

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C 20554

In re Applications of	)	MM DOCKET NO. 93-135
	)	
<b>THE PETROLEUM V. NASBY CORPORATION</b>	)	File No. BRH-890601VB
	)	
For Renewal of License of	)	
Station WSWR(FM),	)	
Shelby, Ohio	)	
	)	
<b>THE PETROLEUM V. NASBY CORPORATION</b>	)	File Nos. BTCH-921019HX
	)	and BTCH-921019HY
For Transfer of Control of	)	
Station WSWR(FM),	)	
Shelby, Ohio	)	

**MASS MEDIA BUREAU'S EXHIBITS**

MASS MEDIA BUREAU EXHIBITS

Federal Convictions:

1. Certified copy of Indictment in Criminal Case No. 90-0134, United States of America v. Thomas L. Root in the District Court of the District of Columbia. (45 pages)
2. Certified copy of Indictment in Criminal Case No. 90-0376, United States of America v. Thomas L. Root in the District Court of the Southern District of Illinois. (5 pages)
3. Certified copy of Judgment in Criminal Case Nos. 90-0134 and 90-0376, United States of America v. Thomas L. Root. The exhibit also contains a sentencing report and related memorandum. (4 pages)

North Carolina Convictions:

4. Certified copy of Indictment, Transcript of Plea, Dismissal as to Count three, Judgment and Commitment in File Nos. 90-CRS-8496, State of North Carolina versus Thomas L. Root. (7 pages)
5. Certified copy of Indictment, Transcript of Plea and Judgment and Commitment in File Nos: 90-CRS-8497, 9155, 9156, 9157, State of North Carolina versus Thomas L. Root. (41 pages)
6. Certified copy of Indictment, Transcript of Plea and Judgment and Commitment in File Nos: 90-CRS-8498, 9158, 9159, 9160, State of North Carolina versus Thomas L. Root. (106 pages)

Florida Convictions:

7. Certified copy of Superseding Indictment in Case No. CRC-90-13295CFANO, State of Florida vs. Thomas L. Root (#1129047). (50 pages)
8. Certified copies of Plea Form of Thomas L. Root and Plea Agreement in Case No. CRC90-13295CFANO (#1129047), State of Florida vs. Thomas L. Root. (7 pages)
9. Certified copy of Judgment and Sentence in Case No. CRC90-13295CFANO (#1129047). State of Florida vs. Thomas L. Root. (11 pages)
10. Certified copy of Judgment, Sentence, and Order Placing Defendant on Probation during Portion of Sentence in Case No. CRC90-13295CFANO-D. State of Florida vs. Thomas L. Root. (3 pages)

Assignment applications:

11. Application for transfer of control of The Petroleum V. Nasby Corporation, licensee of Station WSWR(FM), Shelby, Ohio. The assignment application reflects a transfer of shares by Thomas L. Root, Individually and as a Custodian for the benefit of his minor children, and Kathy G. Root, to Kathy G. Root, Individually and as Custodian for the benefit of her minor children, to Arlene M. Geer, as Trustee for the benefit of the minor children of Thomas L. and Kathy G. Root, and to Joanne L. and Thomas F. Root, Jointly. (File No. BTCH-921019HX) (74 pages)

12. Application for transfer of control of The Petroleum V. Nasby Corporation, licensee of Station WSWR(FM), Shelby, Ohio. The proposed transfer of 70.25 shares of stock in the licensee corporation is from Joanne L. and Thomas F. Root, Jointly, to Ginsburg, Feldman & Bress, Chartered. (File No. BTCH-921019HY). (44 pages)

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<b>Federal Communications Commission</b>	
Docket No. <u>93-135</u>	Exhibit No. <u>1</u>
Presented by <u>OBAMA MASS MEDIA</u>	
Disposition	Identified <u>12/14</u>
	Received <u>12/14</u>
	Rejected _____
Reporter <u>BARBARA LORD</u>	
Date <u>12/14/93</u>	

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on May 25, 1989

UNITED STATES OF AMERICA

v.

THOMAS L. ROOT

DEPT. J.  
DEPT. J.

