

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

In the Matter of:)
)
Michael S. Rice)
and his wholly-owned companies,)
)
Contemporary Media, Inc.,)
)
Contemporary Broadcasting, Inc.,)
)
Lake Broadcasting, Inc.)
)
Request for Expedited Confirmation of)
Continued Operating Authority)
)
Formerly Licensed Stations WBOW(AM),)
WBUZ(AM), and WZZQ(FM), Terre Haute, IN;)
KFMZ(FM), Columbia, MO; and KBMX(FM),)
Eldon, MO)

MEMORANDUM OPINION AND ORDER

Adopted: October 3, 2001

Released: October 3, 2001

By the Commission:

1. The Commission has before it a September 21, 2001 pleading captioned “Request for Expedited Confirmation of Continued Operating Authority” filed by Michael S. Rice and the captioned wholly owned companies (“Rice”). Rice requests that the Commission “confirm” his continuing authority to operate his formerly licensed stations WBOW(AM), WBUZ(AM), and WZZQ(FM), all Terre Haute, IN; KFMZ(FM), Columbia, MO; and KBMX(FM), Eldon, MO (collectively, the “Rice Stations”). For the reasons set forth below, we deny the request and order the Rice Stations to cease broadcast operations no later than 11:59 PM on October 3, 2001.

Background

2. On August 11, 1994, Rice was convicted of four counts of sodomy, six counts of deviate sexual assault in the first degree, and two counts of deviate sexual assault in the second degree, all of which are felonies. The misconduct for which Rice was convicted involved five children. Rice was sentenced to a total of eighty-four years in prison. Because his sentences were to run concurrently, he was sentenced to a maximum term of eight years. He was incarcerated between September 1994 and December 1999. In our 1998 *Decision*, affirming the *Initial Decision*, 12 FCC Rcd 14254 (ALJ 1997), the Commission concluded that, in addition to Rice’s criminal conduct, the Rice Stations “misrepresented

and lacked candor in reporting to the Commission that, subsequent to his arrest, Rice was completely excluded from any further involvement in the management and operation of the Licensees' radio stations." 13 FCC Rcd 114437, 14454 (1998). Based on this record, the Commission revoked each of the authorizations held by the Rice Stations. However, it permitted the Rice Stations to continue to operate until 12:01 AM on the ninety-first day following the completion of judicial review. On March 19, 2001, the Supreme Court denied Rice's petition for certiorari. Rice did not seek rehearing and the decision became final thirty days later. Accordingly, the operating authority of the Rice Stations was scheduled to terminate on July 17, 2001.

3. Following finality, the Mass Media Bureau and the Wireless Telecommunications Bureaus (the "Bureaus") released a public notice (the "Public Notice") announcing application procedures for permanent authority for the five formerly licensed stations and two construction permits held by the corporations controlled by Rice. *Public Notice*, "Permanent and Interim Application Procedures Announced for Authority to Operate Stations Formerly Licensed to Entities Controlled by Michael Rice," DA 01-1441 (released July 5, 2001). The Public Notice granted the former licensees of the Rice stations special temporary authorization ("STA") to continue operations for a period not to exceed ninety days. The short STA was granted because at the time it was issued it seemed possible that there might be a seamless transition to interim operation by persons other than Rice within that time frame. The Public Notice also dismissed a "Petition for Equitable Relief" (the "Petition"), filed by Rice and the Rice Stations, as an untimely and collateral challenge to a proceeding that has been final since April 18, 2001. The Petition sought, *inter alia*, Commission consent for Rice to "retain" the Rice Stations or, in the alternative, to assign certain of the revoked authorizations. The Bureaus concluded that Rice has no radio stations to retain or assign. Finally, the Public Notice dismissed Rice's "Motion for Extension of Operating Authority" (the "Motion"), which sought to extend the former licensees' authority to operate the radio stations pending consideration of the Petition for Equitable Relief. On August 2, Rice and the Rice Stations filed an application for review of the Public Notice. The application for review argues that the Bureaus exceeded their delegated authority in issuing the Public Notice, and that the actions taken therein are arbitrary and capricious, and in violation of the Communications Act and the Fifth Amendment to the Constitution. That pleading remains pending.

