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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

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 /

To: The Commission

**ENFORCEMENT BUREAU'S REPLY BRIEF TO EXCEPTIONS**

Respectfully submitted,  
Charles W. Kelley  
Chief, Investigations and Hearings Division  
Enforcement Bureau

James W. Shook  
Kathryn Berthot  
Attorneys

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3-B443  
Washington, D.C. 20554  
(202) 418-1420

September 17, 2001

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To: The Commission

**ENFORCEMENT BUREAU’S REPLY BRIEF TO EXCEPTIONS**

1. On August 28, 2001, Family Broadcasting, Inc. (“Family”) filed a pleading styled “Exceptions and Brief in Support of Exceptions of Family Broadcasting, Inc.” (“Exceptions”). Family seeks Commission review of the *Summary Decision of Administrative Law Judge Richard L. Sippel*, FCC 01D-02, released August 7, 2001 (“*Summary Decision*”), which revoked Family’s licenses for Stations WSTX/WSTX-FM, Christiansted, U.S. Virgin Islands. Pursuant to section 1.277(c) of the Commission’s rules, 47 C.F.R § 1.277(c), the Enforcement Bureau hereby submits a reply brief. The Bureau emphasizes that its failure to comment on any particular exception or argument should not be construed as a concession to that exception’s or argument’s correctness or accuracy.

Counter Statement of the Case

2. In its July 10, 2001, Motion for Summary Decision, the Bureau argued that Family’s admitted misrepresentations, lack of candor, and willful or repeated violations of the Commission’s rules referenced in the specified issues required revocation of its licenses. In its July 11, 2001, cross motion for summary decision, Family acknowledged that it made multiple misrepresentations and committed a “whole series of violations” of the Commission’s rules. Nevertheless, Family submitted that mitigating circumstances made

revocation of its licenses inappropriate. Family referenced, *inter alia*, the damage caused by various hurricanes, its efforts to bring the stations into compliance with the Commission's rules following the issuance of the *Order to Show Cause and Notice of Opportunity for Hearing* ("OSC"), 16 FCC Rcd 4330 (2001), in this proceeding, and pending applications to transfer control of the stations from Mr. Gerard Luz A. James ("Mr. Luz James") and his wife to their four adult children (File Nos. BTC-20010315AAJ; BTCH-20010315AAK). Family relied on three perceived exceptions to the Commission's policy of prohibiting the subject of a license revocation hearing to sell its station(s) unless and until it was found qualified to do so. Family argued that one or more of those exceptions justified grant of the transfer applications to the children of Mr. Luz James because, *inter alia*, none of them, according to Family, had a part in any wrongdoing. In those applications, Mr. Luz James and his wife propose to give their stock, supposedly representing a controlling interest, to their children for no consideration. On July 30, 2001, the Bureau opposed Family's cross motion, arguing that the proposed assignees were not independent of their parents and that Ms. Barbara James-Petersen, one of the proposed assignees and the only Luz James offspring proposed to work at the stations, had a role in Family's wrongdoing. The Bureau also pointed out that Family, under Ms. James-Petersen, had not fully responded to the Bureau's discovery requests.

3. The *Summary Decision* rejected Family's arguments and revoked Family's licenses. The *Summary Decision* concluded that Family had committed multiple misrepresentations, lacked candor and had violated numerous Commission rules. The *Summary Decision*, agreeing with the Bureau, also concluded that Family's current president, Barbara James-Petersen, was unable to show that she will be independent of her

parents, Mr. Luz James and his wife, Asta. *See Summary Decision* at ¶¶ 40 and 41. In addition, the *Summary Decision* found that willful violations of the Commission’s rules justifying revocation had occurred while Ms. James-Petersen was station manager, thereby casting doubt on her ability to bring the stations into compliance. *See id.* at ¶ 42.

