

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

APR 20 2006

Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
Application for Assignment of Stations )  
WSTX(AM) and WSTX-FM, Christiansted, )  
U.S. Virgin Islands from )  
Family Broadcasting, Inc., Assignor, to )  
Caledonia Communications Corporation, )  
Assignee )  
)  
and )  
)  
Order to Show Cause Why the Licenses for )  
Stations WSTX(AM) and WSTX-FM, )  
Christiansted, U.S. Virgin Islands, Should Not )  
Be Revoked )

FCC File Nos. BALH- 20060302ACP  
BAL-20060302ACQ

EB Docket No. 01-39

**OPPOSITION TO PETITION TO DENY**

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Phillip R. Marchesiello  
Carlos F. Uriarte  
Akin Gump Strauss Hauer & Feld LLP  
1333 New Hampshire Avenue, NW  
Washington, DC 20036  
(202) 887-4000

*Counsel for Caledonia Communications  
Corporation*

April 20, 2006

## EXECUTIVE SUMMARY

Caledonia Communications Corporation (“*Caledonia*”) respectfully opposes the petition to deny (“*Petition*”) the application (“*Application*”) seeking consent of the Federal Communications Commission (“*Commission*” or “*FCC*”) to the assignment of the licenses for full-power commercial radio stations WSTX(AM) (Facility ID No. 20589) and WSTX-FM (Facility ID No. 20601), Christiansted, U.S. Virgin Islands (collectively, the “*Stations*”), from Family Broadcasting, Inc. (“*Family*”) to Caledonia (collectively “*Applicants*”). First, the Commission’s *Second Thursday* policy supports grant of the Application. Second, the Application is fully compliant with the Commission’s radio multiple ownership rules.

Second Thursday Policy. The Commission’s *Second Thursday* policy enables the Commission to grant an application to assign an allegedly malfeasant licensee’s station license during the pendency of a hearing involving the character qualifications of such licensee provided that the licensee will derive little or no benefit from the assignment. This policy enables innocent creditors’ to recover debts owed by the licensee and thus serves the public interest. In applying the *Second Thursday* policy, the Commission balances the benefits to the alleged wrongdoers of a proposed assignment against the benefits of such assignment to the licensee’s innocent creditors.

Application of the *Second Thursday* policy to the Application is appropriate, as neither Family nor its principals will receive any benefit from the assignment of the Station licenses and Family’s innocent creditors, including the governments of the U.S. and the U.S. Virgin Islands, will be paid in full. Contrary to assertions set forth in the Petition, Commission and judicial precedent, including *La Rose v. FCC*, supports application of the *Second Thursday* policy to the Application despite the late stage of the Station license revocation proceeding. Moreover, in addition to ensuring that innocent creditors are paid in full, grant of the Application will serve the public interest by preserving the operation of the Stations for the benefit of the local community. Because Caledonia is a local, minority-controlled small business, the public interest also will be served by furthering the Commission’s objectives with respect to broadcast station ownership.

Radio Multiple Ownership Rules. The Petition requests for the Commission to adopt a novel market analysis when evaluating the compliance of the Application with the Commission’s local radio ownership rule. However, in determining the number of stations in a market not rated by Arbitron pursuant to the Commission’s interim contour overlap methodology, the rule requires consideration of contour overlap that occurs strictly over water. In addition, the Petitioner’s assertion that station programming formats should be considered when determining the scope of a radio market must be rejected, as the Commission does not evaluate radio station programming formats to determine the scope of a radio market under its rules or precedent. Accordingly, the Commission should reject the creative approach to market analysis set forth in the Petition in favor of established Commission policies and regulations.

As set forth in more detail herein, the Commission should summarily deny the Petition and expeditiously grant the Application under the Commission’s *Second Thursday* policy.