B

Criminal No. 90-0134

GRAND JURY ORIGINAL

Violations:

- : 18 U.S.C. § 494 (Altering,
- : Forging & Counterfeiting
- : Public Records & Other
- : Writings); 18 U.S.C. § 1001
- : (Making False, Fictitious
- : & Fraudulent Writings &
- : Documents); 18 U.S.C. § 1341
- : (Transmitting by Mail to
- : Execute a Scheme to Defraud);
- : 18 U.S.C. § 1343
- : (Transmitting by Wire to
- : Execute a Scheme to
- : Defraud); 18 U.S.C. §
- : 1512(b)(2)(A) (Tampering with
- : a Grand Jury Witness);
- : 18 U.S.C. § 2(b) (Causing an
- : Act to be Done); 22 D.C.C.
- : § 3841 (Forgery)

FILED IN OPEN COURT

I N D I C T M E N T

MAR 21 1990

The Grand Jury charges:

CLERK, U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

COUNTS ONE and TWO

The Defendant

1. At all times material to this Indictment, the defendant THOMAS L. ROOT was an attorney admitted to the bar of the District of Columbia who engaged in the practice of law as more fully described below:

United States District Court  
for the District of Columbia  
A TRUE COPY

NANCY MAYER-WHITTINGTON, Clerk

By Michael Cole  
Deputy Clerk

9/2/93

a) the defendant THOMAS L. ROOT was the sole principal in the law firm known as "Thomas L. Root, P.C." (hereafter "Root, P.C.") with offices located in Suites 750 and 410 at 2021 L Street, N.W. in Washington, D.C.; and,

b) the defendant THOMAS L. ROOT concentrated his practice of law in the representation of clients before the Federal Communications Commission (hereafter the "FCC"), which representation included the submission of applications on behalf of his clients for permits to construct and licenses to operate radio stations broadcasting on FM channels.

The Communications Act of 1934

2. At all times material to this Indictment, The Congress of the United States had enacted The Communications Act of 1934 which authorized the FCC to issue permits to construct radio stations (47 U.S.C. § 153(ee)) and to thereafter issue licenses to operate the stations (47 U.S.C. § 153(cc)).

3. Among the specific powers granted to the FCC pursuant to The Communications Act of 1934 which are material to this Indictment are the following:

a) to hold hearings in cases where more than one applicant sought a permit and license (47 U.S.C. § 309(e)) and to appoint examiners, commonly known as administrative law judges (hereafter "ALJ"), to conduct the hearings (47 U.S.C. §§ 155(c)(1) & (8));

b) to issue requirements as to the painting and/or illumination of radio towers if the FCC determined that the towers

would constitute a hazard to air navigation (47 U.S.C. §§ 303(e) & (g)).

4. In order to carry out its mandate under The Communications Act of 1934 to protect air navigation, the FCC promulgated the rule that all applications for construction permits were to be reviewed to determine whether the applicant was required to file a "Notice of Proposed Construction or Alteration" of the applicant's tower (hereafter "Notice") with the Federal Aviation Administration (hereafter the "FAA") (47 C.F.R. § 17.4(a)).

The Federal Aviation Act of 1958

5. At all times material to this Indictment, in order to promote safety in air navigation The Congress of the United States had enacted the Federal Aviation Act of 1958 which authorized the FAA to coordinate with the FCC the administration of all laws involving applications for construction permits and licenses (49 U.S.C. §§ 1501(a) & (c)).

6. At all times material to this Indictment, the FAA's object in the review of the potential hazard to air navigation as presented in an applicant's Notice, as referred to in Paragraph 4 of these Counts, was to determine whether the height of the tower itself would interfere visually and/or physically with overflight air traffic and whether the radio signals to be beamed from it would interfere with communications between aircraft and aviation control authorities.

7. Among the specific rules and regulations issued by the FAA which are material to this Indictment was the requirement that

where the Notice as referred to in Paragraph 4 of these Counts related to the construction of a structure subject to licensing by the FCC, the FAA was to determine in an "Acknowledgement of Notice of Proposed Construction or Alteration" (hereafter "Acknowledgement"), whether a proposed structure exceeded certain prescribed standards designed to avoid those hazards in air navigation as are referred to in Paragraph 6 of these Counts, and, if those standards were exceeded, whether certain forms of painting and/or illumination would reduce the hazard to acceptable levels (49 C.F.R. § 77.19).

Northern Missouri Christian  
Broadcasting, Inc.

8. At all times material to this Indictment, Northern Missouri Christian Broadcasting, Inc. (hereafter "NMCB") was a corporation whose shareholders were primarily located in the vicinity of Kirksville, Missouri and, through its attorney and legal representative to the FCC, the defendant THOMAS L. ROOT, had filed with the FCC its application for a permit to construct a radio station to broadcast on an FM channel in the vicinity of Kirksville, Missouri.

