

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

In the Matter of) MB Docket No. 14-82
)
PATRICK SULLIVAN) FRN 0003749041, 0006119796,
(Assignor)) 0006149843, 0017196064
)
and) Facility ID No. 146162
)
LAKE BROADCASTING, INC.) File No BALFT-20120523ABY
(Assignee))
)
Application for Consent to Assignment of)
License of FM Translator Station W238CE,)
Montgomery, Alabama)

To: Enforcement Bureau

**LAKE BROADCASTING, INC.'S PARTIAL
OPPOSITION TO ENFORCEMENT BUREAU'S
MOTION TO COMPEL ANSWERS
TO INTERROGATORIES
AND AMENDED ANSWER**

Pursuant to Section 1.323(c) of the Commission's Rules, Lake Broadcasting, Inc. ("Lake"), by its attorney, hereby opposes, in part, the Enforcement Bureau's August 27, 2014 Motion to Compel Answers to Interrogatories ("Motion"), and provides an Amended Answer to certain Interrogatories.

A. Partial Opposition to Motion to Compel

1. Lake's August 15, 2014 answers to the Enforcement Bureau's First Set of Interrogatories were filed in good faith and were not intended to be "unresponsive, evasive, and/or incomplete" (Motion, Para. 1). The answers were based upon information then at hand or obtainable by reasonable diligence and were believed to be sufficient to answer each

Interrogatory. Now that the Enforcement Bureau (“Bureau”) has more fully explained what information it is seeking and why, Lake will supply hereinbelow amended answers to Interrogatories 12 and 13, but, for the reasons that follow, it continues to object to providing more detailed information in response to Interrogatories 14, 15, and 23.

2. At the June 24, 2014 Prehearing Conference in this proceeding, the parties and the Presiding Judge spent quite a bit of time (Tr. 28-52) discussing the Hearing Designation Order (“HDO”) herein and how Mr. Michael Rice’s rehabilitation might be proved. It was agreed that, in accordance with Paragraph 27 of the HDO, the Presiding Judge would not “relitigate any of the findings of fact and/or conclusions of law” contained in any of the previous state court or Commission decisions pertaining to Mr. Rice. On the other hand, the Presiding Judge and the Bureau made it clear that they felt obliged under the HDO to probe the extent to which Mr. Rice has been rehabilitated from the felony convictions and misrepresentation and lack of candor delicts specified in Paragraph 22(a) and (b) of the HDO. At first blush, the Bureau’s First Set of Interrogatories, as clarified in its Motion to Compel, appear consistent with that overall purpose.

3. However, “the devil is in the details,” and, as Lake will now explain, Interrogatories 14, 15, and 23 go well beyond the appropriate level of depth in this proceeding and are unduly burdensome, impractical, and/or will not lead to the production of relevant evidence.

Interrogatory No. 14

State whether Michael Rice is or has been employed and/or self-employed since his release from prison. If so, as to each such position that Michael Rice has held:

- a. Identify the employer.
- b. Specify the dates of employment.
- c. Identify Michael Rice’s immediate supervisor.
- d. Specify the title of the position.
- e. Describe Michael Rice’s duties.

Answer

Since he was released from prison in December 1999, Mr. Rice has been self-employed as an investor in residential rental properties, bonds, and securities; a property manager for residential properties and for the towers that he owns; and an engineering consultant for AM and FM radio stations.

4. The Bureau asserts that “[t]he nature and extent of Mr. Rice’s employment history [over the last 15 years] is critical to determining whether he has been rehabilitated and can conduct himself as a responsible licensee. Thus, the Bureau is entitled to specific information requested, *as to each position Mr. Rice has held*” (italics in original). However, as Lake explained in its Answer to Interrogatory No. 14, Mr. Rice is involved with a variety of income-producing endeavors; only a very small part of these endeavors is engineering consulting. His consulting work over the last 15 years has been sporadic and is done as a contractor, not as an hourly employee. Taxpayers are not required to maintain records for more than three years after a tax return is filed. Mr. Rice no longer has contractor records for most of the 15 year period in question.

