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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION Federal Communications Commission
WASHINGTON, D.C. 20554 Office of Secretary

In the Matter of) MM Docket No. 96-123
)
Family Broadcasting, Inc.) File No. BRH-951204YE
)
For Renewal of License)
for Station WSTX(FM))
Christiansted, Virgin Islands)

To: Administrative Law Judge
Edward Luton

MASS MEDIA BUREAU'S COMMENTS
IN SUPPORT OF MOTION FOR SUMMARY DECISION BY
FAMILY BROADCASTING, INC.

1. On March 28, 1997, Family Broadcasting, Inc., ("Family") filed a Motion for Summary Decision. The Mass Media Bureau submits the following comments in support.

2. Family seeks favorable summary decision of the following issues specified in the Hearing Designation Order (HDO), DA 96-856, released May 30, 1996:

(1) To determine whether Family Broadcasting, Inc., has the capability and intent to expeditiously resume the broadcast operations of WSTX(FM), consistent with the Commission's Rules.

(2) To determine whether Family Broadcasting, Inc., has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(3) To determine, in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

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Background

3. Family is the licensee of WSTX(FM), Christiansted, Virgin Islands. WSTX(FM) discontinued operations on October 15, 1994. There is no indication in the Commission's files that Family filed a request for an STA. Family filed a renewal application on December 4, 1995, in which it indicated that the station had experienced "severe problems with the equipment because of its close proximity and exposure to the sea, and therefore has been on and off of the airwaves intermittently." The station suffered further damage in September, 1995, when Hurricane Marilyn removed the roof housing the station's studio and destroyed equipment.

4. Family's renewal application was designated for hearing on May 30, 1996, at which time WSTX(FM) was still off the air. On November 22, 1996, the parties jointly requested that the procedural dates in this proceeding be suspended in order to give Family a final opportunity to resume broadcasting. By Order, FCC 96M-263, released December 6, 1996, the joint request was granted and the procedural dates were suspended.

Family's Motion

5. Family states that it resumed operations on Station WSTX(FM) on January 18, 1997, and that it has, through the date of its motion, been operating on a 24 hour per day basis. Thus, Family moves for grant of its renewal application for WSTX(FM) and summary decision in its favor. However, the motion is silent with regard to the licensee's compliance with Section 73.1740.

Discussion

6. Section 1.251 of the Commission's Rules provides that the presiding judge may grant a motion for summary decision only in the absence of a genuine issue of material fact for determination at the hearing. See New Broadcasting Corp., 44 FCC 2d 386 (Rev. Bd. 1973); Salem Broadcasting Co., 30 RR 2d 995 (ALJ 1974). In order to sustain such a motion, the burden is on the moving party to demonstrate that no genuine issue as to any material fact remains and that it is otherwise entitled to summary decision. Telecorpus Inc., 30 RR 2d 1641, 1644 (ALJ 1974). Therefore, it must be established 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 (Rev.Bd. 1975). It is the Mass Media Bureau's position that no genuine issues of any material fact remain.

7. Issue (1) seeks to determine whether Family has the capability and intent to expeditiously resume the broadcast operations of the station consistent with the Commission's Rules. Given that Family has resumed broadcasting and has operated for nearly 3 months, it should be concluded that Family has the capability and intent to resume broadcasting. Issue (1) should be resolved in Family's favor.

8. Issue (2) seeks to determine whether Family has violated Section 73.1740 and/or Section 73.1750 of the Commission's Rules. Pursuant to Section 73.1740, Family was obligated to submit an informal written request to remain silent when it was unable to

continue station operations due to circumstances beyond its control. Pursuant to Section 73.1750, Family should have notified the Commission of permanent discontinuance of station operation and forwarded the station's license to the Commission for cancellation if Family intended to permanently discontinue operation of WSTX(FM).

9. With respect to Family's compliance with Section 73.1740 of the Commission's Rules, the Bureau submits that the proper conclusion is that willful and repeated violations occurred. In this regard, Family never filed an STA request even though the station had been silent for almost nineteen months prior to the issuance of the HDO on May 30, 1996. Further, Family did not resume broadcasting until January 18, 1997. Thus, from October 15, 1994 to January 18, 1997, Family was off the air without authority. In any event, Family has submitted no evidence regarding its compliance with Section 73.1740. See Victorson Group, Inc., 6 FCC Rcd 1697, 1701 (Rev. Bd. 1991). Accordingly, it should be concluded that Family violated Section 73.1740 from October 15, 1994 to January 18, 1997.

10. Concerning Section 73.1750 of the Commission's Rules, Family's return to the air and its submission of a renewal application indicate that Family never intended to discontinue operation of WSTX(FM). It therefore appears that Family did not violate Section 73.1750 of the Rules.

11. Issue (3) seeks to determine whether Family is qualified to be and remain the licensee of WSTX(FM). Family's resumption of broadcasting on WSTX(FM) indicates that it

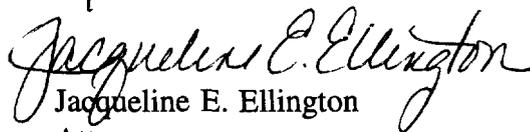
is qualified to be and remain the station's licensee. The ultimate decision for summary decision in this case is whether Family's license to operate WSTX(FM) should be renewed. Family willfully and repeatedly violated Section 73.1740 of the Commission's Rules, but the violations, when considered in light of Family's returning Station WSTX(FM) to the air, do not justify denial of renewal. Therefore, the license renewal application should be granted.

12. In sum, the Bureau supports summary decision of the issues, grant of the above-captioned renewal application, and termination of this proceeding.

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



Norman Goldstein
Chief, Complaints &
Political Programming Branch



Jacqueline E. Ellington
Attorney
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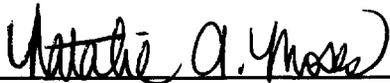
Federal Communications Commission
2025 M Street, N.W.
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April 11, 1997

CERTIFICATE OF SERVICE

Natalie Moses, a secretary in the Complaints & Political Programming Branch, Mass Media Bureau, certifies that she has on this 11th day of April, sent by regular United States mail, copies of the foregoing "Mass Media Bureau's Comments in Support of Motion for Summary Decision by Family Broadcasting, Inc." to:

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Natalie Moses