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 SECTION

Before the  
 Federal Communications Commission  
 JUN 15 1993  
 Washington, D.C. 20554

DISPATCHED BY  
 MM Docket No. 93-135

In re Applications of

THE PETROLEUM V.  
 NASBY CORPORATION

File No. BRH-890601VB

For Renewal of License of  
 Station WSWR(FM)  
 Shelby, Ohio

THE PETROLEUM V.  
 NASBY CORPORATION

File Nos. BTCH-921019HX  
 and BTCH-921019HY

For Transfer of Control of  
 Station WSWR(FM)  
 Shelby, Ohio

**HEARING DESIGNATION ORDER AND NOTICE  
 OF OPPORTUNITY FOR HEARING FOR FORFEITURE**

Adopted: May 10, 1993;

Released: June 14, 1993

By the Commission:

1. The Commission has before it: (1) the above-captioned license renewal application for Station WSWR(FM), Shelby, Ohio, filed on June 1, 1989, by The Petroleum V. Nasby Corporation ("Nasby");<sup>1</sup> (2) an application filed October 19, 1992, for consent to transfer control of Nasby from Thomas L. Root ("Root") and Kathy G. Root, and Thomas L. Root, Custodian for Thomas P.J. Root and Leslie J.L. Root to Kathy G. Root and Kathy G. Root as Custodian for Thomas P.J. Root and Leslie J.L. Root; Arlene M. Geer, Trustee for Thomas P.J. Root, Leslie J.L. Root and Travis S.C. Root; Joanne L. and Thomas F. Root, Jointly; and (3) an application filed October 19, 1992, for transfer of control of Nasby from Joanne L. Root and Thomas F. Root, Jointly to Ginsburg, Feldman & Bress Chartered.

2. Based upon the information provided in the first pending application for transfer of control, as of June 1, 1989, Thomas L. Root held 178.25 shares (39.30%) of Nasby stock in his own name and held 50 shares (11.10%) as custodian for his children. In June 1989 Root transferred 70.25 shares of the Nasby stock to his parents,

Joanne L. Root and Thomas F. Root, for consideration. Also in June 1989, Root transferred 50 of his own shares to the corporation as treasury shares for retirement of a corporate debt which he had assumed and transferred the balance of his individually owned and custodial stocks as gifts to his minor children. Simultaneously, his wife transferred 25 shares of her stock as gifts to her children, giving her a balance of 33 shares in her own name and 50 shares as custodian for her minor children. These transactions are the subject of the first transfer of control application filed October 19, 1992, which seeks *nunc pro tunc* approval of the 1989 stock transfers.<sup>2</sup> Overall the transactions reflect a transfer of more than 50% of Nasby. The ownership changes were reflected in Nasby's 1990 annual ownership report filed on April 27, 1990. The second transfer of control application contemplates the prospective transfer of 70.25 shares of Nasby stock from Root's parents to Ginsburg, Feldman & Bress Chartered, Root's attorneys, and is contingent upon approval of the prior transfer of control.

3. Root became a director and secretary of Nasby in May 1984. He resigned from these positions effective March 21, 1990, and the Commission was so informed by amendment to the Nasby renewal application dated April 26, 1990.

4. Prior to his resignation from positions with Nasby, Root was the attorney responsible for prosecuting applications for FM construction permits of partnerships formed by Sonrise Management Services, Inc. (Sonrise). Root's involvement in Sonrise resulted in his being indicted for violation of federal and state statutes and ultimately his disbarment from the practice of law. A 33 count federal indictment was filed in the United States District Court for the District of Columbia on March 21, 1990 (Case Nos. 90-0134 and 90-0136). Root entered into a plea agreement with the government, and pleaded guilty to two counts of altering, forging and counterfeiting public records, and three counts of wire fraud. Root was also indicted in the United States District Court for the Southern District of Illinois on June 21, 1990. The Illinois criminal action was consolidated with the original action before the United States District Court for the District of Columbia, and Root entered into a further plea agreement whereby he pleaded guilty to one count (causing the interstate transportation of stolen property), on September 11, 1990. On January 17, 1992, Root was sentenced to a term of 33 months in federal prison where he is now serving his sentence.

5. In North Carolina on October 26, 1990, Root pleaded no contest to 90 counts of selling an unregistered security (a violation of G.S. 78A-24); 90 counts of failing to register as a securities dealer (a violation of G.S. 78A-36); 90 counts of securities fraud (a violation of G.S. 78A-8(2)); 90 counts of securities fraud (a violation of G.S. 78A-8(3)); and 4 counts of conspiracy. On August 28, 1992, Root was found guilty on all counts and sentenced to 15 years in prison to be served concurrent with his federal sentence. See *State [of North Carolina] v. Thomas L. Root* (Case Nos. 90-CRS-8496 through 8499 and 90-CRS-9155 through 9161).

<sup>1</sup> The renewal application was initially granted on April 27, 1990. Public Notice of the grant was released on May 3, 1990. However, by letter dated May 31, 1990, the Chief, Audio Services Division, set aside the grant.

<sup>2</sup> The ownership interests set forth in Exhibit A of the first pending transfer of control application are at variance with the

interests set forth in an ownership report filed June 2, 1989, by Nasby, with the Commission. We are relying upon the ownership information in the transfer of control application because that is the application which is before us and because it is most recent.