5. More importantly, as stated in its Objection to Interrogatory No. 15, Lake believes that the details of Mr. Rice’s part time employment are unnecessary to test Mr. Rice’s rehabilitation and could lead to harassment of his clients. The Bureau anticipated this Objection by stating (Motion at 8) that it is “entitled to speak with persons with whom Mr. Rice has worked...to assess the veracity of his claim that he has been rehabilitated...and the fact that Mr. Rice may be embarrassed about the possible disclosure of his criminal past does not provide a basis for Lake to refuse to answer a legitimate interrogatory”. However, the Bureau has failed to establish sufficient basis for Lake to provide further information here. The questions at issue in this proceeding are whether Mr. Rice has been rehabilitated from his felonious sexual misconduct, and whether Lake (not Mr. Rice) has been rehabilitated from the findings and conclusions in previous proceedings that Lake misrepresented facts or lacked candor in its previous dealings

with the Commission.

6. As to Mr. Rice's previous convictions, it is completely unclear to Lake how the Bureau speaking to former employers from the last 15 years will elicit admissible evidence about how Mr. Rice comports himself vis-à-vis teenage boys between the ages of 13 and 16 (the focus of his criminal conviction in 1994). On the other hand, it is very clear that making such inquiries could destroy Mr. Rice's ability to be reemployed by such employers. At a telephone Prehearing Conference on September 2, 2014, as a compromise, counsel for Mr. Rice expressed willingness to provide the Bureau with the names and contact information for two (2) illustrative previous employers over the last 15 years. The Presiding Judge reduced the relevant period of time to the last five years, and asked the parties to negotiate over the next two weeks to try to increase the number of employers to be contacted by the Bureau.

7. Lake's objection is even stronger with respect to the Bureau's desire to inquire into Mr. Rice's rehabilitation from the findings and conclusions in previous proceedings that Lake misrepresented facts or lacked candor in its previous dealings with the Commission. Lake emphasizes that, as a matter of established record evidence, Mr. Rice did not draft, review, or sign any of the Section 1.65 statements to the Commission that were criticized in previous proceedings, and he did not testify at the previous hearing (he was in prison). Thus, there were no findings or conclusions in the previous proceedings that **Mr. Rice** misrepresented or lacked candor in his dealings with the Commission.¹ This is a very important distinction, and it explains why the second hearing issue in this proceeding (Paragraph 22(b) of the HDO) is awkwardly

¹ In Paragraph 17 of the HDO, the Commission quotes from Paragraph 195 of the Initial Decision in the previous proceeding, 12 FCC Rcd 14254, 14305 (ALJ 1997): "Rice had the ultimate responsibility and duty to ensure that the Licensees' submissions to the Commission were complete, accurate, and truthful...However, there is no record evidence that Rice made any attempt whatsoever to live up to his obligations in this regard". Nevertheless, there was no finding or conclusion in the Initial Decision or subsequent Commission decisions that Mr. Rice himself misrepresented or lacked candor to the Commission – only his Licensee companies.

worded “To determine the effects, if any, of the misrepresentation and lack of candor by **Michael S. Rice’s broadcast companies on his qualifications and/or the qualifications of Lake Broadcasting, Inc., to be a Commission licensee**” (emphasis supplied).

8. Under these circumstances, Lake urges that since there is no hearing issue in this proceeding pertaining to **Mr. Rice’s** rehabilitation from misrepresentations or lack of candor, there is no potentially admissible evidence to be gained by the Bureau speaking to Mr. Rice’s former employees about his truthfulness and candor. The hearing issue pertains only to **Lake’s** rehabilitation. Lake was previously the licensee of Station KBMX(FM), Eldon, Missouri, and the permittee of Station KFXX(FM) Cuba, Missouri. Station KBMX ceased operations on October 3, 2001, and Lake essentially became a dormant corporate entity. However, Lake remains registered as a Missouri corporation, and Mr. Rice is its President and 100% stockholder. Janet Cox was Lake’s non-stock Vice President until the early 2000’s, when she retired. As to Lake’s rehabilitation, in Paragraph 16 of the Initial Decision in the previous proceeding, 12 FCC Rcd 14254, *supra*, ALJ Arthur L. Steinberg found that Station KBMX and another of Mr. Rice’s radio stations had never been fined, and two stations had been fined only once, so that “Otherwise, the Licensees’ collective record before the Commission has been unblemished”. The ALJ later issued a Conclusion, at Paragraph 153 of the Initial Decision, that “the lone mitigating factor in Licensees’ favor is their collective good record of compliance with the Commission’s rules and policies”.

9. Turning to Interrogatory No. 15,

Interrogatory No.15

State whether Michael Rice provides or has provided services to any FCC licensee or broadcast station since his release from prison. If so, as to each such service that Michael Rice has held:

- a. Identify the licensee and/or broadcast station.
- b. Specify the dates during which the service was provided.

