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

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

Appearances

Ann C. Farhat, on behalf of The Petroleum V. Nasby Corporation; and *Y. Paulette Laden*, on behalf of the Chief, Mass Media Bureau.

DECISION

Adopted: May 22, 1995; Released: June 5, 1995

By the Review Board: MARINO (Chairman) and GREENE.

Board Member GREENE:

1. This proceeding involves the applications of The Petroleum V. Nasby Corporation (Nasby) for renewal of license of Station WSWR(FM), Shelby, Ohio, and for *nunc pro tunc* approval of the transfer of control of Station WSWR(FM). The central question presented is whether the criminal activities of Thomas L. Root, its former principal and legal counsel, impact adversely on Nasby's respective applications. The issues designated for hearing by the Commission are as follows:

(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 application to transfer control of The Petroleum V. Nasby Corporation will serve the public interest, convenience and necessity.[1]

The Commission also specified a forfeiture provision against Nasby for wilful and/or repeated violations of Section 310(d) of the Act and Section 73.3540 of the Rules. *Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture (HDO)*, 8 FCC Rcd 4035, 4036 (1993).

2. In an *Initial Decision (I.D.)*, 9 FCC Rcd 6072 (ALJ 1994), Administrative Law Judge Edward Luton (ALJ) determined, first, that Root's criminal convictions did not support a denial of Nasby's application for renewal of license and, second, that, although control of Nasby was transferred unlawfully without Commission approval, the unauthorized transfer was not accompanied by deceit or concealment and thus did not warrant denial of Nasby's applications. Because Nasby's "neglect" made the illegal transfer possible, however, the ALJ imposed a forfeiture of $4,000.

3. The proceeding is now before the Review Board on exceptions filed by the Chief, Mass Media Bureau and contingent exceptions filed by Nasby.[2] We have reviewed the *I.D.* in light of these exceptions, the responsive pleadings, and the hearing record, and conclude that the ALJ correctly resolved the key issue of the impact of Root's criminality on Nasby's qualifications in the licensee's favor. Accordingly, we affirm the renewal of license for Station WSWR(FM). In light of this conclusion, we need not reach Nasby's limited exceptions, which are nondecisional. *See* 47 CFR §1.282(b)(2). Furthermore, because neither party has excepted to the ALJ's resolution of the transfer of control issue or his assessment of a forfeiture for the unauthorized transfer, we will not dwell on these issues either. *See* 47 CFR §1.277(a); *Short Broadcasting Co., Inc.*, 8 FCC Rcd 5574 (Rev. Bd. 1993). We will, however, for reasons to be stated hereinafter, affix a specific divestiture condition to the approval of the renewal and transfer applications. Therefore, we turn our attention to the only significant disputed issue, the core question of whether the ALJ erred in finding Nasby qualified to remain a licensee despite the criminal convictions of its erstwhile principal, Mr. Root.

[1] As explained in the *Hearing Designation Order*, 8 FCC Rcd 4035, 4036 (1993), consideration of the transfer of control application is initially dependent on the question of whether Nasby is entitled to renewal for, absent a favorable resolution in this regard, there is no license to convey. See *Jefferson Radio Inc. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964).

[2] We will deny Nasby's request for oral argument. Neither its limited exceptions nor the record or issues in this case are so lengthy or complex as to warrant such argument. *See Hara Broadcasting*, 8 FCC Rcd 3177 (Rev. Bd. 1993).

4. Thomas L. Root served as one of Nasby's three directors and its corporate secretary for approximately seven years, from prior to May 1983 until March 21, 1990, when he resigned his positions. During the same period, from prior to 1983 until his resignation on April 25, 1990, he also served as Nasby's general counsel and communications counsel. In addition, Root was also a significant shareholder in Nasby until June 23, 1989, at one time holding 44.5% of the corporate issued and outstanding stock in his name and an additional 10% as custodian for his minor children.[3] Root represented applicants for FM construction permits before the Commission, some of which were formed by Sonrise Management Services, Inc. (Sonrise). *I.D.*, paras. 2, 17-18; Joint Exh. 1 (Stipulation of Facts), at 1; Nasby Exh. 2; Bureau Exhs. 11, 12.

