

RECEIVED

DEC - 3 2001

DOCKET FILE COPY ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

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

92-214

In the Matter of)	
)	
Amendment of Section 73.202(b),	)	MM Docket No. 90-195
Table of Allotments,	)	RM-7152
FM Broadcast Stations)	
(Brookline, Missouri))	

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))	

In the Matter of)	
)	
Amendment of Section 73.202(b),	)	MM Docket No. 92-214
Table of Allotments,	)	RM-8061
FM Broadcast Stations	)	RM-8144
(Columbia, Bourbon, Leasburg,	)	RM-8145
Gerald, Dixon and Cuba, Missouri)	)	RM-8146
	)	RM-8147

To: The Commission

APPLICATION FOR REVIEW

Lake Broadcasting, Inc. ("Lake"), licensee of Station KBMX(FM), Eldon, Missouri, by its attorneys, pursuant to Section 1.115 of the Commission's Rules, hereby seeks review of the *Memorandum Opinion and Order* ("MO&O"), DA 01-2567, released November 2, 2001, by the

No. of Copies rec'd 014
List ABCDE

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau (the "Bureau") in this proceeding.

1. The *MO&O* consolidated separate petitions for reconsideration filed by Lake in each of the above-captioned FM channel rulemaking proceedings and affirmed the Bureau's dismissal of Lake's previous petitions for reconsideration in *Memorandum Opinions and Orders* at 16 FCC Rcd 7982 (2001), 16 FCC Rcd 8698 (2001), 16 FCC Rcd 8701 (2001), and 16 FCC Rcd 8704 (2001), respectively. **However, in this appeal, Lake is requesting Commission review only of the Bureau's action in terminating the proceeding in MM Docket No. 89-120. Lake is not appealing the *MO&O*'s termination of proceedings in MM Docket Nos. 90-195, 91-352, and 92-214.**

2. As to MM Docket No. 89-120, Lake urges that the *MO&O* committed reversible procedural error by holding (§4) that the Bureau's dismissal of Lake's Petition for Reconsideration as moot was not premature. The *MO&O* erroneously ruled (*id.*) that the upgrade sought by Lake's Station KBMX(FM) at Eldon, Missouri can no longer be effectuated because: (1) Lake's station authorization for Station KBMX(FM) has been revoked and that revocation has become final; (2) the Bureau dismissed Lake's request for special equitable relief on July 3, 2001 in *Public Notice*, DA 01-1441; and (3) the Commission ordered Lake to cease broadcast operations on October 3, 2001 in *Memorandum Opinion and Order*, FCC 01-300, released October 3, 2001. None of these rationales supports termination of this proceeding, and the *MO&O* is simply mistaken that the upgrade sought by Lake can no longer be effectuated.

3. First, MM Docket No. 89-120 is a public rulemaking proceeding to amend the FM Table of Allotments, and the technical upgrade that Lake is seeking has a scientific and public interest legitimacy independent of whether Lake remains the licensee of Channel 270A at Eldon,

Missouri. Lake continues to urge that, as a matter of spectrum maximization, case precedent, and administrative efficiency, Channel 270A should be upgraded to Channel 270C2 at Eldon in the FM Table of Allotments, regardless of whether Lake remains the licensee of Station KBMX(FM). Importantly, **Lake is abandoning its appeal of the Commission's refusal in MM Docket No. 89-120 to upgrade Station KBMX((FM) to Channel 270C1. The subject Application for Review challenges only the Commission's refusal to upgrade the frequency to Channel 270C2.**