6. Additionally, a 47 count superseding indictment was filed on January 10, 1991, in the Supreme Court for Pinellas County, Florida (Case No.13295 CFANO) charging Root with one count of racketeering and one count of conspiracy to commit racketeering in Florida (violations of F.S. 895.03(03)); one count of organized fraud in Florida (a violation of F.S. 817-036); two counts of organized fraud in Florida (a violation of F.S. 817.034(4)(a)); one count of unlawful offer or sale in Florida of an investment contract of an aggregate value exceeding \$50,000 from 5 or more persons (a violation of F.S. 517.302(2)); 20 counts of fraud in connection with the offer or sale of securities within Florida (violations of F.S. 517.301 and F.S. 517.302); 20 counts alleging the unlawful offer or sale in Florida of an unregistered security (violations of F.S. 517.07 and F.S. 517.302); and one count of grand theft in the first degree (a violation of F.S. 812.014(1) and 2(a)). On June 22, 1992, Root pled no contest to all counts (except the grand theft count which was dismissed). Root was found guilty on all counts (except the dismissed grand theft count) and was sentenced to 15 years in prison to be served concurrent with, and coterminous to, his North Carolina sentence.

7. In our *Policy Regarding Character Qualifications in Broadcast Licensing* ("1986 Character Policy Statement"), 102 FCC 2d 1179, 1196-97 (1986), we stated that we would consider felony criminal convictions involving fraudulent conduct and other fraudulent misconduct before government agencies in our character determinations. In our *1990 Character Policy Statement*, 5 FCC Rcd 3252 (1990), we expanded on the *1986 Character Policy Statement* and indicated that evidence of any felony conviction, not just those involving fraud, are relevant to our evaluation of an applicant's or licensee's character. Our consideration includes the misconduct of those whose ownership interests are cognizable under our multiple ownership rules and where the individual has the potential to influence or control the operations of a station. *Id.* at 1205-6. Here Root was an officer and director as well as controlling shareholder of more than 50% of the stock of Nasby. The misconduct which resulted in his convictions both in federal and state courts occurred while he was a principal of Nasby. Additionally, Root's misconduct which resulted in his federal conviction involved, *inter alia*, the creation and forging of a counterfeit order of an Administrative Law Judge of the Commission and submitting a counterfeit FAA "No Hazard" determination in a Commission proceeding. This misconduct clearly violated the integrity of the Commission's licensing processes. It is clear that, pursuant to our character policy, Root's misconduct must be considered in determining Nasby's entitlement to a renewal of its license. The fact that Root resigned as an officer and director prior to his actual convictions does not moot their significance as they impact on Nasby's qualifications. *See TV 9, Inc. v. FCC*, 495 F.2d 929, 939-40 (D.C. Cir. 1973), *cert. denied* 419 U.S. 986 (1974). Accordingly, we will specify an appropriate issue.

8. Consideration of the pending transfer of control application seeking *nunc pro tunc* approval of Root's transfer in June 1989 of all of his shares of stock in the licensee corporation as gifts to his minor children and in return for consideration from his parents and of his wife's transfer of stock to their children is initially dependent upon a determination as to whether Nasby is entitled to a renewal of its license. Absent renewal of the Nasby license for WSWR(FM), there is no license for which the requested transfers of control can be considered. *Cf. Jefferson Radio*

*Inc. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964). In the event that it is determined that grant of Nasby's renewal is warranted, we will then consider whether *nunc pro tunc* approval of the otherwise apparently unauthorized transfer of control of Nasby is in the public interest. Accordingly, an appropriate issue will be specified. Action on the second transfer application will be deferred contingent upon resolution of the specified issues.

9. On the basis of the foregoing, the Commission is unable to conclude that The Petroleum V. Nasby Corporation possesses the basic qualifications to obtain a grant of its renewal application. Additionally, on the basis of the foregoing, the Commission is unable to find that the public interest will be served by granting the pending transfer of control applications.

10. Accordingly, IT IS ORDERED, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the captioned applications of The Petroleum V. Nasby Corporation for renewal of license of Station WSWR(FM), Shelby, Ohio and for transfer of control ARE DESIGNATED FOR HEARING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the effect of Thomas L. Root's federal and state convictions on the basic qualifications of The Petroleum V. Nasby Corporation.

2. To determine, pursuant to Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's Rules, whether Thomas L. Root and Kathy G. Root engaged in the unauthorized transfer of control of The Petroleum V. Nasby Corporation.

3. To determine, in light of the evidence adduced pursuant to the above issues, whether grant of the renewal application of The Petroleum V. Nasby Corporation will serve the public interest, convenience and necessity.

4. To determine, in light of the foregoing, whether approval of the pending applications seeking to transfer control of The Petroleum V. Nasby Corporation will serve the public interest, convenience and necessity.

11. IT IS FURTHER ORDERED, that, irrespective of whether the hearing record warrants an Order denying the renewal application for Station WSWR(FM), it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER FOR FORFEITURE in an amount not to exceed \$250,000, shall be issued against Nasby for willful and/or repeated violations of Section 310(d) of the Communications Act of 1934, as amended, and/or Section 73.3540 of the Commission's Rules.

12. IT IS FURTHER ORDERED, that, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended.

13. IT IS FURTHER ORDERED, that, in accordance with Section 309(e) of the Communications Act of 1934, as amended, the Mass Media Bureau proceed with the initial presentation of the evidence with respect to issue 1, and the applicant then proceed with its evidence on issues 1-3, and Nasby have the burden of proof with respect to all issues.

14. IT IS FURTHER ORDERED, that, to avail itself of the opportunity to be heard, the applicant shall, pursuant to Sections 1.221(c) and 1.221(e) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this *HDO*, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified.

15. IT IS FURTHER ORDERED, that the applicant herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Commission's Rules.

16. IT IS FURTHER ORDERED, that the Secretary of the Commission send a copy of this *HDO* by *Certified Mail-Return Receipt Requested* to Nasby.

FEDERAL COMMUNICATIONS COMMISSION

  
Donna R. Searcy  
Secretary