- c. Identify Michael Rice's contact at the licensee and/or station.
- d. Describe the nature and extent of the service.
- e. Specify the nature and extent of the compensation that Michael Rice received, if any, for the service.

Answer

OBJECTION. Lake objects to all parts of this Interrogatory, except (b), (d), and (e), on the grounds that those details are unnecessary to test Mr. Rice's rehabilitation and could lead to harassment of his clients.

- b. Mr. Rice has provided intermittent engineering consulting services to a number of AM and FM broadcast stations in the Midwest (most especially Missouri, Illinois, and Indiana) from the time he was released from prison in December 1999 until the present. He is recognized as a Certified Professional Broadcast Engineer, which helps him to obtain consulting assignments.
- d. Mr. Rice adjusts antennas and transmitters, troubleshoots technical operational issues, and assists in constructing new or modified radio facilities.
- e. Mr. Rice is paid standard market rates for his engineering services.

10. Lake's opposition to further disclosures in response to Interrogatory No. 15 is the same as its opposition to further disclosures in response to Interrogatory No. 14 above. The Interrogatory is very burdensome and impractical, and it is completely unclear to Lake how the Bureau speaking to former employers from the last 15 years will elicit admissible evidence about how Mr. Rice comports himself vis-à-vis teenage boys between the ages of 13 and 16 (the focus of his criminal conviction in 1994). On the other hand, it is very clear that making such inquiries could destroy Mr. Rice's ability to be reemployed by such employers. Moreover, the Bureau's reference to "the nature and extent of Mr. Rice's employment and conduct at broadcast stations" (Motion at 8) indicates that it is ignoring Lake's responses in (b) and (d) of its Answer to Interrogatory No. 15 to the effect that Mr. Rice has not been a full-time or regular employee of any broadcast station since his release from prison 15 years ago, and he has had no regular duties at broadcast stations – only adjusting antennas and transmitters, troubleshooting technical operational issues, and assisting in constructing new or modified radio facilities. At a telephone Prehearing

Conference on September 2, 2014, as a compromise, counsel for Mr. Rice expressed willingness to provide the Bureau with the names and contact information for two (2) illustrative previous employers over the last 15 years – the same two persons indicated in Paragraph 6 above... The Presiding Judge reduced the relevant period of time to the last five years, and asked the parties to negotiate over the next two weeks to try to increase the number of employers to be contacted by the Bureau.

11. Turning to Interrogatory No. 23,

Interrogatory No. 23

State whether Michael Rice is or has ever been married. If so, identify each spouse and the dates of his marriage(s). If Michael Rice is not now and/or has not been married, state whether he has had a personal relationship with someone whom he would consider to be or have been a partner and/or significant other, as those terms are generally used. If so, identify each partner and/or significant other and the dates of his personal relationship(s) with them.

Answer

Mr. Rice is not married and has never been married. OBJECTION: Lake objects to the remaining part of the Interrogatory since it is highly personal, an invasion of his personal privacy, and not germane to any of the issues specified in this proceeding.

12. The Bureau claims an evidentiary right to interview Mr. Rice's spouse, if any, and any "partner and/or significant other" in order to "speak with those individuals who are and have been closest to Mr. Rice...[and] would be most familiar with his conduct, if any, with youngsters, and have relevant knowledge about his propensity to be truthful and trustworthy" (Motion at 9-10). It claims that when Lake filed its application, "it voluntarily submitted itself to the full range of the Commission's processes, including legitimate and measured inquiry into the personal conduct and behavior of Mr. Rice".

13. Lake urges that the Bureau has greatly overstated the legitimate bounds of its interviewing authority in this proceeding. When Lake filed the subject application and its Notice

of Appearance in this proceeding, it did **not** waive Mr. Rice's right to privacy or give the Bureau a free pass to explore matters outside the scope of this proceeding. At the June 24, 2014 Prehearing Conference, Lake indicated that it would offer into evidence 10 or fewer character letters, and the Bureau stated that it would probably like to speak with the proponents of the letters and might want to depose one or more of them (Tr. 12-14, 27). Lake will provide a list of these character witnesses as soon as it is completed. Thus, the Bureau will have ample opportunity to speak to a variety of folks who know Mr. Rice well. Lake believes that the Bureau's desire to interview partners or significant others of Mr. Rice will be adequately served in the manner indicated. Moreover, and most importantly, at the Presiding Judge's request at the telephone Prehearing Conference on September 2, 2014, Mr. Rice's undersigned counsel asked Mr. Rice on September 2 whether he has or has had a partner and/or significant other, as those terms are generally used, and Mr. Rice responded that he does not have nor has he ever had a partner and/or significant other. This answer moots the Bureau's Motion to Compel as to Interrogatory No. 23.