9. On or about May 2, 1988, the FCC determined that NMCB had failed to produce an Acknowledgement from the FAA approving its structure and tower.

10. On or about May 23, 1988, the defendant THOMAS L. ROOT caused \$6,000 in NMCB's monies to be paid to the FCC to participate in the hearing which the FCC had set for those applicants which

desired to compete for the new FM channel to be allotted for the Kirksville, Missouri area.

The Scheme

11. From on or about September 4, 1987, and continuing to on or about November 23, 1988, within the District of Columbia and elsewhere, the defendant THOMAS L. ROOT did knowingly devise and intend to devise a scheme and artifice to defraud his client NMCB and its shareholders, said scheme and artifice having been perpetrated by means of false and fraudulent pretenses, promises and representations and the concealment of material facts, such as, among others: the making of material misstatements and causing others to do so on applications and legal documents filed with the FCC; the creation of false documents purporting to be official records of the FAA; the presentment of such false documents as true and genuine in support of pleadings to the FCC; the inducing of an ALJ to act on such misrepresentations; the presentment of such false documents to his client as true and genuine; and, the lulling of his client into the mistaken belief that he had taken such steps as were necessary to carry the client's case forward; that by such conduct the defendant THOMAS L. ROOT directly and indirectly deprived NMCB and its officers and shareholders of the following:

a) the right to the defendant THOMAS L. ROOT's honest and loyal services as an attorney and legal representative to the FCC, which services are more specifically set forth in the Disciplinary Rules and Ethical Considerations of the District of Columbia Bar as follows:

i) to seek the lawful objectives of his client through reasonably available means permitted by law;

ii) to carry out a contract of employment with his client for professional services;

iii) to refrain from prejudicing and damaging his client during the course of rendering legal services;

iv) to observe the exclusive authority of his client to make decisions; and,

v) to keep his client advised of all relevant considerations to insure that the client's decisions are made only after having been fully informed; and,

b) the value of the legal fees paid to the defendant THOMAS L. ROOT for said services and for other expenses related to his client's application to the FCC.

Manner and Means to Carry Out the Scheme

12. It was a part of the scheme and artifice that on or about September 4, 1987, the defendant THOMAS L. ROOT caused to be submitted to the FCC an amendment to NMCB's original application in which he caused NMCB to claim "yes" to the question of whether the FAA had been notified of NMCB's proposed construction of a station and tower and to claim that a Notice of said proposed construction had been submitted to the FAA on August 31, 1987.

13. It was further a part of the scheme and artifice that on or about July 20, 1988, the defendant THOMAS L. ROOT drafted and caused to be filed with the FCC two legal documents in which the defendant THOMAS L. ROOT claimed that the FAA had issued an

Acknowledgement determining that NMCB's proposed tower did not constitute a hazard to air navigation.

14. It was further a part of the scheme and artifice that on or about July 20, 1988, the defendant THOMAS L. ROOT caused to be attached to both of the legal documents referred to in Paragraph 13 of these Counts a copy of a purported Acknowledgement issued by the FAA on June 23, 1988, over the signature of an employee of the FAA approving NMCB's tower.

15. It was further a part of the scheme and artifice that by virtue of the acts and omissions set forth in Paragraphs 13 and 14 of these Counts the defendant THOMAS L. ROOT induced the ALJ assigned to the Kirksville matter to unknowingly issue an order released on August 1, 1988, in which the ALJ (1) found on the basis of the purported Acknowledgement that the FAA had approved NMCB's tower and, accordingly, (2) granted a construction permit to NMCB.

16. It was further a part of the scheme and artifice that on or about November 22, 1988, the defendant THOMAS L. ROOT stated to NMCB's president that he would send to NMCB copies of its Notice and the FAA's Acknowledgement in response to the Notice.

17. It was further a part of the scheme and artifice that on or about November 23, 1988, the defendant THOMAS L. ROOT caused Root, P.C. to send to NMCB by wire transmission a facsimile of the purported FAA Acknowledgement.