4. In its exceptions, Family candidly acknowledges that it “does not disagree with any of the findings of fact made by ALJ Sippel.” Exceptions at p. 2. That being so, the matter should end. Nevertheless, Family proceeds to recite a series of “facts.” Some of these “facts” are irrelevant; some are highly questionable.<sup>1</sup> Those that arguably have some relevance were considered and rejected in the *Summary Decision*, and Family makes no argument that the *Summary Decision* erred in rejecting any particular fact it deems important. Rather, Family merely repeats in its Exceptions, verbatim, the Statement of Facts that appeared in its Motion for Summary Decision. *Compare* Exceptions Statement of the Facts ¶¶ 1-17, *with* Family’s July 11, 2001, Motion for Summary Decision ¶¶ 3-19. Family’s facts and arguments contend that: Mr. Luz James is out of the picture; Ms. James-Petersen is totally blameless; and Ms. James-Petersen will not repeat the errors of her father. If such is ultimately concluded, Family believes that it is entitled to extraordinary relief, consistent with one or more of the policies discussed below.

5. For the reasons appearing in the *Summary Decision* and in the Bureau’s July 30, 2001, Opposition to Family’s Motion for Summary Decision, the Commission cannot confidently make

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<sup>1</sup> *See, e.g.*, ¶ 10 of its Statement of Facts, wherein Family focuses on the James family’s historical roots and attributes and wherein it claims that Ms. James-Petersen “always assumed that [the stations] were operating perfectly legally....” As to the latter claim, the Bureau is constrained to note that Ms. James-Petersen was general manager during two inspections which revealed rule violations and that she personally received correspondence from the Commission raising questions about claims previously made by Family, which then went unanswered. *See Summary Decision* at ¶¶ 14, m and n; 18, j and n; 20, k and m; 22, c. *See also* Bureau’s Motion for Summary Decision, p. 6, Admissions 138, 158 and 159. She thus had every reason to know that the stations were not operating in accordance with the rules.

any of the findings advocated by Family. Rather, the current state of the record indicates that Ms. James-Petersen cannot operate the stations independently of her parents. As acknowledged in her deposition, Ms. James-Petersen still resides with her children in her parents' home and has no visible means of bringing the stations into compliance with the rules except through her parents' generosity. Moreover, as admitted in Family's responses to the Bureau's Admissions Requests and as found in the *Summary Decision*, Ms. James-Petersen, the only one of Mr. Luz James' children who will be involved in operating the stations, had a role in Family's wrongdoing. Thus, as the *Summary Decision* concluded, there is no reason to believe that Family will be any more reliable under Ms. James-Petersen than it was under Mr. Luz James. Accordingly, the Commission should affirm the *Summary Decision* and revoke Family's licenses.

#### Arguments Addressed to Family's Exceptions

6. Family recognizes, and the *Summary Decision* correctly notes at p. 3, n. 1, that Commission policy prohibits a broadcast licensee in a revocation proceeding to assign its licenses to a third party prior to favorable resolution of that proceeding. See *Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964) ("*Jefferson Radio*"). Nevertheless, Family contends that its circumstances are sufficiently akin to those where the Commission has permitted a wrongdoer to escape loss of license through grant of extraordinary relief. The Bureau disagrees.

7. Distress sale. Family believes that the Commission's *Minority Distress Sale Policy*<sup>2</sup> is applicable to its situation. To qualify for distress sale relief, the applicants must demonstrate that

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<sup>2</sup> *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1978); *Clarification of Distress Sale Policy*, 44 RR 2d 479 (1978). See also *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 92 FCC 2d 849 (1982). Cf. *Quincy D. Jones*, 11 FCC Rcd 2481, 2485-86, 2489 (1995). But cf. *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13, 20 (D.C. Cir. 2001), rehearing denied, -- F.3d -- (D.C. Cir. June 19, 2001) Nos. 00-1094, 00-1198.

the seller will receive no more than 75 percent of the fair market value of the stations and that the buyer is a minority-controlled entity. In addition, the proposal must be submitted before the hearing commences. *See, e.g., Atkins Broadcasting*, 8 FCC Rcd 6321 (Mass Media Bureau 1993). Because Ms. James-Petersen and her siblings are members of a minority group and because Mr. Luz James will not receive any consideration for the transfer of his stock, Family submits that its motion for summary decision should have been granted in order to allow the Mass Media Bureau to process its transfer applications.

8. Arguably, Family's proposed transfers of control meet some of the tests for distress sale relief. Family's transfer applications and related submissions indicate that grant of the applications would not noticeably enrich Mr. Luz James, the principal wrongdoer, and that his four adult offspring are all members of a minority group. Thus, Family would remain a minority-controlled entity. In addition, the applications were filed prior to the commencement of any hearing. However, noting that the Mass Media Bureau had not granted the applications "before the commencement of the proceeding," the *Summary Decision* held that distress sale relief was unavailable. *See Summary Decision* at ¶ 36.