TABLE OF CONTENTS

**EXECUTIVE SUMMARY..... i**

**I. THE COMMISSION’S *SECOND THURSDAY* POLICY SUPPORTS GRANT OF THE APPLICATION ..... 1**

**A. FAMILY AND ITS PRINCIPALS WILL DERIVE NO BENEFIT FROM GRANT OF THE APPLICATION ..... 3**

**B. THE PUBLIC INTEREST BENEFITS DERIVED FROM GRANT OF THE APPLICATION STRONGLY WEIGH IN FAVOR OF SUCH GRANT UNDER THE *SECOND THURSDAY* POLICY ..... 5**

**C. APPLICATION OF THE *SECOND THURSDAY* POLICY TO THE APPLICATION IS APPROPRIATE DESPITE THE LATE STAGE OF THE UNDERLYING REVOCATION PROCEEDING ..... 7**

**II. THE APPLICATION IS FULLY COMPLIANT WITH THE COMMISSION’S RADIO MULTIPLE OWNERSHIP RULES ..... 10**

**III. CONCLUSION ..... 13**

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Christiansted, U.S. Virgin Islands, Should Not	)	
Be Revoked	)	

**OPPOSITION TO PETITION TO DENY**

Pursuant to Sections 1.45 and 73.3584<sup>1</sup> of the rules of the Federal Communications Commission (the “*Commission*” or “*FCC*”), Caledonia Communications Corporation (“*Caledonia*”), by its attorneys, respectfully opposes the petition to deny (“*Petition*”) the above-captioned application (“*Application*”) filed by Robert J. Hoffman (“*Petitioner*”). The Application seeks Commission consent to the assignment of the licenses for full-power commercial radio stations WSTX(AM) (Facility ID No. 20589) and WSTX-FM (Facility ID No. 20601), Christiansted, U.S. Virgin Islands (collectively, the “*Stations*”), from Family Broadcasting, Inc. (“*Family*”) to Caledonia (collectively, the “*Applicants*”).

**I. THE COMMISSION’S *SECOND THURSDAY* POLICY SUPPORTS GRANT OF THE APPLICATION**

In the Application, the Applicants request the Commission to grant the proposed assignment of the Stations under its *Second Thursday* policy. The Commission’s *Second*

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<sup>1</sup> 47 CFR §§ 1.45, 73.3584 (2005).

*Thursday* policy is an exception to its general policy that “radio station licensees whose licenses have been designated for revocation hearing . . . are forbidden to transfer control of these licenses.”<sup>2</sup> As has been recognized by the Commission and the courts, this general policy “does little to accommodate the Commission’s mandate to regulate in the public interest.”<sup>3</sup> Accordingly, the Commission adopted its *Second Thursday* policy, under which

[d]espite the general rule that an assignment of license will not be authorized during the pendency of a hearing involving the character qualifications of a licensee, the Commission will permit [an assignment of the licensee’s broadcast license] upon a showing that alleged wrongdoers will derive no benefit, either directly or indirectly, from the sale or will derive only a minor benefit which is outweighed by the equities in favor of innocent creditors.<sup>4</sup>

Thus, application of the *Second Thursday* policy requires the Commission to balance the “wrongdoers’ realization of benefits against the public interest in innocent creditors’ recovery from the sale and assignment of the license to a qualified party.”<sup>5</sup> By doing so, the Commission is able to realize fully the deterrent value of enforcement by stripping the malfeasant licensee’s license while ensuring that innocent creditors’ claims against the licensee are paid to the maximum extent possible.

Contrary to Petitioner’s assertions, the balancing that the Commission is required to undertake in applying the *Second Thursday* policy is not dependent on the malfeasance of Family’s principals.<sup>6</sup> Instead, evaluation of the instant Application under the *Second*

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<sup>2</sup> *Coalition for the Preservation of Hispanic Broadcasting v. FCC*, 893 F.2d 1349, 1359 (D.C. Cir. 1990), *reh’g granted* 931 F.2d 73 (D.C. Cir. 1991) (quoting *Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026 (D.C. Cir. 1981)).