5. On March 21, 1990, a thirty-three count federal indictment was entered against Root in the United States District Court for the District of Columbia and, three months later, on June 21, 1990, Root was also indicted on four counts in the United States District Court for the Southern District of Illinois. The two criminal actions were consolidated on September 11, 1990. Root entered a plea in the consolidated federal proceeding and was found guilty on January 17, 1992 of two counts of altering, forging, and counterfeiting public records, three counts of wire fraud, and one count of transporting stolen monies obtained by fraud. The illegalities, which occurred in the course of Commission licensing proceedings, included the submission of a counterfeit FAA no hazard determination in 1988, and the forging of a counterfeit order of an administrative law judge in 1989. Nasby was not involved in any of these licensing proceedings. Following his conviction, Root was sentenced to a term of thirty-three months in federal prison. *I.D.*, paras. 3-4; Stipulation at 1-2; Bureau Exhs. 1, 2, 3.

6. State court indictments were also entered against Root in North Carolina and Florida in connection with the formation by Sonrise of FM construction permit applicants before the Commission. On June 4, 1990, three indictments were returned against him in Nash County, North Carolina and on October 26, 1990, Root pled no contest to ninety counts of selling an unregulated security, ninety counts of failing to register as a securities dealer, one hundred and eighty counts of securities fraud, and four counts of conspiracy. As a result, on August 28, 1992, Root was sentenced to fifteen years in prison to be served concurrently with his federal term. *I.D.*, para. 5; Stipulation at 2-3; Bureau Exhs. 4, 5, 6. On August 13, 1990, an indictment was returned against Root in Pinellas County, Florida and, on January 10, 1991, a superseding indictment was filed against him. On June 23, 1992, Root pled no contest and was found guilty of one count of racketeering, one count of conspiracy to commit racketeering, three counts of organized fraud, one count of organized securities fraud, twenty counts of sale of unregistered securities, and twenty counts of securities fraud. He was sentenced to fifteen years to be served concurrently with his North Carolina and federal sentences. *I.D.*, para. 6; Stipulation at 3; Bureau Exhs. 7, 8, 9, 10.

7. While he was a Nasby principal, Root attended corporate meetings. Director and shareholder meetings were held annually and were presided over by David L. Williamson, the station's general manager. Williamson also served as one of Nasby's three directors, its president and treasurer, and was a stockholder. He resigned his corporate positions in 1989, and was succeeded by Timothy J. Moore, who then presided at the corporate meetings. At shareholder meetings, Root was available to answer questions and explain legal issues. At board meetings, where financial matters were discussed, officers elected, and the salary of the general manager set, Root voted on all matters coming before the board. *I.D.*, paras. 7-8; Nasby Exhs. 1-3; tr. 84-85.

8. In August 1988, when WSWR(FM) was experiencing financial difficulties, including a threat of action from the Internal Revenue Service, Williamson informed Root who then advanced Nasby the $40,000 needed to satisfy the Service. In November 1988, when Moore became Nasby's acting general manager, he and Root negotiated station loan refinancing at the local bank. As Nasby's secretary, Root executed the financial documents and provided his personal guarantee. Since that time, all station refinancing has been handled by Moore. During his tenure as general manager, Williamson had sole access to the station's checking accounts. From November 25, 1988 until September 7, 1993 (when it was discovered that his name had not been removed following his resignation), Root also had bank signature authority, but Root did not sign any WSWR(FM) checks during Moore's tenure. *I.D.*, paras. 9-10; Nasby Exhs. 1, 2; tr. 66.