18. It was further a part of the scheme and artifice that the pretenses, promises, representations and omissions of material fact set forth in Paragraphs 12 through 17 in these Counts were

false and fraudulent and concealed material facts, as the defendant THOMAS L. ROOT well knew, in that:

- a) he had neither filed nor caused to be filed any Notice with the FAA on NMCB's behalf;
- b) the FAA had never issued an Acknowledgement on NMCB's behalf;
- c) the representations he made to the FCC in legal documents that the FAA had issued an Acknowledgement approving NMCB's tower were false and fictitious; and;
- d) the purported FAA Acknowledgement on NMCB's behalf which he caused to be filed with the FCC and which he sent by wire transmission to his client was a false, forged, altered and counterfeited public record and writing and was sent with the intention to lull his client into the mistaken belief that the FAA had approved NMCB's tower.

19. On or about the dates for each Count as set forth below, within the District of Columbia and elsewhere, the defendant THOMAS L. ROOT, for the purpose of executing the above-described scheme and artifice to defraud by means of false and fraudulent pretenses, promises and representations and the concealment of material facts, and attempting to do so, did knowingly and willfully transmit and cause to be transmitted those sounds and writings in interstate commerce between the defendant THOMAS L. ROOT in Washington, D.C. and NMCB's president in Kirksville, Missouri by means of wire communications, that is: the telephone calls and written facsimile

as are set forth below in the column entitled "Nature of Communications".

<u>Count</u>	<u>Date</u>	<u>Nature of Communications</u>
One	November 22, 1988	The telephone statement that he would send copies of the FAA Acknowledgement to NMCB's president.
Two	November 23, 1988	The telephone transmission of a written facsimile purporting to be an FAA Acknowledgement approving NMCB's tower.

(Violations of 18 U.S.C. §§ 1343 & 2(b))

COUNTS THREE Through FIVE

1. The allegations contained in Paragraphs 1 through 18 of Counts One and Two of this Indictment are repeated and realleged as though fully set forth in these Counts.

2. On or about the dates for each Count as set forth below, within the District of Columbia, in a matter within the jurisdiction of the Federal Communications Commission, an agency of the United States, the defendant THOMAS L. ROOT did knowingly and willfully make and use and cause to be made and used false writings and documents, then knowing the same to contain false, fictitious and fraudulent statements and entries as to material facts, that is, the defendant THOMAS L. ROOT made and submitted and caused to be made and submitted to the FCC in connection with the application of NMCB for a construction permit and license to

broadcast on an FM channel in the vicinity of Kirksville, Missouri the false and fictitious writings and documents set forth below in the column entitled "Document", whereas, in truth and in fact, as the defendant THOMAS L. ROOT well knew, said writings and documents contained false, fictitious and fraudulent statements as to material facts as set forth in the column entitled "Material Falsehood".

<u>Count</u>	<u>Date</u>	<u>Document</u>	<u>Material Falsehood</u>
Three	September 4, 1987	NMCB's Amended Application	The statement that NMCB had submitted a Notice to the FAA.
Four	July 20, 1988	NMCB's Legal Documents	The statement that the FAA had issued an Acknowledgement approving NMCB's tower.
Five	July 20, 1988	2 Purported FAA Acknowledgements	The entire contents.

(Violations of 18 U.S.C. §§ 1001 & 2(b))

#### COUNT SIX

1. The allegations contained in Paragraphs 1 through 18 of Counts One and Two of this Indictment are repeated and realleged as though fully set forth herein.

2. On or about July 20, 1988, within the District of Columbia, the defendant THOMAS L. ROOT did knowingly and willfully transmit and cause to be transmitted as true and genuine to the Federal Communications Commission, an agency of the United States, two copies of a false, forged, altered and counterfeited public

record and writing dated June 23, 1988, that is: a purported Acknowledgement of the Federal Aviation Administration that the proposed tower of NMCB did not constitute a hazard to air navigation, the defendant THOMAS L. ROOT then well knowing the Acknowledgement to be false, forged, altered and counterfeited.

(Violation of 18 U.S.C. §§ 494 & 2(b))

COUNT SEVEN

1. The allegations contained in Paragraphs 1 through 18 of Counts One and Two of this Indictment are repeated and realleged as though fully set forth herein.

2. On or about November 23, 1988, within the District of Columbia and elsewhere, the defendant THOMAS L. ROOT did knowingly and willfully utter and publish and caused to be uttered and published to NMCB's president as true and genuine a false, forged, altered and counterfeited public record and writing dated June 23, 1988, that is: a purported Acknowledgement of the Federal Aviation Administration that the proposed tower of NMCB did not constitute a hazard to air navigation, the defendant THOMAS L. ROOT then well knowing the same to be false, forged, altered and counterfeited.