<sup>3</sup> *LaRose and Swaggart v. FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974); *see also Spanish International Communications Corporation*, Memorandum Opinion and Order, 1 FCC Rcd 844, ¶ 5 (RB 1986) (citing *La Rose*).

<sup>4</sup> *Shell Broadcasting, Inc.*, Memorandum Opinion and Order, 38 FCC.2d 929, ¶ 5 (1973).

<sup>5</sup> *La Rose*, 494 F.2d at 1149.

<sup>6</sup> *See Id.* at 1146 n2 (holding that the “qualifications of the original licensee are irrelevant”).

*Thursday* policy is very straightforward—Family and its principals will receive no benefit from assignment of the Station licenses and innocent creditors, including the governments of the U.S. and the U.S. Virgin Islands, will be paid fully. By contrast, even if the Commission were to refrain from applying its *Second Thursday* policy to the instant Application, not only would Family still be stripped of the Station licenses, innocent creditors also would be deprived of any significant satisfaction of the debt owed to them by Family.<sup>7</sup> In addition, as further set forth below, Petitioner’s argument that application of the *Second Thursday* doctrine is inappropriate at this stage is inconsistent with Commission and judicial precedent.

**A. Family and its Principals Will Derive No Benefit from Grant of the Application**

As stated in the Application, no portion of the price to be paid by Caledonia to purchase the Stations will accrue to Family or its principals and thus neither Family nor its principals will receive any benefit from the sale of the Stations.<sup>8</sup> Due to the state of Family’s accounting records and the consistent unavailability of Family’s principals, Caledonia has been unable to determine, much less verify, the extent to which Family’s shareholders may have loaned funds to Family. However, Family’s Disclosure Statement does not list any Family principal as a creditor<sup>9</sup> and expressly specifies that Family’s principals will not receive any payment under Family’s proposed plan of emergence from bankruptcy (*Plan*).<sup>10</sup> Further, attached hereto as Exhibit A is an affidavit signed by Family’s General Manager,

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<sup>7</sup> As set forth in the Application, Family does not hold any assets of significant value from which its debt to the creditors can be paid other than the Station licenses. See Application, Exhibit 12.

<sup>8</sup> Family’s First Amended Disclosure Statement to Accompany Plan (Case No. 105-00004), filed on December 21, 2005 (“*Disclosure Statement*”), states on page 5 that the only two shareholders of Family are G. Luz A. James and Asta James.

<sup>9</sup> See Disclosure Statement at 6-8.

<sup>10</sup> See Disclosure Statement at 9 (“Interest holders will receive no compensation upon consummation of the Plan.”). Ms. Petersen is the daughter of Family’s principals.

Barbara A. Petersen, averring that no Family shareholder will receive any payment from the sale of the Stations.<sup>11</sup>

In addition, contrary to the assertion of Petitioner, Family's principals are not personally liable for any of the pre-petition back taxes owed by Family to the governments of the U.S. and the U.S. Virgin Islands. Rather, the only taxes for which Family's principals are personally liable are post-petition taxes that have accrued since Family filed for bankruptcy,<sup>12</sup> because this tax liability accrued post-petition, it will not be discharged by Family's emergence from bankruptcy. Moreover, even if it is shown that Family's principals would be relieved of potential tax liability, the Commission frequently has granted assignment applications where the alleged wrongdoer will "receive only an incidental benefit from the elimination of his potential liability through the bankruptcy."<sup>13</sup>

Petitioner also argues that the Commission's *Second Thursday* policy in some way would be undermined by grant of the Application because Family currently is receiving a portion of the Stations' net revenue and will continue to do so under the Plan until consummation of the assignment of the Stations to Caledonia.<sup>14</sup> This assertion has no

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<sup>11</sup> See Exhibit A, Affidavit of Barbara A. Petersen, General Manager of Family Broadcasting, Inc.