9. It was Williamson's testimony that during his tenure at WSWR(FM), he alone exercised control over the day-to-day operations of the station with no assistance from Root or the other Nasby board member, Emma D. Slone. All station employees reported to Williamson and he was solely responsible for employment policies and practices. He also determined the station's format, programming, and commercial policies. Likewise, Moore testified that during his tenure, he also exercised day-to-day control of the operations of the station, including employment policies and practices, programming, and commercial policies. *I.D.*, para. 11; Nasby Exhs. 1, 2; tr. 58-59.

10. During the time he served as a corporate officer and director of Nasby, Root was not involved in the day-to-day management, operation, or control of the station. As Nasby's corporate counsel, Root was consulted periodically by Williamson and Moore on such matters as the review of contracts, and inquiries regarding Commission subjects relating to contests, lotteries, and political advertising. In addition, Root assisted Nasby with the filing of ownership information and applications and maintained the Nasby corporate book. *I.D.*, paras. 15-16; Nasby Exh. 1, at 3-7; Nasby Exh. 2, at 3-8; Nasby Exh. 3, at 3-4.

11. In March 1990, Moore received a letter from Root saying he was resigning as an officer and director of Nasby. No reason for the resignation was offered and Moore did not speak to Root at the time to learn the reason for his resignation. When Root resigned as legal counsel in April 1990, Moore recalled that Root was experiencing personal legal and financial problems stemming from an airplane crash he had survived months earlier, and Moore assumed that Root's resignation as legal counsel was intended to shield the station and its image in the community from any negative impact resulting from that incident. Moore stated he had no knowledge that Root was under criminal inves-

[3] *See* para. 23, *infra*.

tigation and that Root did not tell him or any other Nasby officer or director of that fact. *I.D.*, para. 12; Nasby Exh. 1, at 6-7. This testimony was unchallenged.

12. On May 31, 1990, the Commission wrote to Nasby rescinding an earlier grant of its renewal application. No specific reasons for setting aside the grant were stated. Upon receipt of this letter, Moore, who was "quite surprised", contacted Root, who, in turn, stated he had no idea why the Commission had taken this action. Root did volunteer that Nasby had to file its annual ownership report in June 1990 and Root assisted in its preparation. It was not until Nasby obtained new legal counsel that Moore was informed of the Commission's concerns regarding Root and the potential impact on Nasby's qualifications. *I.D.*, para.13; Bureau Exh. 11, at 25; Bureau Exh. 12, at 28; Nasby Exh. 1, at 7-8.

13. Following his resignation as an officer and director, and his transfer of his stock ownership, Root has not attended or participated in corporate meetings. Moore has maintained the corporate record book since Root's resignation as legal counsel. Other than his assistance in preparing the ownership report in June 1990, Root has provided no further assistance to Nasby. *I.D.*, para. 14; Nasby Exh. 1, at 6; tr. 66-67.

14. The ALJ concluded that Root's criminal activities, while serious, could not be imputed to Nasby, which had neither been convicted nor accused of criminal conduct. He found that although Root played an active corporate role as an officer, director, and legal counsel, he was not involved in the day-to-day operations of the station. The management, operation, and control of WSWR(FM) rested with others, the ALJ stated, and, long prior to his federal and state convictions, Root had departed from his ownership and corporate roles at the station. The other Nasby principals were unaware of Root's criminal activities, the ALJ noted, and Root had no further connection with Nasby following his resignation, other than his assistance with the filing of an ownership report prior to the time Nasby acquired new counsel. The ALJ concluded that Root's involvement with Nasby was not so pervasive as to implicate its ability to obey the law or require denial of its license renewal.

