

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

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In re )  
)  
FAMILY BROADCASTING, INC. )  
)  
Order to Show Cause Why the Licenses for )  
Stations WSTX(AM) and WSTX-FM, )  
Christiansted, U.S. Virgin Islands, )  
Should Not Be Revoked )

EB Docket No. 01-39

**RECEIVED**

**APR 12 2001**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Administrative Law Judge  
Richard L. Sippel

**ENFORCEMENT BUREAU'S MOTION TO HAVE RESPONSES  
DEEMED AS ADMISSIONS OF FACTS**

1. The Enforcement Bureau submits the instant motion pursuant to sections 1.246 and 1.294 of the Commission's rules, 47 C.F.R. §§ 1.246 and 1.294. The Bureau requests that the Presiding Judge issue an order that finds that certain answers submitted by Family Broadcasting, Inc. ("Family") to the Bureau's Request for Admission of Facts and Genuineness of Documents ("Admissions Requests") be deemed admitted. The Bureau is seeking the requested order to avoid ambiguities in the record, which could otherwise lead to useless litigation and argument.

2. The Bureau's Admissions Requests and Family's answers included the following:

39. Attachment J is a true and accurate copy of a letter dated October 20, 1994, from Family to the Commission.

Answer: Admitted.

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40. Family, in its October 20, 1994, letter, did not advise the Commission that WSTX(AM) was not being operated in accordance with its license.

Answer: When Family Broadcasting, Inc., bought WSTX(AM) there was no tower, because it had been destroyed by Hurricane Hugo in 1989. By 1994, however, I believe that the tower had been replaced.

41. Family's claim in its October 20, 1994, letter, "Now that our AM portion is up to snuff ..." was false.

Answer: I cannot say what my father meant when he used the term "up to snuff", but I am reasonably certain that the tower had been replaced. It was destroyed by Hurricane Marilyn in 1995 and re-erected, but the new tower was also destroyed by Hurricane Lenny in 1999.

42. Luz James knew that the claim, "Now that our AM portion is up to snuff ..." was false when he signed the October 20, 1994, letter.

Answer: See responses to 40 and 41.

43. Family's claim in its October 20, 1994, letter, "we are operating [WSTX-FM] at 500 watts" was false.

Answer: I do not know what power we were using in October 1994, and have not been able to determine that fact one way or the other.

44. Luz James knew that the claim "we are operating [WSTX-FM] at 500 watts" was false when he signed the October 20, 1994, letter.

Answer: See response to 43.

...

54. Family's claim in Attachment N that "Radio Station WSTX-FM has been experiencing severe problems with equipment because of its close proximity and exposure to the sea, and has therefore been on and off of the airwaves intermittently" was false.

Answer: I have not been able to personally verify these facts, but I believe them to be true. Therefore, they are admitted.

55. Luz James knew that the claim in Attachment N that "Radio Station WSTX-FM has been experiencing severe problems with equipment because of its close proximity and exposure to the sea, and has therefore been on and off of the airwaves intermittently" was false.

Answer: Admitted. While I do not know my father's state of mind, it appears that this claim was false.

56. Family's claim, in Attachment N, that WSTX-FM's current silence occurred as a result of destruction of station equipment by Hurricane Marilyn, was false.

Answer: I have not been able to personally verify these facts, but I believe them to be true. Therefore, they are admitted.

57. Luz James knew that the claim, in Attachment N, that WSTX-FM's current silence occurred as a result of destruction of station equipment by Hurricane Marilyn, was false.

Answer: Admitted. While I do not know my father's state of mind, it appears that this claim was false.

Family provided identical answers to those noted for Admissions Requests 55 and 57 in responding to Admissions Requests 98, 103, 105 and 148.

3. Ms. Barbara James-Petersen, Family's current president, provided Family's answers and swore to their accuracy. She became Family's president in March 2001. Previously, her father, Mr. Gerard Luz A. James ("Mr. Luz James") was president. Since Family became licensee, Mr. Luz James has been and remains Family's controlling stockholder. Mr. Luz James provided a declaration under penalty of perjury in support of Family's March 15, 2001, Petition for Reconsideration.