9. The Bureau agrees with the *Summary Decision's* ultimate conclusion that distress sale relief is unavailable in this case. Simply put, a transfer of Family's stock to Mr. Luz James' children, which contains no assurance that Mr. Luz James himself will exit the scene completely and irrevocably, will not advance the Commission's goal of deterring future wrongdoers. *See Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1190 n. 26, 1228 (1986) (subsequent history omitted). There is no deterrent value to a policy that allows a licensee principal to lie and violate the rules if he can, when finally caught, simply give his interest

in the licensee to his children. Granting a distress sale under these circumstances would be a farce. Cf. *Silver Star Communications – Albany, Inc.*, FCC 86-172, released April 17, 1986.<sup>3</sup>

10. Moreover, the Commission will not advance the goal of deterrence by allowing one of the wrongdoers to become a licensee stockholder. Repeatedly in its Exceptions, Family asserts that Mr. Luz James' children generally, or Ms. James-Petersen specifically, had no part in the wrongdoing which Family has admitted committing. *E.g.*, Exceptions at p. 9. Family is mistaken. The Bureau's Admissions Requests and Family's Admissions Answers demonstrate that Ms. James-Petersen, in her position as general manager of the stations since July 1, 1998, had a role in Family's wrongdoing with respect to issues (b), (c), (d), (e) and (f). She was present at two inspections, and she received Commission correspondence that went unanswered, alerting her to serious concerns about Family's operation of the stations and its apparent untruthfulness. Thus, Family's protests to the contrary notwithstanding, Ms. James-Petersen knew or should have known that, in a number of significant respects, Family was not operating the stations in accordance with the Commission's rules. Moreover, she knew well before the issuance of the *OSC*, that the Commission had serious concerns about the truth of statements made by Family. *See* Motion for Summary Decision, Attachment A, Admissions Requests 155-161; Attachment B, Responses 155-161. Nonetheless, Ms. James-Petersen apparently took few steps to correct the stations' many deficiencies until the issuance of the *OSC*. The Bureau submits that the Commission should not ignore this history and allow a transfer of control to Ms. James-Petersen and her brothers. The

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<sup>3</sup> In this regard, the Bureau notes that the *Silver Star* licensee ultimately avoided loss of license only because the Mass Media Bureau could not prove at the hearing that the licensee had a secret agreement to resell the stations in question back to a principal of the former licensee. As further explained in that proceeding's *Order to Show Cause*, the Commission was concerned that had such an agreement existed an abuse of the *Minority Distress Sale Policy* would have resulted. *See Silver Star Communications – Albany, Inc.*, 6 FCC Rcd 6905 (1991).

*Summary Decision* at ¶ 42 concluded likewise, and Family's Exceptions do not present a reasoned basis for overturning this conclusion.

11. Second Thursday. Family also contends that the *Second Thursday*<sup>4</sup> doctrine justifies the proposed transfer of stock from Mr. Luz James to his children. Under *Second Thursday*, a licensee in bankruptcy may assign the license if the individuals charged with misconduct will have no part in the proposed operations and will either derive no benefit from favorable action on the assignment or will receive only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors. The doctrine "accommodates the policies of the federal bankruptcy law with those of the Communications Act." *LaRose v. FCC*, 494 F.2d 1145, 1147 n.2 (D.C. Cir. 1974).

12. *Second Thursday* relief is not available to Family. First, Family is not in bankruptcy. Second, as noted above, the proposed transfers provide no assurance that Mr. Luz James will leave the scene. Third, while grant of the transfer would remove Mr. Luz James from stock ownership, it could well keep him as Family's principal and perhaps only creditor. As noted in the Bureau's July 30, 2001, Opposition to Motion for Summary Decision at ¶ 13, Family's tax returns suggest that substantial creditors exist, but Family has provided no specific information to identify them. Dep. at pp. 39, 42-46. Ms. James-Petersen, however, indicates that Family's only creditor may well be her father as her understanding is that Family has lost money throughout its existence and that those losses have been funded by her parents. Dep. at pp. 71-74. In view of the foregoing, *Second Thursday* does not justify further processing of Family's transfer applications.