Discussion

4. Rice argues that unless the Commission extends the STA, its pending requests for relief as set forth in its application for review would be "severely and irreparably harmed." Although not directly before us, the application for review contends that the Mass Media Bureau lacked authority to dismiss the Rice Petition and Motion. Rice concludes that the dismissal was "legally void and without force and effect." He further argues that because the staff action is void and a timely application for review is pending, continued operation of the five Rice stations is "legally authorized and appropriate"

5. This argument is without merit. The 1998 *Decision* concluding that Rice lacks the character qualifications to deal truthfully with the Commission and to comply with our rules and policies is now final. The revocation of the Rice licenses also is final. In these circumstances, Rice's reliance on Section 307(c)(3) of the Communications Act, 47 U.S.C. § 307(c)(3), as a basis for asserting his continuing authority to operate the stations is misplaced. Rice is not awaiting a final decision on renewal of his licenses. Rather, his licenses were revoked and the revocation action is incontrovertibly final. Reliance

on Section 558(c) of the Administrative Procedure Act, 5 U.S.C. § 558, is equally misplaced. Rice was given a full opportunity to demonstrate why his authorizations should not be revoked and the revocation decision is final.

6. Moreover, we find that the Bureaus properly dismissed the Petition as an untimely and collateral challenge to a final Commission action. In any event, since we affirm this staff action, those Rice arguments in the Request that are based upon the Bureau's lack of authority to dispose of these filings are moot.

7. Rice also contends that certain public interest benefits would result from extending the STA. He states that the listening public in three small markets would lose service and the employees of these stations would lose their jobs. He also notes that there is considerable doubt about the Commission's ability to select permanent licensees in the foreseeable future. He alludes to the recent action of the United States Court of Appeals for the District of Columbia Circuit vacating the former Commission rule requiring noncommercial educational applicants to participate in auctions with competing commercial applications for certain non-reserved broadcast spectrum. *See National Public Radio, Inc. et al., v. FCC*, Nos. 00-1246, 00-1255 (decided July 3, 2001). Finally, he claims that at a time when the United States is under attack by terrorists, the time could come when one or more of the five stations could provide critical information to the public.

8. The loss of existing broadcast services is always a serious matter. However, in the instant circumstances, we believe that the public interest is better served by denying the Request and ordering the Rice Stations off the air. At the Commission's direction, the Mass Media Bureau has undertaken an exhaustive survey of radio service in these markets. It is clear that each of these markets is well served. Nine other AM and FM stations are licensed to Terre Haute. Thirteen radio stations place at least a 60 dBu strength signal over the center of Terre Haute. Seventy-four radio stations serve some or all of the areas now covered by the Rice Terre Haute stations. Service is also abundant in and around Columbia, Missouri. Nine stations are licensed to this community. Eighteen stations place at least a 60 dBu strength signal over the center of Columbia. Thirty-eight stations serve some or all of the area now served by KFMZ(FM), Columbia. In Eldon, Missouri, the smallest of the markets, there is only one other station licensed to this community. However, even here, thirteen stations place at least a 60 dBu strength signal over the center of Eldon. In addition, twenty-four stations provide service to some or all of the area covered by KBMZ, Eldon, Missouri. Thus, we believe that each of the affected markets will continue to have service, including EAS service, until these stations can be relicensed.

9. In this instance, the public interest is better served by allowing Rice's authority to operate these stations expire than by renewing the STA. Rice's criminal acts and the deceit of his companies in misrepresenting his continuing involvement in the management of the Rice Stations require this result. While the loss of jobs is truly regrettable, jobs will be lost whenever a license is revoked. We do not believe this fact outweighs the above-discussed factors that lead us to allow the STA to expire pursuant to its terms. The Commission established this course of action more than three years ago and the record in this proceeding fully supports the actions we take today.

Conclusion

10. For the foregoing reasons, IT IS ORDERED that the September 21, 2001 Request for Expedited Confirmation of Continued Operating Authority filed by Michael S. Rice and his wholly owned companies IS DENIED, and stations WBOW(AM), WBUZ(AM), and WZZQ(FM), all Terre Haute, IN; KFMZ(FM), Columbia, Missouri; and KBMX(FM), Eldon, Missouri, are ORDERED TO CEASE BROADCAST OPERATIONS no later than 11:59 PM on October 3, 2001.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Román Salas
Secretary