<sup>12</sup> See Exhibit B, Affidavit of Francisco Depousoir, C.P.A. Family's principals are personally liable for approximately \$1,900 of post-petition taxes that have accrued since Family filed for bankruptcy. Caledonia will seek to cause Family to satisfy this obligation as expeditiously as possible.

<sup>13</sup> See *NewSouth Broadcasting*, Order, 8 FCC Rcd 1272, ¶ 5 (1993); see also *Mobile Media Corporation*, Memorandum Opinion and Order, 14 FCC Rcd. 8017, ¶ 21 (1999) (granting a *Second Thursday* assignment application where alleged wrongdoers would receive a *direct* benefit of \$1.6 million because "that amount is miniscule (0.14 percent) in comparison with the benefit to innocent creditors . . ."); *Shell Broadcasting*, 38 FCC.2d at 929, ¶ 11 ("The indirect benefit to the [alleged wrongdoer] which would result from approval of this [the *Second Thursday*] transaction . . . amounts to approximately 8% of the purchase price. We believe this to be a minor benefit which is outweighed by the equities in favor of innocent creditors.").

<sup>14</sup> As a debtor-in-possession, Family continues to control the Stations under the supervision of the bankruptcy court and therefore is permitted to make financial decisions

relevance to the application of the *Second Thursday* policy. The only relevant consideration under the *Second Thursday* policy is the disposition of the proceeds of the sale of the Stations. As discussed above, none of these proceeds will benefit Family's principals. Further, upon Commission approval of the Application and consummation of the assignment of the Stations to Caledonia, all payments to Family will cease immediately under the Plan.

**B. The Public Interest Benefits Derived from Grant of the Application Strongly Weigh in Favor of Such Grant under the *Second Thursday* Policy**

As noted above, under its *Second Thursday* policy, the Commission is required to balance any benefit to the alleged wrongdoers of a proposed assignment against the benefit of such assignment to the licensee's innocent creditors.<sup>15</sup> In this case, there is no benefit to the alleged wrongdoers, Family's principals, and significant benefit to Family's innocent creditors. Thus, contrary to the Petitioner's assertion, the *Second Thursday* balancing test is simple to administer with respect to this Application. If the Commission approves the Application, Family's debt to its innocent creditors, including the governments of the U.S. and the U.S. Virgin Islands, will be satisfied in full. If the Commission denies the Application, these innocent creditors will receive virtually no recovery—only pennies on the dollar.

Moreover, regardless of whether the Commission grants the Application under *Second Thursday* or revokes the Station licenses, Family will be stripped of the Station

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with respect to the stations provided that the bankruptcy court doesn't intervene at the behest of the creditors to prevent any impermissible diminution in the value of the debtor's assets. Once the Plan is approved by the bankruptcy court, Family will receive 25% of the net revenue of the Stations and the remaining 75% of the net revenue will be used to satisfy Family's debt to its creditors. See Disclosure Statement at 3.

<sup>15</sup> See *NewSouth Broadcasting, Inc.*, Order, 8 FCC Rcd 1272, ¶ 4 n.4 (1993) (“[T]he *Second Thursday* policy is intended to accommodate the policies of the federal bankruptcy law with those of the Communications Act, and, thus, *Second Thursday* questions should be considered *in light of the public interest in the protection of innocent creditors.*”) (emphasis added) (citations omitted).

Licenses. Accordingly, the deterrent effect of enforcement of the Commission's rules is in no way compromised by grant of the Application. In the latter scenario (*i.e.*, license revocation), however, Family's innocent creditors cannot recover all debts owed by Family, as would be the case if the Application is granted under the *Second Thursday* policy. Thus, granting the Application pursuant to *Second Thursday* serves the public interest by benefiting innocent creditors.