15. In its exceptions, the Bureau argues that Root's misconduct, which led to his felony convictions, was wilful, frequent, current, and serious, and was directly related to the Commission's licensing activities. The Bureau disagrees with the ALJ's reliance on *Sande Broadcasting, Inc.*, 61 FCC 2d 305 (1976) and *Chapman Radio and Television Co.*, 70 FCC 2d 2063 *(1979)*, as support for exonerating Nasby, and contends that it is significant that the nondisqualifying misconduct in those cases did not involve broadcasting or any application before the Commission. Instead, the Bureau relies on the Board's holding in *West Jersey Broadcasting Co.*, 90 FCC 2d 363 (Rev. Bd. 1982), for the proposition that "the Commission does not distinguish between guilty and innocent principals", and will disqualify whenever a corporate principal is engaged in serious wrongdoing. Moreover, the Bureau argues, Root participated extensively in Nasby's activities and was in control of the largest single block of Nasby stock at the time of his misconduct. It concludes that Root's resignation prior to his convictions should not insulate the licensee.

16. In evaluating an applicant's or licensee's character qualifications, the Commission will consider evidence of felony convictions. *Character Policy Statement*, 5 FCC Rcd 3252 (1990). This is so because a broadcaster's propensity to obey the law generally is a clear indicant of whether it can be relied on to deal truthfully with the Commission and comply with its rules and policies. The Commission is concerned with persons whose ownership interests are cognizable under the multiple ownership rules or who are in a position to potentially influence or control the operation of the station. *Character* Policy Statement, 102 FCC 2d 1179, 1205-06 (1986). Because not all crimes are equally probative of an applicant's inclination to conform to FCC rules and policies, the Commission examines traditional mitigating factors in particular cases, which include the wilfulness, frequency, currentness, and seriousness of the misconduct, overall record of compliance with FCC rules and policies, and rehabilitation. *Id.* at 1227-29; *Character Policy Statement*, 5 FCC Rcd at 3252; *Hara Broadcasting, Inc.*, 8 FCC Rcd 3177, 3179 (Rev. Bd. 1993).

17. Beyond peradventure, the misconduct of Mr. Root, which led to his criminal convictions, was wilful, repeated, recent, and quite serious, occurring as it did in the context of the prosecution of applications before the Commission and involving incidents such as the submission of a fraudulent FAA clearance and the forgery of an ALJ's signature on a bogus document. Equally beyond question is that Root played a major and active role in Nasby as paramount stockholder, corporate secretary, one of three corporate directors, and legal counsel. Were Nasby an individual applicant owned and controlled exclusively by Root, there would be little doubt that his criminal activities catalogued in the record before us would require the denial of its applications. The issue is joined in this case, however, over the question of whether Root's individual criminality fatally infects the greater corporate entity that is the licensee.

18. In analyzing this question, we initially reject Nasby's contention that Root's resignation prior to his convictions insulates the licensee from the effect of his criminal behavior. In *TV 9, Inc. v. FCC*, 495 F. 2d 929 (D.C. Cir. 1973), *cert. denied*, 419 U.S. 986 (1974), the court made clear that the significance of the impact of a corporate principal's criminal conviction is not mooted by his resignation, *see* 495 F. 2d at 939-40, and that, moreover, is the law of this case. *See HDO*, 8 FCC Rcd at 4036.[4] In *TV 9*, as in this case, the individual engaged in criminal misconduct, was an officer, director, stockholder, and legal counsel to the corporate applicant. On remand, after lengthy review, the Board held that despite the tainted principal's continuing participation in policy decisions as an officer and director, because he did not have a controlling stock interest and his misconduct was apparently unknown to the other corporate principals, only a comparative demerit would be imposed. *Mid-Florida Television Corp.*, 69 FCC 2d 607, 653 (Rev. Bd. 1978), *set aside on settlement*, 87 FCC 2d 203 (1981).[5] Here, Root, although an active participant in cor-

[4] Unlike the situation involving voluntary resignation presented in this case and in *TV 9*, the Commission may take into account and weigh the impact of the prompt ousting of a wrongdoer by the other principals at the time his misconduct comes to light. *See Central Texas Broadcasting Co.*, 74 FCC 2d 393, 409 (1979); *Nuance Corp.*, 85 FCC 2d 412, 417 (Rev. Bd. 1981).

