

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

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FEDERAL COMMUNICATIONS COMMISSION  
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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: Administrative Law Judge  
Edward Luton

**MASS MEDIA BUREAU'S COMMENTS IN SUPPORT OF MOTION  
FOR SUMMARY DECISION AND GRANT OF THE RENEWAL AND TRANSFER  
OF CONTROL APPLICATIONS OF THE PETROLEUM V. NASBY CORPORATION**

1. On August 2, 1996, The Petroleum V. Nasby Corporation ("Nasby") filed a motion for summary decision. The Mass Media Bureau submits the following comments in support of Nasby's motion.

2. In The Petroleum V. Nasby Corporation, 11 FCC Rcd 3494, 3495 ¶ 9 (1996), the Commission remanded this proceeding to "facilitate a determination of whether [Thomas L.] Root may potentially influence the licensee's affairs in the event that WSWR(FM)'s license is renewed." Although Root himself no longer holds stock in Nasby and no longer serves as an officer or director of Nasby, the Commission was concerned that the circumstances of Root's

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departure from his various roles in the corporation reflected an ability to allocate control over the licensee. 11 FCC Rcd at 3495 ¶ 10. Thus, the Commission determined that the record in this proceeding should be supplemented to explore the circumstances surrounding the transfers of stock from Root to various family members and the circumstances concerning Root's relationship with his family with respect to Nasby, then, now and in the future. 11 FCC Rcd at 3495-96 ¶ 11.

3. In its motion, Nasby has submitted the "testimony" of Kathy G. Root, Root's wife; Arlene M. Geer, Root's mother-in-law; Joanne L. Root, Root's mother; and Timothy J. Moore, Nasby's president and the station's general manager. Considered collectively, the testimony reflects that the disposition of Root's Nasby stock to trusts for the benefit of his minor children was related to estate planning, while the disposition of such stock to his parents was to raise funds to cover various debts. Moreover, subsequent to his divestiture of Nasby stock and his resignation from the roles of corporate secretary, director and general counsel, the testimony establishes that Root has had no role in the operation of Station WSWR(FM). Finally, Nasby has submitted additional documentation which shows that Root will have no future role in Nasby's operation of the radio station. The documentation includes an irrevocable trust agreement, provisions to restrict stock transfers, and the testimony of Root's mother which reports, *inter alia*, that she has resigned from Nasby's board of directors.

4. Section 1.251 of the Commission's Rules provides for summary decision where

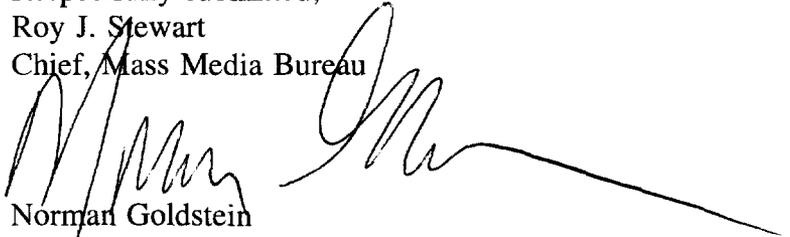
there is no genuine issue of material fact for determination at hearing. New Broadcasting Corp., 44 FCC 2d 386 (1973). A request for summary decision requires a showing that "the truth is clear," that "the basic facts are undisputed," and that "the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts." Big Country Radio, Inc., 50 FCC 2d 967 (1975). Applying the foregoing standards to the undisputed facts of this case leads to the conclusion that summary decision in favor of Nasby is warranted.

5. As noted above, Nasby has clearly shown that Root is in no position to influence the corporation's affairs. Further, Nasby has demonstrated that Root's transfers of stock and his departure as an officer and director had no relation to any scheme to allocate control over the licensee. Rather, his transfers of stock occurred because of personal considerations such as estate planning and obtaining cash to cover debts and anticipated personal expenses. Finally, Nasby has clearly shown that, since his resignation as an officer and director of Nasby, Root has not had and will not have any role in the operation of the corporation or the radio station.

6. In view of the foregoing, Nasby's motion for summary decision should be granted,

its application for renewal of license should be granted, its applications for transfer of control should be granted, and this proceeding should be terminated.<sup>1</sup>

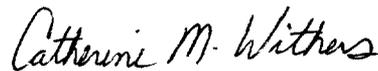
Respectfully submitted,  
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August 16, 1996

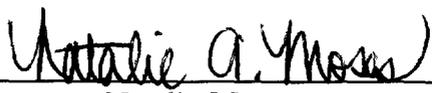
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<sup>1</sup> The Bureau's position that grant of this motion is appropriate is with the understanding that Nasby will submit a fully executed irrevocable trust agreement and an amendment to the transfer of control application as reflected in fn. 3 of Nasby's motion.

**CERTIFICATE OF SERVICE**

Natalie Moses, a secretary in the Complaints and Political Programming Branch, Mass Media Bureau, certifies that she has, on this 16th day of August, 1996, mailed a copy of the foregoing "**MASS MEDIA BUREAU'S COMMENTS IN SUPPORT OF MOTION FOR SUMMARY DECISION AND GRANT OF THE RENEWAL AND TRANSFER OF CONTROL APPLICATIONS OF THE PETROLEUM V. NASBY CORPORATION**" to:

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