

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20534

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

MEMORANDUM OPINION AND ORDER

Adopted: May 20, 2004

Released: May 26, 2004

By the Commission:

1. The Commission has before it a petition for reconsideration of its prior order in this proceeding,¹ filed by Lake Broadcasting, Inc. ("Lake"), the former licensee, *inter alia*, of Station KBMX(FM), Channel 270A, Eldon, Missouri. No oppositions or replies were filed.

2. Lake's request to upgrade the class of Station KBMX(FM) was previously denied in this proceeding.² Thereafter, two petitions for reconsideration of this action were dismissed as moot, and an application for review was denied because the license for Station KBMX(FM), Eldon, Missouri, as well as the other stations licensed to Lake or controlled by its principal shareholder, Michael Rice, had been revoked due to a lack of character qualifications, and the revocations had become final.³

3. Lake's latest petition for reconsideration, which was filed in May, 2002, argues that the Commission erred in dismissing its Eldon upgrade proposal as moot. The petition relies upon two court appeals of the Commission's denial of Lake's request for equitable relief to reopen the revocation proceeding⁴, contending that, until these cases are decided, it is premature to dismiss the reconsideration petition in this proceeding as moot. Lake requests that its petition for reconsideration in MM Docket 89-120 be held in abeyance pending the outcome of judicial review. However, in March, 2003, the United States Court of Appeals for the D.C. Circuit denied these appeals, affirming the Commission's determination that no relevant information not previously available and no evidence of fraud or misconduct had been presented that would warrant reopening a final proceeding.⁵ In view of this decision, Lake's latest petition for reconsideration may be dismissed as moot.

¹ *Northweye, Cuba, Waynesville, Lake Ozark, and Eldon, Missouri*, 17 FCC Rcd 7585 (2002) ("MO&O").

² *Northweye, Cuba, Waynesville, Lake Ozark, and Eldon, Missouri*, 7 FCC Rcd 1449 (MMB 1992).

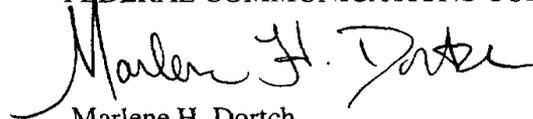
³ *Northweye, Cuba, Waynesville, Lake Ozark, and Eldon, Missouri*, 16 FCC Rcd 7982 (MMB 2001), *recon. dismissed*, 16 FCC Rcd 19423 (MMB 2001), *app. for rev. denied*, 17 FCC Rcd 7585 (2002). *See also Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 920 (2001) (Mem).

⁴ *See Michael S. Rice*, 17 FCC Rcd 7111 (2002).

⁵ *Rice v. FCC*, 60 Fed.Appx. 332 (D.C. Cir. 2003).

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

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marlene H. Dortch". The signature is written in a cursive style with a large initial "M".

Marlene H. Dortch
Secretary