[5] The demerit imposed, a substantial one, had a significant

porate affairs in his capacity as secretary, director, and legal counsel, individually owned and controlled more than 50% of Nasby's stock for only a day or two[6] (albeit he and his wife together did and were able to effectively transfer control). Furthermore, there is no evidence that other Nasby principals were aware of Root's illegal acts. Nor does the record indicate any involvement by Nasby or any other Nasby principal in any of the broadcast applications involved in Root's wrongdoing.

19. Although the Bureau is correct that the criminal conduct at issue in *Chapman Radio* and *Sande Broadcasting,* the cases relied upon by the ALJ, did not involve broadcasting or any application before the Commission, nevertheless, other factors in the Commission's resolution of those cases support Nasby's position. In *Chapman,* as here, no corporate stockholder was aware of or participated in the criminal wrongdoing of the principal in question. *See* 70 FCC 2d 2082, 2106 (ALJ 1979), *aff'd.,* 70 FCC 2d 2063 (1979); *see also Leflore-Dixie, Inc.,* 100 FCC 2d 331, 337 (Rev. Bd. 1985). And, in *Sande,* the Commission found no basis to impute the criminal wrongdoer's individual acts to the licensee because there was no showing that he was involved in the day-to-day operation of the radio station. *See* 61 FCC 2d at 308-09. Similarly, in the case at hand, although Root was active in his corporate roles, day-to-day operation and management were in the hands of the respective corporate presidents and station general managers, Williamson and Moore.

20. Furthermore, we disagree with the Bureau that a careful reading of *West Jersey,* the case it principally relies on, requires denial of license renewal here. There, the licensee was denied renewal because it violated Section 311 of the Communications Act, 47 U.S.C. §311, and engaged in accompanying misrepresentations, by illicitly paying $25,000 in excess of the amount approved by the Commission for withdrawal of a competing application. The Board rejected the licensee's request that it should find qualified a 30% "innocent" principal of the licensee and permit renewal solely to allow a transfer of control to that individual. The Board's statement in that case that it would not "atomize a licensee into its molecular elements for a gratuitous adjudication on the discrete qualifications of an individual stockholder", 90 FCC 2d at 371, quoted by the Bureau, hardly supports the Bureau's contention that a licensee is in all cases fatally tainted by the misconduct of one of its principals. In *West Jersey,* the licensee's misbehavior was undertaken on behalf of the licensee and directly involved the license in question and its procurement, which is quite unlike the situation in the present case where the licensee and the station seeking renewal were entirely uninvolved in Root's misconduct.

21. In short, we are not compelled by the evidence or the case law to adopt the Bureau's flat prescription in this case. In our view, the Commission must examine all the factors presented by an instance of individual principal criminality to determine whether license renewal is in the public interest. Where, as here, there is no evidence of licensee knowledge or involvement in the individual's misconduct, and that individual was not in control of the daily operation and management of the station, there would seem to be no inference to be drawn of a propensity generally by the licensee to disobey the law or the Commission's rules and policies and little public purpose served by punishing it for the transgressions of a single member. The fact that the illegalities occurred here in the context of broadcast proceedings before the Commission, while reprehensible in and of itself and deserving of severe sanction with respect to the wrongdoer himself, nevertheless, cannot, without some evidence of greater licensee complicity or *scienter* on the part of its managing principals, be attributable to the larger corporate entity. In sum, the license, now shorn of Root's taint, may be renewed.

22. As we indicated earlier, there are no exceptions taken to the ALJ's determination that the transfer of control, although illegal, was not accompanied by misrepresentation and, therefore, consistent with Commission precedent, would not require removal of the license. While we will not, *sua sponte,* review this holding, we will attach a specific condition to renewal of the license as well as approval of the transfer. The facts are, briefly, as follows.

