

MAR 25 1994

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)	MM DOCKET NO. <u>93-135</u>
)	
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)	

To: Administrative Law Judge
Edward Luton

MASS MEDIA BUREAU'S REPLY TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE PETROLEUM V. NASBY CORPORATION

1. On March 4, 1994, The Petroleum V. Nasby Corporation ("Nasby") filed its Proposed Findings of Fact and Conclusions of Law ("PFC's") in the above-captioned proceeding. The Mass Media Bureau hereby replies to Nasby's PFC's. Our failure to reply to any particular finding or conclusion contained in Nasby's PFC's should not be construed as a concession to its accuracy or completeness. The Bureau submits that its own proposed findings of fact are an accurate and complete presentation of the relevant record evidence and that its conclusions of law properly apply Commission precedent in light of the record.

2. We agree with Nasby's statement, at p. 19, that "[t]he

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basic facts of this case are largely undisputed." We believe, that, on the basis of those facts, existing Commission precedent requires denial of Nasby's renewal application. Nasby, on the other hand, is asking for an approach that would involve ignoring clear precedent and making new law.

3. For instance, Nasby cites Chapman Radio and Television Co., 57 FCC 2d 76 (1975), modified on other grounds, 45 RR 2d 239 (1979), pet. for recon. dismissed, 46 RR 2d 752 (1979); and Sande Broadcasting Co., Inc., 61 FCC 2d 305 (1976), in support of its argument that Nasby should not be disqualified on the basis of the criminal convictions of its principal, Thomas L. Root ("Root"). Nasby acknowledges, however, that the activities of the principal in each of those cases did not involve broadcasting or any application before the Commission. Of course, most of Root's criminal activities involved many applications which he filed with the Commission on behalf of many applicants associated with Sonrise Management Services. Indeed, one of the criminal counts of which Root was convicted involved the forging of a counterfeit Order of a Commission Administrative Law Judge in connection with a broadcast application. Incredibly, Nasby claims that Chapman and Sande are apposite because the applications filed by Root were not related to Nasby. Nasby does not cite any precedent in support of that distinction and the Bureau is aware of none. Clearly, the distinction is artificial. The criminal conduct at issue here was the conduct of Nasby's

principal and there is no logical reason to whitewash the misconduct merely because it did not involve an application with Nasby's name on it.

4. Moreover, in Chapman and Sande the wrongdoers were not involved in the operation of the stations. Nasby's insistence that Root was not involved in the day-to-day operation of Nasby's station is somewhat misleading. Although many day-to-day matters were delegated to the general manager, Root was not a passive owner. He reviewed matters ostensibly as the station's attorney, and he was an active Board member, who voted on financing and on the general manager's salary. Root reviewed a station contract for the provision of programming via satellite. He signed loan documents, provided personal guarantees to lending sources and once advanced Nasby \$40,000 to satisfy the Internal Revenue Service. Root handled the filing of ownership reports and the renewal application, and, even after he had resigned, he assisted in the preparation of an ownership report.

5. Nasby claims that the instant case is different from cases where the Commission has made clear that it does not distinguish between guilty and innocent shareholders. Yet, Nasby does not cite a single case, similar to Nasby's or not, where the Commission has made the distinction urged by Nasby. In fact, the Commission's directive is clear: it will not "atomize a licensee into its molecular elements for a gratuitous adjudication on the

discrete qualifications . . . of individual shareholders." West Jersey Broadcasting, Co., 90 FCC 2d 363, 371 (Rev. Bd. 1982).

6. Nasby argues that it did not engage in an unauthorized transfer of control because the station's management did not change. Nasby cites no precedent for this proposition and the Bureau is aware of none. Indeed, the principle is illogical. If that were the Commission's view, licensees could change at will, without even notifying the Commission, as long as the station's management staff did not change. In addition, in an apparent attempt at mitigation, Nasby points out that Root's wife, also a principal, relied upon her husband to file whatever was necessary. This is a red herring. It does not matter who Kathy Root relied upon; what matters is that Nasby engaged in an unauthorized transfer of control. If Nasby is trying to excuse this by asserting reliance upon counsel, the assertion is unavailing. Root was a principal of Nasby, not just its counsel.

7. Finally, without any precedential support, Nasby asks the Commission to take into account the practical effect of Root's misconduct on Nasby, including expenses associated with this proceeding. Moreover, Nasby claims that any harm to the Commission's processes is offset by the federal and state prosecutions of Root. This argument loses sight of the fact that the instant proceeding is not intended as punitive. Rather, the

inquiry here is intended to determine whether Nasby possesses the requisite character qualifications to remain a Commission licensee. The "practical effect of Root's misconduct" on Nasby is not relevant to the issues. Furthermore, there is such an effect in every proceeding which questions a licensee's qualifications. Similarly, it is not clear what the federal and state prosecutions are supposed to "offset." Basic qualifications are not subject to such a balancing act.

8. In sum, the Bureau submits that Nasby's renewal application should be denied.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau


Charles E. Dziejcz
Chief, Hearing Branch


Y. Paulette Laden
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street N.W., Suite 7212
Washington, D.C. 20554
(202) 632-6402

March 25, 1994

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has, on this 25th day of March, 1994, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Reply to Proposed Findings of Fact and Conclusions of Law of the Petroleum V. Nasby Corporation"** to:

Ann C. Farhat, Esq.
Bechtel & Cole
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036


Michelle C. Mebane