(Violation of 18 U.S.C. §§ 494 & 2(b))

COUNTS EIGHT Through TENHoly Spirit FM  
Limited Partnership

1. The allegations contained in Paragraphs 1, 2 and 3(a) of Counts One and Two of this Indictment are repeated and realleged as though fully set forth in this Count.

2. At all times material to this Indictment, Holy Spirit FM Limited Partnership (hereafter "Holy Spirit") consisted of a group of individuals operating in a partnership located in Raleigh, North Carolina and, through its attorney and legal representative to the FCC, the defendant THOMAS L. ROOT, had filed with the FCC its application for a permit to construct a radio station to broadcast on an FM channel in the vicinity of Raleigh, North Carolina.

3. On or about August 9, 1988, the defendant THOMAS L. ROOT caused \$6,000 in Holy Spirit's monies to be paid to the FCC as the fee to participate in the hearing which the FCC had set for those applicants which desired to compete for the new FM channel to be allotted for the Raleigh, North Carolina area.

4. On or before October 27, 1988, competitors to Holy Spirit had filed legal documents claiming that Holy Spirit should not be awarded the construction permit for Raleigh, which arguments included the claim that Holy Spirit's application was misleading in that it failed to disclose that Holy Spirit was actually controlled by a non-local business which, in the course of forming the Holy Spirit partnership as well as several other partnerships around the country in order to seek FCC permits and licenses, was the real party behind Holy Spirit's application.

5. On or about November 14, 1988, the ALJ assigned to the Raleigh matter determined that Holy Spirit's competitors' claims, as referred to in Paragraph 4 of these Counts, were relevant to his decision as to which applicant should be awarded the permit and could, therefore, be raised by the competitors at a hearing.

The Scheme

6. From on or about October 27, 1988, and continuing to on or about July 11, 1989, within the District of Columbia and elsewhere, the defendant THOMAS L. ROOT did knowingly devise and intend to devise a scheme and artifice to defraud his client Holy Spirit and its partners, said scheme and artifice having been perpetrated by means of false and fraudulent pretenses and representations and the concealment of material facts, such as, among others: the making of material misstatements on legal documents filed with the FCC; the inducing of an ALJ to act unknowingly on such misrepresentations; the creation of a false document purporting to be an official record of an ALJ; the presentment of such a false document to his client; and, the lulling of his client into the mistaken belief that he had taken such steps as were necessary to carry his client's case forward; that by such conduct the defendant THOMAS L. ROOT directly and indirectly deprived Holy Spirit and its partners of their rights to the honest and loyal services of the defendant THOMAS L. ROOT as their attorney and legal representative to the FCC, as well as the value of legal fees paid to the defendant THOMAS L. ROOT, which rights are more fully set forth in sub-Paragraphs 11(a) and 11(b)

of Counts One and Two of this Indictment and which are repeated and realleged as though fully set forth herein.

Manner and Means to Carry Out the Scheme

7. It was a part of the scheme and artifice that on or about October 27, 1988, the defendant THOMAS L. ROOT, who had previously agreed with attorneys for competitors to Holy Spirit to present Holy Spirit's general partner at a deposition to be taken of the partner in Raleigh on that date, stated to such attorneys that Holy Spirit intended to dismiss its application and would file legal documents requesting such dismissal.

8. It was further a part of the scheme and artifice that on or about November 21, 1988, the defendant THOMAS L. ROOT caused to be drafted and to be filed with the FCC a legal document which requested that the FCC dismiss Holy Spirit's application.

9. It was further a part of the scheme and artifice that by virtue of the act set forth in Paragraph 8 of these Counts, the defendant THOMAS L. ROOT induced the ALJ assigned to the Raleigh matter to unknowingly dismiss Holy Spirit's application.

10. It was further a part of the scheme and artifice that on or about November 28, 1988, in response to the complaint by Holy Spirit's general partner that the partner had just learned that the FCC had dismissed Holy Spirit's application, the defendant THOMAS L. ROOT told Holy Spirit's general partner that the ALJ must have made a mistake in issuing the order dismissing Holy Spirit's application and that the defendant THOMAS L. ROOT promised to get Holy Spirit's application reinstated before the FCC.

