

Before the
Federal Communications Commission
Washington, DC 20554

FCC 17M-25
0365

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: June 8, 2017

Released: June 8, 2017

On May 23, 2014, the Commission set the above-captioned matter for formal hearing, designating four issues:

- (a) To determine the effects, if any, of Michael S. Rice's felony convictions on his qualifications and/or the qualifications of Lake Broadcasting, Inc., to be a Commission licensee;
- (b) 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;
- (c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Michael S. Rice and/or Lake Broadcasting, Inc., is qualified to be a Commission licensee; and
- (d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the captioned Application for consent to the assignment of license for Station W238CE should be granted.

Hearing Designation Order, DA 14-703 at 9-10 (rel. May 23, 2014) (HDO).

Mr. Rice is the president, director, and sole shareholder of Lake Broadcasting, Inc. (Lake). *Id.* at 1. So while he is not explicitly a named party in the above-captioned application, he is the wizard behind the corporate curtain, so to speak, as identified in the *HDO* and acknowledged by Lake's counsel.¹

On May 8, 2017, Lake, the Assignee, filed a Motion to Dismiss the above-captioned application of Patrick Sullivan (Sullivan) seeking Commission consent to assign Sullivan's license for FM Translator Station W238CE, Montgomery, Alabama, to Lake. On May 11, 2017, Sullivan, the Assignor, submitted a filing entitled "Further Motion to Dismiss," declaring his intention to sell the station at issue to a third party rather than to Lake.² Lake did not oppose Sullivan's motion. On May 15, 2017, the Enforcement Bureau (Bureau) filed an Opposition to both Motions to Dismiss. On May 16, 2017, Lake and Sullivan filed a Joint Reply to the Bureau's Opposition (Joint Reply).

The Bureau notes in its Opposition that the Declaration proffered in support of Lake's Motion to Dismiss represents only that "*Lake* will not file any further broadcasting applications" (emphasis added). But it says nothing as to *Mr. Rice's* intentions regarding his filing future broadcasting applications, whether in his own name or in the name of a surrogate entity other than Lake. Indeed, the Bureau represents, and Lake does not dispute, that "Bureau counsel was told that Rice is unwilling to make such a commitment." Bureau Opp. at 5 n.9.

The Presiding Judge shares the Bureau's concern. He also takes issue with the qualifier in Lake's Declaration that Lake is representing that it will not file future applications "[a]t the request of the Presiding Judge." It is wrong to represent that this Presiding Judge, who has the responsibility for being fully informed before issuing a dismissal order, "request[ed]" that Lake not file any more broadcasting applications. The Presiding Judge only asked Lake's counsel whether Mr. Rice and/or Lake planned to file any more broadcasting applications.³ The Judge asked that question in order to ascertain whether the character issues regarding Mr. Rice could recur in a future hearing should the present motion(s) to dismiss be granted.⁴ To put off the trial

¹ Tr. 162:14-21 (May 3, 2017). All transcript citations are to the uncorrected version of the transcripts, so line numbers may differ slightly from the published version.

² According to the purchase agreement attached to Sullivan's Motion to Dismiss, the agreement between Lake and Sullivan contained an option for either party to withdraw if the license transfer was not completed by November 13, 2012 (six months after the agreement was signed on May 13, 2012).

³ Tr. 654:19-655:14 (May 5, 2017). *See also id.* 657:16-22 ("But I do want a declaration from Mr. Rice that he is willing to accept what you laid out and . . . that he also indicate in that same declaration . . . that he has no intention of applying for another license. *Otherwise, we'll have to make that decision when we come to it.*") (emphasis added). Thus, the Presiding Judge clearly left the option open for Mr. Rice to decline to state that he would not apply for another license, but with the understanding that if Mr. Rice did so, "we might as well stick with this case and get it resolved." *Id.* 655:10-11. So the present order should come as no surprise.

⁴ The Commission has made clear that where "unresolved substantial and material character allegations remain against a dismissing applicant," those allegations "can be revisited in a future proceeding." *In re Allegan Cnty. Broadcasters, Inc.*, 83 FCC 2d 371, 373 (1980). Although *Allegan* involved a payout, its holding and the spirit of its declared policy pertain here.

of these character issues would run the risk of losing witnesses and/or their recollections, and other relevant evidence becoming stale.