Additional public interest considerations strongly support grant of the Application. Such grant will preserve the operation of the Stations for the benefit of the local community, a factor which the Commission has recognized to be a valid consideration when undertaking a *Second Thursday* analysis.<sup>16</sup> By contrast, as set forth in the Application, if the Commission revokes the Station licenses, it could be several years before either Station returns to the air; WSTX(AM) may never reinitiate service.<sup>17</sup> Such loss of service would be contrary to the public interest, as WSTX(AM), the first AM radio station to broadcast from the U.S. Virgin Islands, has served the local community (including broadcasts during hurricanes and other natural disasters) since the 1950s. Further, Caledonia is a local, minority-controlled small business, and therefore ownership of the Stations by Caledonia supports several of the Commission's objectives with respect to broadcast station ownership.<sup>18</sup>

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<sup>16</sup> See *Public Service Enterprises, Inc.*, Memorandum Opinion and Order, 69 FCC.2d 967, ¶ 22 (1978) (characterizing "the loss of service to the public" as an "obvious public benefit" of a *Second Thursday* assignment).

<sup>17</sup> See Application, Exhibit 12. Petitioner claims that he is interested in purchasing the Stations at auction in the event that the Commission revokes the Station licenses. See Petition at 7-8. In addition to the fact that it is unclear when such auction would occur and that there is no certainty that Petitioner would be the winning bidder for either Stations, Caledonia notes that Petitioner has not intervened in Family's pending bankruptcy proceeding in any manner to effect the disposition of the Station licenses.

<sup>18</sup> See Application, Exhibit 12.

**C. Application of the *Second Thursday* Policy to the Application is Appropriate Despite the Late Stage of the Underlying Revocation Proceeding**

Contrary to the Petitioner's assertion, the late stage of the instant revocation proceeding does not bar the application of the *Second Thursday* doctrine by the Commission. The ability of Family's innocent creditors to recover amounts owed by Family should not be prejudiced by Family's exercise of its due process rights to challenge the revocation of the Station licenses under the Commission's revocation procedures. The Commission has held previously that the occurrence of a hearing in a revocation proceeding does not prevent the assignment of a license under the *Second Thursday* policy.<sup>19</sup> According to the Commission,

the argument that time and resources of the Commission will not be saved by granting the [*Second Thursday*] assignment because the applicant was not declared bankrupt until after an Initial Decision issues is ... without merit. This argument ignores obvious public benefits from avoiding loss of service to the public, and from the saving of resources required to consider a construction permit application to restore lost service."<sup>20</sup>

In fact, the Commission previously has granted *Second Thursday* assignment applications following hearings in proceedings resulting in the revocation of a broadcast license.<sup>21</sup>

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<sup>19</sup> The Commission is fully capable of specifying such a brightline requirement. *See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, Policy Statement and Notice of Proposed Rulemaking, 92 FCC.2d 849, ¶ 3 (1982) ("The distress sale policy allows broadcasting licensees whose licenses have been designated for revocation hearing, *prior to the commencement of a hearing*, to sell their station to a minority-owned or controlled entity...") (emphasis added). The Commission has not done so in the *Second Thursday* context.

<sup>20</sup> *Public Service Enterprises, Inc.*, 69 FCC.2d 967, ¶¶ 13, 22 (rejecting the argument that "where the hearing is completed and an Initial Decision has issued, approval of an assignment would encourage wrongdoers to protract proceedings and remove any incentive for creditors to force bankruptcy at an early stage").

<sup>21</sup> *See Public Service Enterprises, Inc.*, 69 FCC.2d 967, ¶ 2 (noting that the administrative law judge resolved all issues adversely to the licensee "[a]fter hearings"); *Shell Broadcasting, Inc.*, 38 FCC 2d at ¶ 2 (granting a *Second Thursday* assignment application after a renewal hearing and prior to the termination of the renewal proceeding); *see also Twelve Seventy, Inc.*, Memorandum Opinion and Order, 2 FCC.2d 973, ¶ 6 (1966) (granting a

