, 1997, with no such petitions filed. *See, Notice of Acceptance of FM Broadcast Applications and Notification of Petitions to Deny Deadline*, Report No. NA-210, released October 28, 1997. Thus, the grant of W.R.D.'s application and commencement of first local service to Horseshoe Bend has already been delayed for over three and one-half years. It is therefore, long past time to bring this proceeding to a final conclusion so that the public interest benefits set forth in the *R&O* may be fully realized, W.R.D.'s application may be granted, and W.R.D. may provide new service to Horseshoe Bend.

2. On April 20, 2001, the Commission released a *Memorandum Opinion and Order*, DA 01-1017 ("*MO&O*"), which was intended to have that effect. Indeed, immediately under the title of the *MO&O* is the notation "Proceeding Terminated." In the *MO&O*, the Commission notes that Lake's license for KBMX(FM), Eldon, Missouri, and its construction permit for KFXE(FM), Cuba, Missouri, have been revoked, and that revocation has become final. Accordingly, the Commission dismissed Lake's previous petition for reconsideration in this proceeding as moot.

3. Lake's recent Petition for Reconsideration argues that the dismissal of its previous

petition was premature. Lake points to *Contemporary Media, Inc.*, 13 FCC Rcd 14437 at 14461 ¶ 45, which authorizes Lake to continue to operate until 12:01 a.m. on the 91st day after the completion of judicial review. Petition for Reconsideration at 1-2. As that period will not expire until July 12, 2001, Lake claims that the dismissal of its previous petition for reconsideration as moot was therefore premature. Lake further claims that it intends to seek extension of its operating authority and other equitable relief from the Commission.

4. Lake's argument is entirely misplaced, however. Nothing Lake can say changes the fact that its authorizations have been revoked, and that revocation has become final. Further, the portion of the Commission's decision in *Contemporary Media, Inc.* cited by Lake makes it clear that the purpose of allowing Lake to continue operating at all is "to conclude the stations' affairs...." *Id.* Quite obviously, the grant of an authorization to continue operating so that a station's affairs may be wound up in an orderly manner, with the least possible disruption to advertisers and the public, is far from the equivalent of the grant of a new license or construction permit. The fact remains that Lake has no continuing license or construction permit which may be modified by the Commission.

5. Moreover, regardless of any future decision to extend Lake's operating authority, and regardless of any equitable considerations which Lake may raise in the future, the Commission could not by administrative fiat restore a license or construction permit to Lake. The license revocation proceeding completed the full administrative and judicial review process, and the outcome is now final. It is not within the Commission's power to reverse that outcome. The only way in which Lake could acquire a license or construction permit would be to follow the normal administrative processes for acquiring new construction permits and licenses, a remote

prospect at best. Even if Lake were to pursue this course successfully, in the interim, it would have no license or construction permit which could be modified, and any construction permit which it did receive would be for a new station, not for an existing station. Accordingly, a proposal to modify any such future construction permit or license could have no place in this proceeding, as the station would not even come into being until long after the comment deadline herein.

6. Given these facts, the Commission was entirely correct in dismissing Lake's previous petition for reconsideration as moot. Accordingly, W.R.D. requests herein that Lake's Petition for Reconsideration be denied. Further, so that this proceeding may at last be drawn to a close, W.R.D.'s application may be granted, and new local service may be provided to Horseshoe Bend, W.R.D. requests that such action be taken expeditiously.

WHEREFORE, the premises considered, W.R.D. respectfully requests that Lake's
Petition for Reconsideration be denied post haste.

Respectfully submitted,

W.R.D. ENTERTAINMENT, INC.

By: 
Frank R. Jazzo
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Its Attorneys

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July 3, 2001

CERTIFICATE OF SERVICE

I, Penny Matthews, a secretary with the firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that I have mailed, first class postage prepaid, on this 3rd day of July, 2001, a copy of the attached OPPOSITION TO PETITION FOR RECONSIDERATION to the following:

John A. Karousos, Chief*
Allocations Branch
Policy and Rules Division
Mass Media Bureau, room 3-A266
Federal Communications Commission
Washington, D.C. 205534

Ms. Kathleen Scheuerle*
Allocations Branch
Policy and Rules Division
Mass Media Bureau, Room 3-A247
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Certificate of Service

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Corum Industries, Inc.
Station KKOZ-FM
P.O. Box 386
Ava, MO 65608

* By Hand Delivery


Penny Matthews