

**Before the  
Federal Communication Commission  
Washington, DC 20554**

**FCC 15M-8  
10271**

In the Matter of	)	EB 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)	)	
	)	
For Commission Consent to the Assignment	)	
of License of FM Translator Station W238CE,	)	
Montgomery, Alabama	)	

**ORDER**

**Issued: March 3, 2015**

**Released: March 4, 2015**

**Background**

On February 4, 2015, Lake Broadcasting, Inc. (“Lake”) filed a Request for Ruling on Burdens of Proof (“Request”). Lake is concerned by the Enforcement Bureau’s (“Bureau’s”) characterization of the Commission’s Decision in *David Titus* (“*Titus*”).<sup>1</sup> The Bureau describes that Decision as setting “a very high bar for a licensee or applicant who is an adjudicated sex offender to demonstrate that he has been rehabilitated and is qualified to be or remain a Commission licensee,”<sup>2</sup> and emphasizing that “a particularly egregious crime committed by a convicted sex offender not only *may* be disqualifying but is ‘*prima facie* disqualifying.’”<sup>3</sup> The Bureau also cites the Hearing Designation Order as guiding the Presiding Judge to consider “whether a convicted sex offender should be found qualified to be a licensee ‘only in the most extraordinary and compelling of circumstances.’”<sup>4</sup>

Lake objects to these interpretations of *Titus* and the language quoted in the Hearing Designation Order. Lake expresses its concern that this case will not be tried with a “normal

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<sup>1</sup> *David Titus*, Decision, FCC 14-177 \_\_ FCC Rcd. \_\_ (rel. Nov. 6, 2014).

<sup>2</sup> Second Supplement to Joint Status Report and Request for Ruling on Burdens of Proof at 2 ¶ 1 (filed Feb. 4, 2015) (quoting Enforcement Bureau’s Comments on the Commission’s *Titus* Decision at 2 ¶ 3 (filed Dec. 8, 2014)).

<sup>3</sup> Enforcement Bureau’s Comments on the Commission’s *Titus* Decision at 2 ¶ 3 (emphasis in original) (quoting *Titus* at 5 ¶ 11).

<sup>4</sup> *Id.* (quoting Hearing Designation Order, DA 14-703 at n.60. (rel. May 23, 2014)).

burden of proof by a preponderance of the evidence,” but will require Lake to meet “some higher standard” in demonstrating that Michael Rice “has been rehabilitated and that he and Lake are qualified to be Commission Licensees.”<sup>5</sup> Lake believes this situation is extraordinary in that the evidentiary standards supported by the Bureau are so high that they would prevent Lake from receiving a fair hearing, and thus it seeks a prehearing ruling on where the burdens of proof will be placed in this proceeding.

The Bureau filed an Opposition to that Request on February 10, in which it states that the appropriate evidentiary standard for the issues designated for hearing in this proceeding is a preponderance of the evidence.<sup>6</sup> The Bureau argues that Lake’s Request is “nothing more than a veiled attempt to gauge the sufficiency of its case in advance of the actual hearing and is contrary to established Commission rules of procedure.”<sup>7</sup>

Lake filed a Reply on February 12 that reiterated the concerns expressed in its prior filing and further clarified that it sought “a prior ruling from the Presiding Judge that [the Bureau’s] phony higher standards are incompatible with the preponderance of the evidence standard and will not be applied in this case.”<sup>8</sup>

### **Discussion**

In an apparent show of puffery, Bureau counsel used colorful language to describe his view as to the challenges an applicant who is an adjudicated sex offender would face in demonstrating that he is qualified to be a Commission licensee, perhaps hoping to discourage Lake from further prosecuting its application. Regardless of the Bureau’s views as to the practical difficulties in successfully preparing and putting on proof of rehabilitation, those views do not alter the *legal burden of proof* an applicant for a license must meet in such an administrative hearing, which is a preponderance of the evidence. This well-established burden is acknowledged by both parties in their filings and by the U.S. Supreme Court.<sup>9</sup>

### **Ruling**

The parties are so advised as to the burden of proof and shall continue in their preparation for trial.

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<sup>5</sup> Request at 2-3 ¶ 1.

<sup>6</sup> Enforcement Bureau’s Opposition to Lake Broadcasting’s Request for Interlocutory Ruling at 1 ¶ 1 (filed Feb. 10, 2015).

<sup>7</sup> *Id.* at 2 ¶ 1.

<sup>8</sup> Reply to Enforcement Bureau’s Opposition to Lake Broadcasting’s Request for an Interlocutory Ruling at 2 ¶ 3 (filed Feb. 12, 2015).

<sup>9</sup> *Steadman v. S.E.C.*, 450 U.S. 91, 102 (1981).

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION<sup>10</sup>



Richard L. Sippel  
Chief Administrative Law Judge

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<sup>10</sup> Courtesy copies of this *Order* were sent by e-mail on date of issuance to each counsel.