11. It was further a part of the scheme and artifice that on or about December 7, 1988, the defendant THOMAS L. ROOT told members of the Holy Spirit partnership that he expected that the FCC would soon issue an order reinstating Holy Spirit's application.

12. It was further a part of the scheme and artifice that in approximately mid-January, 1989, the defendant THOMAS L. ROOT caused to be mailed to Holy Spirit's general partner a purported order released on January 13, 1989, over the signature of the ALJ which reinstated Holy Spirit's application.

13. It was further a part of the scheme and artifice that from approximately mid-March, 1989, and continuing to on or about July 11, 1989, the defendant THOMAS L. ROOT gave the impression to Holy Spirit's general partner that Holy Spirit's application was proceeding timely and would be properly pursued.

14. It was further a part of the scheme and artifice that the pretenses, promises, representations and omissions of material fact set forth in Paragraphs 7 through 13 of these Counts were false and fraudulent and concealed material facts, as the defendant THOMAS L. ROOT well knew, in that:

- a) he had failed to inform his client that a deposition had been scheduled for October 27, 1988, and that the general partner was to be present;
- b) he had never consulted with his client relative to seeking and filing for the dismissal of Holy Spirit's application;

- c) his statement to his client that the FCC had mistakenly dismissed the application was a misrepresentation, since the FCC had dismissed the application at his request;
- d) the purported order of the FCC reinstating Holy Spirit's application constituted a false, forged, altered and counterfeited public record and writing; and,
- e) his statements to his client that the FCC had reinstated its application and that he was pursuing it were false and fraudulent, since he knew that Holy Spirit's application had not been reinstated.

15. On or about the dates for each Count as set forth below within the District of Columbia and elsewhere, the defendant THOMAS L. ROOT, for the purpose of executing the above-described scheme and artifice to defraud by means of false and fraudulent pretenses, promises and representations and the concealment of material facts, and attempting to do so, did (1) as to Counts 8 and 9, knowingly and willfully transmit and cause to be transmitted those sounds and signals, that is: telephone calls, in interstate commerce between the defendant THOMAS L. ROOT in Washington, D.C. and those persons set forth below in the column entitled "Persons Contacted", all of whom were located in Raleigh, North Carolina, by means of wire communications, as are set forth below in the column entitled "Nature of Communication" and, further, (2) as to Count 10, knowingly and willfully place and caused to be placed in an authorized depository for mail that matter as set forth below in

the column entitled "Nature of Communication", said matter to be sent and delivered by the United States Postal Service from the defendant THOMAS L. ROOT in Washington, D.C. to that person set forth below in the column entitled "Persons Contacted", who was located in Raleigh, North Carolina.

<u>Count</u>	<u>Date</u>	<u>Persons Contacted</u>	<u>Nature of Communication</u>
Eight	October 27, 1988	Attorneys for Holy Spirit's competitors	The telephone statement that Holy Spirit intended to dismiss its application.
(Violation of 18 U.S.C. §§ 1343 & 2(b))			
Nine	November 28, 1988	Holy Spirit's general partner	The telephone statement that an ALJ of the FCC had made a mistake in dismissing Holy Spirit's application and that it would be reinstated.
(Violation of 18 U.S.C. §§ 1343 & 2(b))			
Ten	Mid-January 1989	Holy Spirit's general partner	The mailing containing a purported order of an ALJ reinstating Holy Spirit's application.
(Violation of 18 U.S.C. §§ 1341 & 2(b))			

COUNT ELEVEN

1. The allegations contained in Paragraphs 1 through 14 of Counts Eight through Ten of this Indictment are repeated and realleged as though fully set forth in this Count.

2. On or about November 21, 1988, within the District of Columbia, in a matter within the jurisdiction of the Federal Communications Commission, an agency of the United States, the defendant THOMAS L. ROOT did knowingly and willfully make and use and cause to be made and used a false writing and document then knowing the same to contain false, fictitious and fraudulent statements and entries as to material facts, that is, the defendant THOMAS L. ROOT made and submitted and caused to be made and submitted to the FCC in connection with the application of Holy Spirit for a construction permit and license to broadcast on an FM channel in the vicinity of Raleigh, North Carolina a false and fictitious writing and document, that is: a legal document stating that the applicant Holy Spirit FM Limited Partnership did not elect to pursue prosecution of its application and requesting that the application be dismissed, whereas in truth and in fact, as the defendant THOMAS L. ROOT then well knew, (1) Holy Spirit desired to pursue its application, (2) Holy Spirit had not given authority for the filing of a request for dismissal, and (3) Holy Spirit had no knowledge that such a request had been filed on its behalf.

