

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

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In the Matter of)
)
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)
)
TO: The Full Commission)

EB Docket No. 01-39

MOTION FOR LEAVE TO FILE ADDITIONAL EXCEPTION

Family Broadcasting, Inc. ("Family"), by its attorney, hereby respectfully requests leave to file an additional exception to the Summary Decision of Administrative Law Judge Richard L. Sippel, released in this proceeding on August 7, 2001. In support thereof, it is alleged:

1. In an Opposition to Motion to Strike filed by the Enforcement Bureau on October 12, 2001, the Enforcement Bureau calls attention to the following paragraph in ALJ Sippel's Summary Decision:

"[S]ubstantial evidence shows that under Luz James' control, which included a period of time when Ms. James-Petersen was station manager, there were willful violations that justify the remedy of revocation. Her past performance does not instill a confidence that she can bring the stations into full compliance in the future. Family has failed in its proof to show by reliable evidence that the proposed familial assignees would guarantee future compliance. Luz James, and all others associated with the operations of the Family stations,

including Barbara James-Petersen and Asta James, knew from the designated renewal proceeding in 1997, and the subsequent Notices of Violations incident to on-site inspections, that there was a probability of revocation if corrective action was not taken, particularly if Family was less than candid in its dealings with the Commission. Family ignored the warnings and chose to violate the law. Why should the future be any different? There are presented no reasonable probabilities of future compliance that can alter the historical merits of this case.”

2. In its exceptions, Family pointed out that ALJ Sippel did not have jurisdiction over the transfer application; that no hearing has ever been held on the transfer application; and that his jurisdiction was limited to the record adduced on the show cause order, through a deposition and various documents. Hence, it did not seem necessary to except to matters which were clearly beyond the ALJ’s jurisdiction.

3. However, the Enforcement Bureau is relying upon the above-quoted finding and its reliance is entirely misplaced, because the ALJ’s finding was based upon a total misunderstanding of the facts. As we will show, Barbara James-Petersen was not present at the radio station in 1997 and had nothing to do with the renewal proceeding. Moreover, the renewal proceeding had absolutely nothing to do with any of the violations which resulted in the present proceeding. The two matters were completely unrelated.

4. In the late 1980's and early 1990's, the Commission began having a problem with silent radio stations. Most of the stations which were silent were AM stations but some were also FM stations. The Commission felt that it had a public interest obligation to get as many radio stations back on the air as possible. Consequently, where a station remained silent for a long period of time, it began designating renewal applications for hearing. A description of the policy is set forth in Birach Broadcasting Corporation, 16 FCC Rcd 5015 (2001) at paragraphs 10-13. A search in

Westlaw discloses at least 25 of these renewal cases (some of which were handled by ALJ Sippel, himself), where licenses of silent stations were designated for hearing. In most cases, the hearing proceedings succeeded in getting the attention of the licensees, who put the stations back on the air. For examples, see Quality Broadcasting, Inc., 12 FCC Rcd 2893 (ALJ 1997); Chester Broadcasting Company, Inc., 12 FCC Rcd 2333 (ALJ 1997); Bluestone Broadcasters, Inc., 11 FCC Rcd 17833 (ALJ Sippel 1996); Hometown Media, Inc., 11 FCC Rcd 19677 (1996); L.T. and Raymond Simes, 11 FCC Rcd 12248 (MMB 1996); WKZF-FM, Inc., 11 FCC Rcd 11793 (ALJ 1996); WPVG, Inc., 11 FCC Rcd 14348 (MMB 1996); Southwestern Broadcasting Corporation, 11 FCC Rcd 9120 (ALJ Sippel 1996); Communications Enterprises, Inc., 11 FCC Rcd 8555 (ALJ Sippel 1996); Jotocon Communications, Inc., 11 FCC Rcd 13814 (MMB 1996); University of Kansas, 11 FCC Rcd 13818 (MMB 1996); Clarence E. Jones, 11 FCC Rcd 12086 (MMB 1996).¹

5. On May 30, 1996, the Audio Services Division released a Hearing Designation Order in the matter of Family Broadcasting, Inc., published at 11 FCC Rcd 6647. In that order, the Audio Services Division indicated that it had information that Station WSTX-FM had discontinued operations on October 15, 1994, and had not resumed operations. Therefore, the Audio Services Division designated the application for renewal of the WSTX-FM license for hearing on the following issues:

(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.

¹Eventually, the Congress passed legislation, 47 U.S.C. 312(g), providing for automatic forfeiture of a station license if the station remained silent for more than a year. Thereafter, the FCC discontinued the practice of designating renewals for hearing where a station was silent, because there was no longer a need to do so.

(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.

Please note that the only rule violations alleged in the Hearing Designation Order related to Sections 73.1740 and/or 73.1750 of the Commission's Rules, which pertain entirely to the need to be on the air or, if the station is not on the air, to have permission to remain silent. These were the same issues which were always designated in "silent station" cases, as boilerplate.

6. Eventually, a hearing was held and Luz James entered an appearance on behalf of Family. Apparently he also filed a Motion for Summary Decision, indicating that the FM station was back on the air (although he failed to report as he should have done that the station was not operating from its proper transmitter site). On June 18, 1997, ALJ Luton granted the Motion for Summary Decision and renewed the FM license, pointing out that the only issue to be decided was whether the station was back on the air, which it was. Family Broadcasting, Inc., 12 FCC Rcd 18700 (Summary Decision 1997).

7. While all of this was going on, Barbara James-Petersen was not employed at the radio stations. She was working for the state, *i.e.*, Virgin Islands legislature (Dep. Tr. pp. 6-7, 88-89). She did not return to the radio stations until July 1, 1998. She knew only that her father went to Washington for a hearing of some kind (Dep. Tr. 88). Even if she had been intimately acquainted with the renewal proceeding, however, there was nothing in that proceeding which would in any way have alerted her to any violations other than the violation of the rules requiring that the FM station be on the air or have permission to be silent. Thus, to the extent that ALJ Sippel's decision seems

to indicate to the contrary, he was simply wrong.

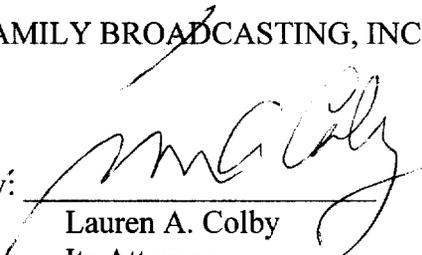
8. Acceptance of this late-filed exception will in no way delay or disrupt this proceeding. Family's exceptions and the Enforcement Bureau's response to those exceptions were only recently filed and it is extremely unlikely that the FCC staff has begun the writing of an opinion. In any event, the revocation of the stations' licenses is an extremely serious matter and the Commission should not proceed on the basis of a finding by the ALJ which is so demonstrably incorrect. The record will be served by considering this motion, so that the Commission will not be misled by a finding which was based upon a misunderstanding of the pertinent facts.

Respectfully submitted,

FAMILY BROADCASTING, INC.

October 19, 2001

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CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 19th day of October, 2001, to the offices of the following:

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