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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)	MM DOCKET NO. 93-135
)	
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: The Review Board

MASS MEDIA BUREAU'S REPLY TO
STATEMENT IN SUPPORT OF INITIAL DECISION
OF ADMINISTRATIVE LAW JUDGE EDWARD LUTON
AND CONTINGENT EXCEPTIONS OF
THE PETROLEUM V. NASBY CORPORATION

Respectfully submitted,
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December 1, 1994

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**MASS MEDIA BUREAU'S REPLY TO
STATEMENT IN SUPPORT OF INITIAL DECISION
OF ADMINISTRATIVE LAW JUDGE EDWARD LUTON
AND CONTINGENT EXCEPTIONS OF
THE PETROLEUM V. NASBY CORPORATION**

Preliminary Statement

1. On November 21, 1994, The Petroleum V. Nasby Corporation ("Nasby") filed a Statement in Support of Initial Decision and Contingent Exceptions in the above-captioned proceeding. The Mass Media Bureau, pursuant to Sections 1.276 and 1.277 of the Commission's Rules, hereby submits its reply.

Counterstatement of the Case

2. The Initial Decision of Administrative Law Judge Edward Luton, 9 FCC Rcd 6072 (1994) ("ID"), granted Nasby's renewal application, as well as the above-captioned transfer of control application. The ID imposed a \$4,000 forfeiture for repeated violations of Section 310(d) of the Communications Act, as amended, and Section 73.3540 of the Commission's Rules. For the reasons set forth in the Bureau's Exceptions, filed November 21, 1994, we are of the view that the ID erred in concluding that Nasby is qualified to remain a Commission licensee. Thus, we disagree with Nasby's statement in support of the ID. The Bureau also believes that Nasby's contingent exceptions should be

denied, and we submit the following comments.

Question Presented

Whether the Presiding Judge erred in excluding testimony of community witnesses and letters from the general public.

Argument

The Presiding Judge correctly excluded testimony of community witnesses and letters from the general public.

3. Nasby excepts to the Presiding Judge's ruling rejecting Nasby's proffer of evidence consisting of the testimony of community witnesses and letters from the general public taken from WSWR(FM)'s public inspection file. Nasby Ex. 1, Appendices A and B; Tr. 47, 50. The evidence in question did not address any of the designated issues in the case. Rather, the evidence addressed the station's reputation. Arguably, such evidence would be relevant under the renewal expectancy aspect of a comparative issue. See Radio Station WABZ, Inc., 90 FCC 2d 818, 841 (1982), aff'd Victor Broadcasting, Inc. v. FCC, 722 F.2d 756 (D.C. Cir. 1983). The instant case did not involve a comparative renewal, however.

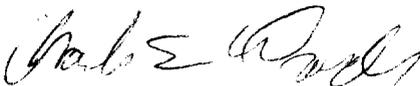
4. Moreover, as Nasby explains at p. 2 of its exceptions,

the evidence was proffered "to show the station's performance as a counter to any potential negative impact" of the misconduct of its principal, Thomas L. Root, on Nasby's qualifications. However, the Commission does not permit evidence of a station's performance to mitigate serious misconduct. See KOED, Inc., 5 FCC Rcd 1784, 1785 (1990), and cases cited therein. Thus, the evidence proffered by Nasby was simply irrelevant and it was correctly excluded from the record.

Conclusion

5. Nasby's contingent exceptions should be denied and the Bureau's exceptions should be granted. Nasby should be found not qualified to remain a Commission licensee.

Respectfully submitted,
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December 1, 1994

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has, on this 1st day of December, 1994, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Reply to Statement in Support of Initial Decision of Administrative Law Judge Edward Luton and Contingent Exceptions of the Petroleum V. Nasby Corporation" to:

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