23. As of May 29, 1989, Root individually owned 120.25 shares or 24.5% of Nasby's 500 shares of issued and outstanding stock. He also held 50 shares or 10% as custodian for his minor children. On May 30, he acquired another 100 shares or 20% from the Williamson family, giving him 54.5% ownership. On May 31, he transferred the 50 shares he held as custodian for his children to his wife, Kathy G. Root, as custodian. On June 1, Root transferred 50 shares back to the corporation in return for forgiveness of a corporate debt which he had assumed, thus reducing the total issued and outstanding stock to 450 shares, and transferred 100 shares to his minor children as gifts, with 25 of the shares apparently being passed through his wife on the same date,[7] leaving her with a total of 33 shares owned individually.[8] The stock transfers to the Root children were intended to give them equal ownership shares in Nasby. These shares were placed in a trust with Mrs. Root's mother, Arlene Gere, as trustee. On June 23, Root transferred his remaining 70.25 shares to his parents, Thomas F. and Joanne Root. Cumulatively, these transactions beginning May 31 resulted in the transfer of more than 50% of Nasby's stock, and Nasby seeks *nunc pro tunc* approval of the resultant transfer of control.[9] Nasby also seeks approval

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negative impact on the applicant's standing in the ultimate comparative analysis in that case, *see* 69 FCC 2d at 654, but these considerations are no longer germane. *See Character Policy Statement,* 102 FCC 2d at 1230-32.

[6] This was between May 30, 1989, when he acquired 100 shares from the Williamsons, and May 31, 1989, when he transferred 50 shares he held as custodian for his minor children to his wife as custodian. *See* para. 23, *infra.*

[7] The record is not clear on this latter point because the parties' Stipulation (Joint Exh. 1) indicates separate transfers on June 1 of 100 shares by Root and 25 shares by Mrs. Root to their children, whereas the transfer application (Bureau Exh. 11) and amendment thereto (Nasby Exh. 5) show a total of only 100 shares held in trust for the children. We are accepting the information in the amended application because the amendment was intended to correct the information previously submitted.

[8] It does not appear from the record when Mrs. Root acquired these shares.

[9] Although the transfer of control application on its face appears to reflect only those transactions that began on May 31, in fact, as noted in the text, one day earlier when Root acquired the 100 shares from the Williamsons which gave him 220.25 shares individually in addition to the 50 shares he held as custodian for his children, for a total of 270.25 of the then issued and outstanding 500 shares of Nasby, he obtained sole *de*

of the proposed transfer of the 70.25 shares owned by Root's parents to the law firm of Ginsburg, Feldman & Bress to cover legal fees incurred in representing Root. *I. D.*, paras. 17-22; Stipulation at 3-5; Nasby Exhs. 4, 5; Bureau Exh. 11.