4. The Attachment J referenced in the Bureau's Admissions Requests #39 was a letter from Mr. Luz James to Mr. Jim Bradshaw of the Commission's Mass Media Bureau, Audio Services Division. In that letter, Mr. Luz James sought to justify why WSTX-FM was not operating in accordance with its license. The letter reflects that at least part of Mr. Luz James' justification was that Family had limited resources and that it was using those resources initially to restore licensed operations to its AM station. Thus, it appears that Mr. Luz James was claiming not only that there was a tower in place for WSTX(AM) but also that the WSTX(AM) tower was of the authorized height and that WSTX(AM) was operating at its licensed power. The answers provided by Family to the Bureau's Admissions Requests #s 40-42 address only whether a tower existed. They do not reveal whether the tower was at its authorized height or whether the station was operating at its licensed power. Further, and more importantly, Family's answers arguably do not clearly admit or deny whether Mr. Luz James knew that his claims about the AM station being "up to snuff" were untrue. Finally, Family's answer to Admission Requests # 43 suggests that WSTX-FM was broadcasting on October 20, 1994, which is rendered questionable by its response to Admissions Requests # 37. Therein, Family admitted that WSTX-FM ceased broadcasting on or about October 15, 1994.

5. Similar problems exist with other answers submitted by Family. In the instances cited (#s 55, 57, 98, 103, 105 and 148), Family acknowledges that the referenced claims were false. However, because Ms. James-Petersen responded, rather than her father, Family will not admit unequivocally that Mr. Luz James knew that the claim was false. The Bureau believes it reasonable to infer that Family has opted to respond with ambiguity because complete and forthright admissions will concede that Family uttered numerous falsehoods in order to keep the Commission at bay. The Bureau does not believe Family should be allowed to avoid facing up to the truth.

6. Section 1.246(b) of the Commission's rules provides: "Each of the matters of which an admission is requested shall be deemed admitted unless ... the party to whom the request is directed serves .... A sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters ...." Although the Bureau recognizes that in responding to Admissions Requests 55, 57, 98, 103, 105 and 148, Family has "admitted" those Admissions Requests, it also appears that Family has qualified its answers so as to avoid directly addressing an essential element of those Admissions Requests. Its excuse for not doing so is that it did not even ask Mr. Luz James to respond. The Bureau finds this unacceptable. Family should not be allowed to sidestep Admissions Requests it finds embarrassing.

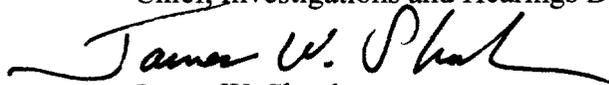
7. In sum, because it appears that Family did not even consult Mr. Luz James (much less provide his declaration), the Bureau submits that Family should be deemed to have admitted both that it was not operating WSTX(AM) in accordance with its license at the time of its October 20, 1994 letter (Admissions Request #s 40 and 43) and that Mr.

Luz James' claim that it was operating in accordance with its license was knowingly false (Admissions Request #s 41, 42 and 44). Further, the Bureau submits that Family should be deemed to have admitted that Mr. Luz James' claims referenced in Admissions Request #s 55, 57, 98, 103, 105 and 148 were also knowingly false. *Cf. The Baltimore Radio Show, Inc.*, 4 FCC Rcd 6437, 6438 (Rev. Bd. 1989) ("A presiding ALJ has broad discretion over the use of discovery, and the rulings of the ALJ will not be disturbed unless such rulings are arbitrary or an abuse of discretion.") *See also L. Ray Vickers*, 29 FCC 2d 415 (Initial Decision 1971). The Bureau believes that grant of its request will clarify the record; minimize, if not eliminate, the need to depose Mr. Luz James or seek his testimony should the hearing go forward; and increase the likelihood of stipulations.

Respectfully submitted,



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April 12, 2001

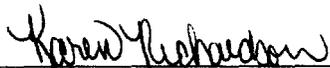
CERTIFICATE OF SERVICE

Karen Richardson, secretary of the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 12th day of April 2001, sent by facsimile, first class mail, or by hand copies of the foregoing "Enforcement Bureau's Motion to Have Responses Deemed as Admissions of Facts" to:

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Karen Richardson