13. Nasby. Family's final hope is that the Commission will view the instant proposed transfers as acceptable because of the decision in *The Petroleum V. Nasby Corporation*, 10 FCC

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<sup>4</sup> See *Second Thursday Corp.*, 22 FCC 2d 515, 516, *recon. granted*, 25 FCC 2d 112 (1970).

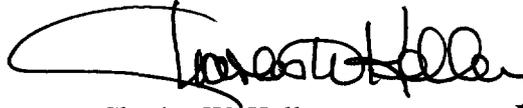
Rcd 6029 (Rev. Bd. 1995), *remanded to supplement the record*, 11 FCC Rcd 3494 (1996). In *Nasby*, the Commission considered granting renewal of license to a corporate licensee even though Thomas Root, one of *Nasby's* directors, its corporate secretary, and, for a brief period, its majority shareholder, had been convicted of numerous felonies. Contrary to the instant case, however, Mr. Root, the *Nasby* wrongdoer, had left the scene well before designation of the station's renewal application by both resigning his corporate offices and transferring all of his stock. Further, none of Mr. Root's disqualifying actions occurred in connection with the operation of the station whose license was at stake. Moreover, contrary to the instant situation, none of the persons who owned *Nasby's* stock and worked at the station had anything to do with Mr. Root's felonies. Finally, even though Mr. Root had left the scene, the Commission, before it would grant renewal, remanded the proceeding to the Administrative Law Judge ("ALJ") to determine whether Mr. Root could potentially influence the licensee's affairs. Only after the ALJ determined that Mr. Root was in fact unable to influence *Nasby* – through the use of irrevocable trusts, independent trustees, and restrictive legends on shares of stock, all of which ensured that Mr. Root was and would remain unable to influence the corporation – did he grant renewal of license. *See The Petroleum V. Nasby Corporation*, 13 FCC Rcd 13538 (ALJ 1997).

14. As discussed above, the evidence does not allow the Commission to conclude that Mr. Luz James will be unable to influence Family's affairs. The facts call for quite the opposite conclusion. His influence is pervasive and ongoing. Moreover, all of Family's disqualifying wrongdoing occurred in connection with the operation of WSTX and WSTX-FM, the stations whose licenses are now at stake. Thus, the *Nasby* case provides no solace to Family, and the

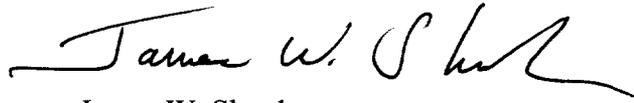
*Summary Decision* at ¶¶ 38 and 41 correctly so concluded.<sup>5</sup> *See also Contemporary Media, Inc.*, 13 FCC Rcd 14437, 14443 (1998) (subsequent history omitted).

15. Accordingly, for the reasons stated, Family's Exceptions should be denied. Thus, the licenses of Family Broadcasting, Inc. for Stations WSTX and WSTX-FM, Christiansted, U.S. Virgin Islands, should be revoked.

Respectfully submitted,



Charles W. Kelley  
Chief, Investigations and Hearings Division  
Enforcement Bureau



James W. Shook  
Attorney



Kathryn Berthot  
Attorney

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3-B443  
Washington, D.C. 20554  
(202) 418-1420

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<sup>5</sup> As to Family's argument that the transfer applications cannot be denied without a hearing (*see* Exceptions at p. 12, ¶ 6), the Bureau notes that the *Jefferson Radio* policy prohibits a broadcast licensee in a revocation proceeding to assign its licenses to a third party prior to favorable resolution of that proceeding. Should the Commission revoke Family's licenses, Family will have nothing to assign or transfer, and the Mass Media Bureau will dismiss the transfer applications as moot.

CERTIFICATE OF SERVICE

Karen Richardson, secretary of the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 17th day of September 2001, sent by first class mail, copies of the foregoing "Enforcement Bureau's Reply Brief to Exceptions" to:

Lauren A. Colby, Esquire  
10 E. Fourth Street  
P.O. Box 113  
Frederick, MD 21705-0113

Daniel A. Huber, Esquire  
560 N Street, S.W., Suite 501  
Washington, D.C. 20024

  
Karen Richardson