(Violation of 18 U.S.C. §§ 1001 & 2(b))

COUNT TWELVE

1. The allegations contained in Paragraphs 1 through 14 of Counts Eight through Ten of this Indictment are repeated and realleged as though fully set forth in this Count.

2. In or about mid-January 1989, within the District of Columbia and elsewhere, the defendant THOMAS L. ROOT did knowingly and willfully utter and publish and caused to be uttered and published to Holy Spirit's general partner as true and genuine a false, forged, altered and counterfeited public record and writing dated January 13, 1989, that is: a purported order of an ALJ of the Federal Communications Commission which provided that the application for an FM radio channel of Holy Spirit FM Limited Partnership would be reinstated, the defendant THOMAS L. ROOT well knowing the same to be false, forged, altered and counterfeited.

(Violation of 18 U.S.C. §§ 494 & 2(b))

COUNTS THIRTEEN Through SEVENTEEN

Louisburg FM  
Limited Partnership

1. The allegations contained in Paragraphs 1 through 3(a) of Counts One and Two of this Indictment are repeated and realleged as though fully set forth in this Count.

2. At all times material to this Indictment, Louisburg FM Limited Partnership (hereafter "Louisburg") consisted of a group of individuals operating in a partnership located in Raleigh, North Carolina and, through its attorney and legal representative to the FCC, the defendant THOMAS L. ROOT, had filed with the FCC its application for a permit to construct a radio station to broadcast on an FM channel in the vicinity of Louisburg, North Carolina.

3. On or about July 17, 1988, the defendant THOMAS L. ROOT caused \$6,000 in Holy Spirit's monies to be paid to the FCC as the

fee to participate in the hearing which the FCC had set for those applicants which desired to compete for the new FM channel to be allotted for the Louisburg, North Carolina area.

4. On or about September 30, 1988, the ALJ assigned to the Louisburg matter ordered as follows: each of the applicants was to exchange the exhibits on which it intended to rely with each of the other applicants by January 6, 1989; the hearing was to commence on January 23, 1989; and, the claim could be raised by Louisburg's competitors at the hearing that Louisburg should not be awarded the construction permit for Louisburg, North Carolina because its application was misleading in that it failed to disclose that Louisburg was actually controlled by a non-local business which, in the course of forming the Louisburg partnership as well as several other such partnerships around the country in order to seek FCC permits and licenses, was the real party behind Louisburg's application.

#### The Scheme

5. From on or about January 10, 1989, and continuing to on or about September 7, 1989, within the District of Columbia and elsewhere, the defendant THOMAS L. ROOT did knowingly devise and intend to devise a scheme and artifice to defraud his client Louisburg and its partners, said scheme and artifice having been perpetrated by means of false and fraudulent pretenses, promises and representations and the concealment of material facts, such as, among others: the causing of the forged signature of the client's general partner to be placed on a legal document which he knew

would be filed with the FCC; the causing of others to unknowingly make material misstatements on legal pleadings filed with the FCC; the inducing of an ALJ to act unknowingly on such misrepresentations; and, the lulling of his client into the mistaken belief that he had taken such steps as were necessary to carry the client's case forward; that by such conduct, the defendant THOMAS L. ROOT directly and indirectly deprived Louisburg and its partners of their rights to the honest and loyal services of the defendant THOMAS L. ROOT as their attorney and legal representative to the FCC, as well as the value of legal fees paid for said services, which rights are more fully set forth in sub-Paragraphs 11(a) and 11(b) of Counts One and Two of this Indictment and which are repeated and realleged as though fully set forth herein.

Manner and Means to Carry Out the Scheme

6. It was a part of the scheme and artifice that on or about January 10, 1989, the defendant THOMAS L. ROOT back-dated a postage meter stamp to approximately January 6, 1989, in an attempt to show that a package containing legal documents required to have been delivered by January 10, 1989, to attorneys for Louisburg's competitors, as set forth in Paragraph 4 of these Counts, had been timely sent.

7. It was further a part of the scheme and artifice that on or about January 10, 1989, the defendant THOMAS L. ROOT stated to the attorney for Franklin Broadcasting Co., Inc. (hereafter "Franklin"), a competitor to Louisburg, that he would convey