Bureau counsel further argues that a significant amount of the Commission's time and resources have already been invested in this case – three years' worth, in fact,⁵ due in no small part to Lake's recalcitrance.⁶ The hearing was ending its third and final day, May 5, 2017, when, upon return from lunch, counsel announced unexpectedly that his client had decided to "withdraw his application and withdraw from the proceeding, thereby ending the case," without submitting any findings and conclusions.⁷ Further reasons were later set forth in the Declaration of Jerold L. Jacobs, counsel for Lake, submitted in support of Lake's Motion to Disqualify the Presiding Judge (May 9, 2017), as required by 47 CFR § 1.245(b)(1). Nonetheless, given Mr. Rice's unwillingness to state whether he plans to seek another Commission license, the Presiding Judge must seek to determine Mr. Rice's present intentions. The D.C. Circuit felt it necessary to explicitly state that "[t]he Commission is not required to play games with applicants." *Fischer v. FCC*, 417 F.2d 551, 555 (D.C. Cir. 1969). To allow Mr. Rice to circumvent procedure and force the Commission to relitigate the above issues all over again when Mr. Rice files his next application would be to "play games" concocted by Mr. Rice and his counsel, games of the ilk disapproved of by the D.C. Circuit. The same conclusion would be true if Mr. Rice and his counsel are "forum shopping" in the hope of retrying their case before a different presiding judge.

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⁵ The *HDO* was filed on May 23, 2014.

⁶ See, e.g., Tr. 167:4-15 (May 3, 2017) (arguing during opening statement after Presiding Judge instructed him not to); *id.* 252:14-253:8 (nitpicking Bureau counsel's phrasing). While Lake's allegations of bias in the Joint Reply are more appropriately discussed with regard to Lake's Motion to Disqualify, which will be addressed in a future order, one major point must be noted here. In the Joint Reply to the Bureau's Opposition, Lake accuses the Bureau of pursuing a "vendetta" against Rice, "instead of simply allowing him to demonstrate that he is fully rehabilitated from his previous misconduct . . ." Joint Reply at 2. This accusation reveals a fundamental ignorance of how litigation works: contrary to what Lake may believe, the Bureau is under no obligation to conform to Lake's theory of the case.

This apparent unawareness of litigation procedures was demonstrated during the hearing itself. For instance, Lake's counsel would frequently try to testify to the record himself, rather than asking questions of witnesses. See, e.g., Tr. 329:13-18 (May 3, 2017); *id.* 332:20-334:2; *id.* 335:15-21. See also, e.g., *id.* 338:15-21 (asking leading questions on direct examination); *id.* 194:5-10 (trying to "interject" when only permitted to object); Tr. 625:22-626:13 (May 5, 2017) (arguing with witness). Cf. Tr. 328:13-20 (May 3, 2017) ("MR. JACOBS: . . . I'm a little perplexed about how to make some of the points which I would like to make.") Lake then complains that the Presiding Judge and the Bureau are biased. But the truth of the matter is that Lake prejudiced itself by not being adequately prepared for the hearing.

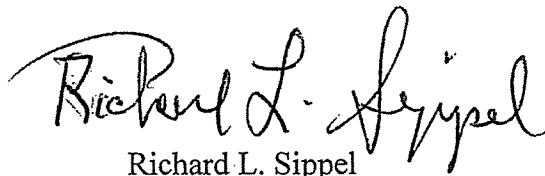
⁷ Tr. 653:4-11 (May 5, 2017).

Rulings

Accordingly, **IT IS ORDERED** that the Motions to Dismiss filed by Lake Broadcasting, Inc. (Assignee) on May 8, 2017 and by Patrick Sullivan (Assignor) on May 11, 2017 **ARE DENIED.**⁸

IT IS FURTHER ORDERED that the parties shall confer and jointly propose dates for the submission of Proposed Findings of Fact and Conclusions of Law, and shall submit such dates to the Presiding Judge by **June 15, 2017.**

FEDERAL COMMUNICATIONS COMMISSION⁹



Richard L. Sippel
Chief Administrative Law Judge

⁸ Should Mr. Sullivan wish to file a Motion to Withdraw from the case in his individual capacity, he may do so, citing the relevant contract provision(s) and including a copy with his motion.

⁹ Courtesy copies of this Order will be sent via email to all counsel of record on the date of issuance.