24. As a consequence of the unusual circumstances presented by this case, namely, that the voluntary removal of the wrongdoer from the applicant licensee was accomplished largely through the transfer of his considerable ownership interest to his family, the record now indicates that the Root children (through a trustee) own 100 shares of Nasby, Mrs. Root individually owns 33 shares, and she holds an additional 50 shares as custodian for her children, resulting in a total of 183 shares held by the immediate Root family, which equates to 41% ownership.[10] While we do not wish to visit the sins of the father upon the children, nevertheless, we do not believe the public interest would be served by giving effectuation to an *arabesque* of stock transfers which, when all is said and done, results in retention of significant ownership of the station in the hands of members of the immediate Root family. We note, particularly, that Kathy G. Root, who, together with her husband, was responsible for the unauthorized transfer for which Nasby seeks belated approval, would, as an individual owner, and on behalf of her children, be a beneficiary of this arrangement. In addition, it appears that Joanne Root, Thomas Root's mother, who, together with her husband, was the recipient of 70.25 of Root's shares, has succeeded Root to Nasby's three-member board and as corporate secretary. *See* tr. 63; Bureau Exhs. 11, 12. In our view, only a complete divestiture to unrelated third parties of the Root family holdings involved in the unauthorized transfers of control can provide the Commission with adequate assurance that WSWR(FM) will not again be subjected to public scrutiny to determine the potential impact of Mr. Root's presence. Accordingly, we will condition both the grant of license renewal and transfer application approval with provision for appropriate divestiture of stock ownership and corporate membership resulting from the illegal transfers.[11] *See Spanish International Communications Corp.*, 2 FCC Rcd 3336, 3339 (1987) (Commission has discretion in fashioning remedy in case involving alien ownership which ALJ found to be in violation of Section 310(b) of the Act, 47 U.S.C. § 310(b), to approve settlement agreement providing for grant of renewal applications subject to immediate transfer of stations to unrelated buyers who have no alien owners), *aff'd sub nom. Coalition for the Preservation of Spanish Broadcasting v. FCC*, 931 F. 2d 73 (D.C. Cir. 1991), *cert. denied*, 502 U. S. 907 (1991); *see also Fox Television Stations, Inc.*, FCC 95-188, released May 4, 1995 (Commission renews license despite violation of Section 310(b) alien ownership restrictions conditioned upon submission by licensee of public interest showing justifying non-compliance or statement demonstrating future compliance); *Deer Lodge Broadcasting, Inc.*, 86 FCC 2d 1066 (1981) (Where licensee's illegal transfer of control was not accompanied by concealment, Commission imposed sanction of short-term renewal). In so holding, we make clear that the divestiture condition attaches to the renewal of license granted herein because if it attached solely to *nunc pro tunc* approval of the transfer of control and Nasby did not comply with the condition, a return of the ownership situation to the *status quo ante* would place significant Nasby stock ownership back in Mr. Root's hands, an obviously unacceptable result in view of his criminal record. In sum, we grant the applications before us with the express understanding that Mr. Root and members of his immediate family will not in the future retain ownership or corporate position in WSWR(FM).[12]

25. ACCORDINGLY, IT IS ORDERED, That the application of The Petroleum V. Nasby Corporation (File No. BRH-890601VB) for renewal of license of Station WSWR(FM) IS GRANTED, and the applications of The Petroleum V. Nasby Corporation (File Nos. BTCH-921019HX and BTCH-921019HY) for transfer of control of Station WSWR(FM) ARE GRANTED; and

26. IT IS FURTHER ORDERED, That grant of the applications for renewal of license and transfer of control of Station WSWR(FM) is conditioned upon the sale of the ownership interests of Kathy G. Root, Thomas P. J. Root, Leslie J. L. Root, and Travis S. C. Root in WSWR(FM), including those interests held in trust for Thomas P. J. Root, Leslie J. L. Root, and Travis S. C. Root, and the sale of the 70.25 shares held by Thomas F. and Joanne Root that are the subject of the proposed transfer to Ginsburg, Feldman & Bress, to unrelated buyers, and the resignation of Joanne Root from her corporate positions, within sixty (60) days of the release of this opinion; and

27. IT IS FURTHER ORDERED, That The Petroleum V. Nasby Corporation shall FORFEIT to the United States the sum of four thousand dollars ($4,000) for violation of Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's Rules, as described above. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument payable to the Federal Communications Commission.

FEDERAL COMMUNICATIONS COMMISSION

Marjorie Reed Greene
Member, Review Board

jure control. No application has been filed to report this earlier transfer.

[10] This figure does not include the 70.25 shares transferred by Root to his parents, which brings the present family ownership resulting from the aggregate transactions to over 50%, because these shares are the subject of the proposed transfer to Ginsburg, Feldman & Bress.

[11] The interest of Root's parents in 25 shares of Nasby stock acquired apart from the illegal transfers addressed herein is not affected by this order.

[12] Any further modification to the transfer of control applications or amendment necessitated by the divestitures ordered herein should be filed with the appropriate officials of the Mass Media Bureau.