

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

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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) **DOCKET FILE COPY ORIGINAL**
)
THE PETROLEUM V. NASBY)
CORPORATION) File Nos. BTCH-921019HX
) and BTCH-921019HY
)
For Transfer of Control)
of Station WSWR(FM),)
Shelby, Ohio)

To: The Commission

MASS MEDIA BUREAU'S OPPOSITION TO
APPLICATION FOR REVIEW

1. On October 13, 1995, The Petroleum V. Nasby Corporation ("Nasby") filed an Application for Review. Nasby seeks review of the Review Board's Decision, 10 FCC Rcd 6029 (1995), and a subsequent Memorandum Opinion and Order, FCC 95R-17, released September 13, 1995. The Mass Media Bureau, pursuant to Section 1.115(d) of the Commission's Rules, hereby submits its opposition to Nasby's Application for Review.¹

2. The Decision granted Nasby's application for renewal of license for Station

¹ In view of its position, as stated in its Application for Review, that the renewal application of Nasby should be denied, the Bureau has opted not to address every argument advanced by Nasby in the instant application for review. The Bureau's failure to address a particular argument should not be construed as an admission of its accuracy or relevance.

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WSWR(FM) and Nasby's applications for transfer of control. The Decision conditioned the grants upon the sale of voting stock ownership interests in Nasby held by the wife, children and parents of convicted felon, Thomas L. Root. The Decision also conditioned the grants upon the resignation of Joanne Root, Thomas L. Root's mother, from her corporate positions in Nasby.² The Memorandum Opinion and Order upheld the conditional grants but extended the period for the divestiture of the stock holdings of the Root family. By these actions, both the Decision and the Memorandum Opinion and Order sought to ensure that Thomas L. Root could have no influence whatsoever in the future operations of Nasby.

3. In seeking Commission review, Nasby submits that the Board's actions are not supported by substantial evidence and that they are arbitrary and capricious. Nasby contends that Thomas L. and Kathy G. Root, his wife, held Nasby stock only for the benefit of their two children and that Thomas L. Root held Nasby stock as an individual only because he had not expeditiously established a trust for the benefit of a third child. Nasby argues that, given the existence and intended commencement of the noted trusts, Thomas L. Root never sought to influence the operation of Nasby's station. Nasby further insists that Thomas L. Root will not have any potential or actual influence over Nasby's activities as a result of his children's stock holdings. Nevertheless, in order to assuage the Board's concerns, Nasby proposes the formation of a new trust which would place control of the Thomas L. Root family stock holdings in the hands of an independent trustee. Nasby also submits that forcing Joanne L. Root, Thomas L. Root's mother, to resign her positions as an officer and director of Nasby is

² The Decision also imposed a \$4,000 forfeiture on Nasby for repeated violations of Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules for unauthorized transfers of control.

arbitrary even though she attained these positions upon the resignation of her son. Nasby argues that forcing Mrs. Root to resign implies wrongdoing on her part which is not supported by the record.

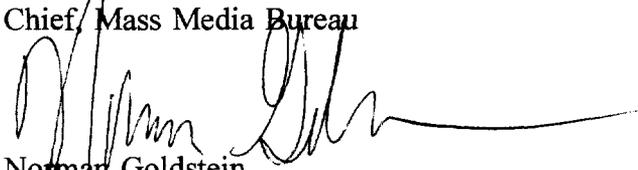
4. During the license term under review, Thomas L. Root was an officer, director and legal counsel of Nasby. He owned and/or controlled as an individual and, jointly with his wife as custodians for their minor children, the largest block of Nasby stock. During his tenure as an officer, director and shareholder of Nasby, Thomas L. Root committed felonies, including felonies directly related to Commission licensing proceedings. Thomas L. Root's misconduct was willful, frequent, current and serious. His immediate family, most of whose interests can be traced directly to stock transfers made by him, have continued to own interests in Nasby. One of Nasby's current directors and officers is Thomas L. Root's mother, who did not attain those posts until her son's resignation from them.

5. In West Jersey Broadcasting Co., 90 FCC 2d 363 (Rev. Bd. 1982) ("West Jersey"), the Review Board recognized that the Commission does not "atomize[] a licensee into its molecular elements for a gratuitous adjudication on the discrete qualifications of ... individual shareholder[s]." West Jersey, 90 FCC 2d at 371. See also, Marr Broadcasting Company, Inc., 2 FCC Rcd 6596, 6597-98 (Rev. Bd. 1987); California Broadcasting Corp., 2 FCC Rcd 4175 (Rev. Bd. 1987). Thus, in West Jersey, the Review Board denied an application even though it was proposed that certain wrongdoers be removed from the applicant. Contrary to the rationale of West Jersey, the Decision and the Memorandum Opinion and Order atomize

Nasby and seek to resolve the dilemma posed by the specter of Thomas L. Root by restructuring Nasby to eliminate any possibility of his influencing Nasby's future operations. While Nasby argues that the Board's approach is too harsh, the Bureau submits that it does not go far enough. Given the family relationships present here, it is necessary to deny Nasby's renewal application in order to ensure that Thomas L. Root never has a role with Nasby.

6. For the reasons set forth above, the Bureau opposes Nasby's application for review and urges the Commission to deny Nasby's renewal application for Station WSWR(FM).

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



Norman Goldstein
Chief, Complaints and
Investigations Branch



James W. Shook
Attorney
Mass Media Bureau

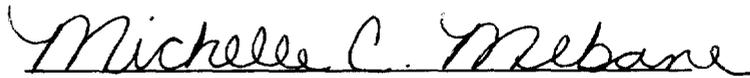
Federal Communications Commission
2025 M Street N.W., Suite 8210
Washington, D.C. 20554
(202) 418-1430

October 30, 1995

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Complaints and Investigations Branch, Mass Media Bureau, certifies that she has, on this 30th day of October, 1995, sent by regular United States mail copies of the foregoing "**Mass Media Bureau's Opposition to Application for Review**" to:

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


Michelle C. Mebane