Further, the Petitioner's reliance on *La Rose v. FCC*, the authoritative D.C. Circuit *Second Thursday* decision, is misplaced. Although the hearing in *La Rose* was waived by the receiver, there is no evidence in the court's decision that such waiver had any bearing on the court's determination that the Commission abused its discretion by not considering the underlying *Second Thursday* assignment application. Rather, the court clearly required consideration of the assignment application under procedural circumstances very similar to the instant situation. The court was not troubled that, as with the instant Application, the assignment application in dispute in *La Rose* was filed by the parties after a prior assignment application had been rejected by the Commission.<sup>22</sup> Nor did the court express concern that the second assignment application was filed after the Commission fully adjudicated the license renewal under applicable procedures and issued an order denying the renewal of such license.<sup>23</sup> As with the instant proceeding, the assignment application in *La Rose* was filed during the pendency of an appeal of the Commission's decision.<sup>24</sup> Nevertheless, the court required the Commission to reconsider its denial of the assignment application. On remand, over four years after the commencement of the renewal hearing in *La Rose*, the Commission ultimately approved the assignment application.<sup>25</sup>

Petitioner suggests that the D.C. Circuit's decision in *La Rose* stands for the proposition that "the Commission should assure that licensees do not use bankruptcy as a

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*Second Thursday* assignment application after prehearing conferences and during the pendency of an appeal of a denial of renewal by the hearing examiner).

<sup>22</sup> *La Rose*, 494 F.2d at 1146.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 1147.

<sup>25</sup> The renewal hearing in *La Rose* was initiated in October 1970. *Id.* at 1146. The Commission finally granted the *Second Thursday* assignment application in *La Rose* on December 23, 1974. Capitol City Communications, Inc., Memorandum Opinion and Order, 50 F.C.C.2d 51 (Dec. 23, 1974).

means of circumventing their obligations to operate in the public interest.”<sup>26</sup> This instruction by the court, however, is taken out of context by the Petitioner. In fact, the very next sentence in *La Rose* directs that the matter “should be considered in light of the public’s interest in the protection of innocent creditors.”<sup>27</sup> Ultimately, the court concludes that the “establishment of policies that would accommodate these diverse interests . . . would be more in keeping with the overall [Commission] responsibility” than was the Commission’s denial of the *Second Thursday* application at issue in *La Rose*.<sup>28</sup>

Further, Petitioner suggests that the court’s decision in *La Rose* was motivated by considerations of administrative finality.<sup>29</sup> To the contrary, the court appears to have rejected the relevance of administrative finality in *La Rose* because, as in the instant proceeding, the underlying revocation was still subject to a pending appeal.<sup>30</sup> Instead, the D.C. Circuit held that “the promotion of administrative efficiency” should have been the Commission’s paramount consideration. Taking the Commission’s interest in administrative efficiency into account, the court in *La Rose* ultimately instructed the Commission to consider the parties’ *Second Thursday* assignment application despite the late stage of the Commission proceeding.<sup>31</sup>

The Petitioner goes on to suggest that the D.C. Circuit endorsed the Commission’s refusal to reconsider the *La Rose* assignment application “to prevent the possible duplicity of

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<sup>26</sup> 494 F.2d at 1146 n2.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *See* Petition at 6-7.

<sup>30</sup> *See* 494 F.2d at 1148-1149 (“The Commission retained authority to reconsider its earlier decision [denying renewal of the license] until an appeal was filed in this court, or until the time for filing such an appeal had expired. Thus, the considerations of public interest inherent in the *jurisdictional* concept of administrative finality are not significantly implicated.”) (citation omitted).