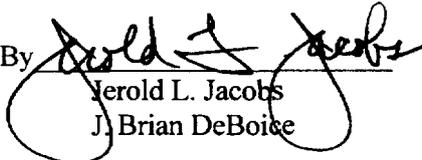
4. Second, on November 1, 2001, Lake filed a Notice of Appeal in the United States Court of Appeals for the District of Columbia Circuit *sub nom. Michael S. Rice, Contemporary Media, Inc., Contemporary Broadcasting, Inc. and Lake Broadcasting, Inc. v. FCC* (Case No. 01-1474), which appeals the *Memorandum Opinion and Order*, FCC 01-300, that, *inter alia*: (1) affirmed the Bureau action in *Public Notice*, DA 01-1441, purporting to dismiss Lake's June 1, 2001 Petition for Equitable Relief and associated Supplements without consideration; and (2) effectively denied, without consideration, Lake's August 2, 2001 Application for Review of the Bureau's action in *Public Notice*, DA 01-1441. Thus, Lake maintains that finality has not occurred concerning Lake's efforts to preserve and resurrect its authorizations for Station KBMX(FM), and, hence, it was indeed premature for the Bureau to attempt to terminate these four FM channel rulemaking proceedings in the *MO&O*. Since Lake's Notice of Appeal was filed one day after the *MO&O* was adopted and one day before it was released, it is not surprising that the *MO&O* makes no reference to it. Nevertheless, the Notice of Appeal clearly precludes any determination at this time that Lake has exhausted its administrative remedies or has otherwise lost standing to participate in these four proceedings and appeal the *MO&O*.

WHEREFORE, in view of the foregoing, Lake respectfully asks the Commission to set aside the *MO&O* as to MM Docket No. 89-120, reinstate Lake's Petition for Reconsideration, and

hold the MM Docket No. 89-120 proceeding in abeyance to the extent required by Paragraph 3 above pending the outcome of judicial review in Case No. 01-1474 and any further proceedings that the Court may order pertaining to Station KBMX(FM).

Respectfully submitted,

LAKE BROADCASTING, INC.

By 
Harold L. Jacobs
J. Brian DeBoise

Cohn and Marks
1920 N Street, N.W. Suite 300
Washington, D.C. 20036
(202) 293-3860

Its Attorneys

Dated: December 3, 2001

CERTIFICATE OF SERVICE

I, Maryam B. Jeffrey, hereby certify that I have mailed, first class postage prepaid, or have caused to be hand-delivered, on this 3rd day of December 2001, a copy of the attached APPLICATION FOR REVIEW to the following:

Roy J. Stewart, Chief
Mass Media Bureau Room 2-C347
Federal Communications Commission
Washington, DC 20554

Peter H. Doyle, Chief
Audio Services Division
Mass Media Bureau Room 2-A360
Federal Communications Commission
Washington, DC 20554

John A. Karousos, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau Room 3-A266
Federal Communications Commission
Washington, DC 20554

Andrew J. Rhodes, Esq.
Policy and Rules Division
Mass Media Bureau Room 2-C261
Federal Communications Commission
Washington, DC 20554

David D. Oxenford, Esq.
Martin R. Leader, Esq.
ShawPittman
2300 N Street, N.W.
Washington, D.C. 20037-1128
**Counsel for MW Springmo, Inc.
and CTC Communications, Inc.**

John R. Wilner, Esq.
Bryan Cave, L.L.P.
700 13th Street, N.W. Suite 700
Washington, D.C. 20005-3960
Counsel for Stereo Broadcasting, Inc.

Frank R. Jazzo, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street Eleventh Floor
Arlington, VA 22209
**Counsel for W.R.D. Entertainment, Inc.
and Zimmer Radio of Mid-Missouri, Inc.**

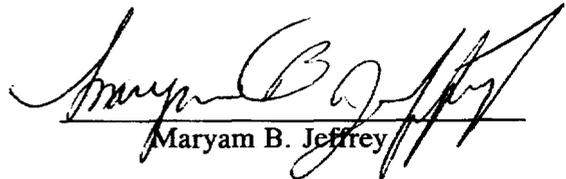
Howard A. Topel, Esq.
Leventhal Senter & Lerman, P.L.L.C.
2000 K Street, N.W., Suite 600
Washington, DC 20006-1809
**Counsel for Herrin Broadcasting, Inc.,
Turtle Broadcasting Co., and
Reichel Broadcasting Corporation**

Alan C. Campbell, Esq.
Irwin Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W. Suite 200
Washington, D.C. 20036-3101
Counsel for Central Missouri Broadcasting, Inc.

Mr. Al Germond
Columbia FM, Inc. (KARO(FM))
503 Old 63 North
Columbia, Missouri 65201

Communications Works, Inc.
Station KCMG-FM
P.O. Box 804
Mountain Grove, MO 65711

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



Maryam B. Jeffrey