

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
 Reclassification of License of )  
 Station KJEL(FM) )  
 (Lebanon, Missouri) )  
 )  
 In re: Application of )  
 )  
 Ozark Broadcasting, Inc. )  
 For Minor Change Application to )  
 KJEL (FM), Lebanon, Missouri )  
 )  
 For Minor Change )  
 )

RM-10567

File No. BPH-20030401ABZ

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

Four Him Enterprises, L.L.C. ("Four Him"), licensee of KHCR(FM) (now KHZR), Potosi, Missouri, files this Reply to the Opposition to Petition for Reconsideration filed by Ozark Broadcasting, Inc. ("Ozark"). The sole issue in this proceeding is whether Ozark is entitled to actual notice of the Order to Show Cause released September 20, 2002 (Show Cause Order) or whether constructive notice is sufficient. Ozark does not dispute that it received constructive notice of the Show Cause Order.

Ozark relies on the 1933 decision *Unity Schools of Christianity v FRC*, 64 F.2d 550 (1933) to support its position that it is entitled to actual notice. Ozark misconstrues Unity Schools to require actual notice as a matter of constitutional law. Nowhere does the decision require actual notice. The Commission was faulted for issuing a decision to rescind a license and grant a mutually exclusive proposal without affording any notice. Ozark claims failure to

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provide actual notice of an Administrative Law Judge's Exceptions to a station that lost its license is a denial of due process. The receipt of the Exceptions was not the issue. In fact copies of the Exceptions had been mailed to each of the parties and there is no indication they were not received. The problem was that the Commission, contrary to the recommendation of the Administrative Law Judge, rescinded the license of the station without giving any prior notice to the station of its intent to rescind the license. The Commission gave no notice and the Court rightly faulted the Commission for its failure.

In this proceeding it is beyond dispute that the Commission issued a Show Cause Order explicitly stating its intent to downgrade KJEL from a Class C to a Class C0 station. It is beyond dispute that Ozark received constructive notice of this Order. Ozark was also served with a copy of Four Him's request for issuance of a Show Cause Order for a C0 downgrade.

Significantly Ozark fails to address in any way the clear language 47 U.S.C. §316(a)(1) which nowhere requires actual notice. If Congress had intended actual notice, it would have drafted §316(a)(1) to require actual notice, in the same way that 47 U.S.C. §312(a)(1) requires the Commission to serve a copy of an Order to Show Cause to a licensee or permittee before revoking a license or permit.

Ozark also cites *Denison-Sherman, Texas, et al.*, 12 FCC Rcd 10265 and *Spring Valley, Minnesota and Osage, Iowa*, 12 FCC Rcd 15237. In each of these cases the Show Cause Order was upheld despite the fact neither of the affected parties received actual notice from the FCC via certified mail. Neither of these decisions require actual notice or receipt of notice by certified mail. The Commission simply concluded that since the parties were aware of the Show Cause Order the question of whether the Show Cause Order was received by certified mail was moot.

Lastly Ozark claims Four Him suffered no prejudice since its only right was issuance of a Show Cause Order. On the contrary, Four Him had a right to expect, as provided under Commissioner Rules, that Ozark's failure to timely respond to the Show Cause Order would afford the relief it was seeking in the first place when it filed its Petition for Rule Making - i.e. an upgraded facility.

Ozark was both served with the rule making (and therefore on notice that the Show Cause Order may be issued) and was put on notice that a Show Cause Order was issued when it was published in the FCC Daily Digest. This is not a situation where a license is being rescinded or revoked which does require actual notice. In fact the Show Cause Order does not affect Ozark's current operations in any way. It merely affects Ozark's right to operate at a higher power. All rulemakings have the potential of affecting a stations' future options. Actual notice is not required in all rulemaking proceedings. Allowing parties who have been given notice of a Show Cause Order to ignore the deadline and procedures set forth in a Show Cause Order prejudice all other parties attempting to maximize their facilities to provide a better public service.

Respectfully submitted,

**FOUR HIM ENTERPRISES, L.L.C.**

By: 

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September 24, 2003

**CERTIFICATE OF SERVICE**

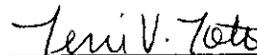
I, Terri V. Toto the law offices of Gammon & Grange, P.C., hereby certify that I have sent copies of the foregoing REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION this 24th day of September 2003, by first-class, postage prepaid, U S. Mail to the following:

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