B. Amended Answers

14. Following are Lake's Amended Answers to Interrogatories Nos. 12 and 13:

Interrogatory No. 12

State whether Michael Rice has consulted with, and/or been examined and/or treated by, a psychiatrist, psychologist, therapist (other than a physical therapist), and/or counselor. If so, as to each such psychiatrist, psychologist, therapist, and/or counselor:

- a. Identify the professional.
- b. Specify the time period during which he received treatment.
- c. Describe the reason for the consultation, examination, and/or treatment.
- d. Describe the diagnosis.

Amended Answer to Interrogatory No. 12

- a. Psychiatrist: Dr. Wayne A. Stillings, M.D, Kare & Therapy, Inc., 680 Craig Road, Suite 210, St. Louis MO 63141, 314-994-0100.

Treatment: 1991 – 2011

Reason: Post-arrest treatment and post-prison follow-up

Diagnosis: Bipolar Affective Disorder, Mixed; Dissociative Disorder NOS;
Dysthymia; Alcohol Abuse

- b. Psychologists: Dr. Ann Dell Duncan, Ph.D., J.D. and Dr. Wells Hively, Ph.D.,
Duncan Hively Psychological Services, 300 Chesterfield Center, Suite 150,
Chesterfield MO 63017, 314-580-5346

Treatment: 1991; 2014-present

Reason: Post-arrest evaluation in Barnes Hospital in 1991; rehabilitation re-
evaluation in 2014

Diagnosis: Bipolar Affective Disorder, Mixed; Dissociative Disorder NOS;
Dysthymia; Alcohol Abuse

- c. Therapists: Mark Lee Robinson and Carol Klooster, Abuse Prevention Program
– Center for Creative Conflict resolution, 6454 Alamo, St Louis, MO 63105,
314-863-2363

Treatment: 2000-2001 -- weekly group therapy sessions

Reason: Condition of Mr. Rice's parole; parole was completed in August
2002.

Diagnosis: Not specified; no individual treatment

Interrogatory No.13

State whether Michael Rice takes or has taken any prescription medication for anything other than a physical condition. If so, as to each such medication:

- a. Identify the medication.
- b. Specify the dose and frequency.
- c. Specify the time period during which the medication was taken.
- d. Explain why the medication was taken.
- e. If the dose was changed at any time, explain why.
- f. If Michael Rice is no longer taking the medication, explain why.

Amended Answer to Interrogatory No. 13

Wellbutrin, 300 mg, once daily; 1991-present; an antidepressant used to treat Bipolar Affective Disorder. This is the only medication that Mr. Rice is now taking for his mental conditions.

Lithium, 900 mg per day; no longer taken (taken from 1991 for at least 10 years); treats mania part of Bipolar Affective Disorder; Dr. Stillings decided that it was no longer needed.

Prozac, 40 mg per day; no longer taken (taken from 1991 for at least 10 years), treats depression; Dr. Stillings decided that it was no longer needed.

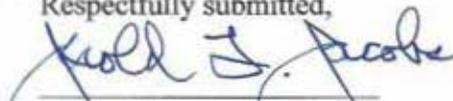
AS TO ANSWERS:

I declare under penalty of perjury that, to the extent that the answers set forth above are within my personal knowledge, they are true and correct to the best of my knowledge, and that, to the extent that the answers are not within my personal knowledge or to the extent the answers were prepared by others, they are true and correct to the best of my information and belief.


Michael S. Rice

AS TO OPPOSITION:

Respectfully submitted,


Jerold L. Jacobs

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Counsel for Lake Broadcasting, Inc.

Dated: September 3, 2014

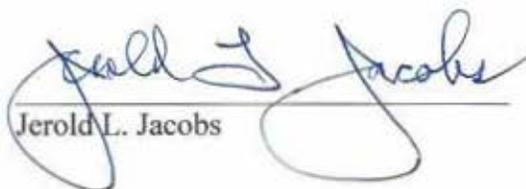
CERTIFICATE OF SERVICE

I, Jerold L. Jacobs, hereby certify that on this 3rd of September, 2014, I filed the foregoing "Lake Broadcasting, Inc.'s Partial Opposition to Enforcement Bureau's Motion to Compel Answers to Interrogatories and Amended Answer" in ECFS and caused a copy to be sent via First Class United States Mail and via e-mail to the following:

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