<sup>31</sup> *See id.* at 1150.

parties who attempt to urge one goal, and, after having failed at that, thereafter advance a less desirable but more plausible position.”<sup>32</sup> Again, this mischaracterizes the court’s decision. In the very next sentence in *La Rose*, the court rejects an “iron-clad rule of administrative finality” and notes that the Commission “has likewise recognized the need to reopen records and reconsider matters.”<sup>33</sup> The court ultimately concludes:

While this decision to reopen proceedings for reconsideration is one committed to the discretion of the agency, that discretion must be exercised without caprice. In this case, we are persuaded that the Commission failed to do so in refusing to consider the merits of the second proposed sale and assignment offered by appellant *La Rose*.<sup>34</sup>

Thus, Commission and judicial precedent, including the D.C. Circuit’s *La Rose* decision, support grant of the Application under the *Second Thursday* policy. This precedent makes clear that application of *Second Thursday* is appropriate even when, as in the instant proceeding, hearings have been held and the Commission has issued a revocation decision. The public interest in the protection of innocent creditors under the *Second Thursday* policy is not undermined by the alleged malfeasant licensee’s exercise of Commission procedures aimed at protecting the licensee’s due process rights.

## **II. THE APPLICATION IS FULLY COMPLIANT WITH THE COMMISSION’S RADIO MULTIPLE OWNERSHIP RULES**

Petitioner requests that the Commission adopt a novel market analysis when evaluating the compliance of the Application with the Commission’s local radio ownership rule. This argument should be rejected by the Commission in favor of its established policies and regulations.<sup>35</sup> In determining the number of stations in a market not rated by Arbitron pursuant to the Commission’s interim contour overlap methodology, the rule requires

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<sup>32</sup> Petition at 7, citing 494 F.2d at 1149.

<sup>33</sup> 494 F.2d at 1149 (citations omitted).

<sup>34</sup> *Id.* (citations omitted).

<sup>35</sup> See 47 C.F.R. § 73.3555(a)(1)(iv).

consideration of contour overlap that occurs strictly over water. In addition, the Commission does not utilize radio station programming formats to determine the scope of a radio market under its rules or precedent.

Since 1992, the Commission has used contour overlap methodology in radio transactions to determine compliance with Section 73.3555(a).<sup>36</sup> To determine the number of stations in a market, the Commission “counts all stations whose principal community contours overlap the principal community contour of any one or more of the stations to define the market.”<sup>37</sup> Commission rules and precedent do not provide for the exclusion of certain of these principal community contours even where the contour overlap occurs solely over water.<sup>38</sup>

The Petitioner relies solely on inapposite Commission precedent to support its objection. As admitted by Petitioner, in each decision cited in the Petition, the Commission addressed the impermissible overlap over water of stations’ principal community contours.<sup>39</sup> However, none of these decisions considered the overlap over water of stations’ principal community contours to determine the scope of a radio market for purposes of applying the Commission’s local radio ownership rule. Further, in each case cited by Petitioner, the Commission granted the applicants a waiver of its rules where the impermissible contour

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<sup>36</sup> See *Definition of Radio Markets*, Notice of Proposed Rule Making, 15 FCC Rcd 25077, 25077-79 (2000) (“*Radio Markets Definition NPRM*”), *Pine Bluff Radio Inc.*, 14 FCC Rcd 6594, 6598-99 (1999) (the local radio ownership rules are based first on contour overlap), *Revision of Radio Rules and Policies*, 7 FCC Rcd 6387, 6395-96 (1992) (“*Revision of Radio Rules and Policies*”).

<sup>37</sup> *Radio Markets Definition NPRM*, 15 FCC Rcd at 25079 (emphasis omitted).

<sup>38</sup> See 47 C.F.R. § 73.3555(a); *Liability of Macau Traders, Inc.*, 13 FCC Rcd 228, 232 (MMB 1998) (“Local radio markets which overlap only over water are not excluded from [47 C.F.R. § 73.3555(a)]”); see also Letter Decision from Peter Doyle, Chief, Audio Division, Media Bureau, to Bruce Tria, President, Crystal Coast Communications, Inc., February 26, 2003.

<sup>39</sup> See Petition at 14 n32.

overlap occurred mainly over water to accommodate the applicants.<sup>40</sup> The fact that the Commission deemed such waivers necessary in each of the cited cases clearly demonstrates that consideration of principal community contour overlap over water is fully consistent with the Commission's application of its local radio ownership rule.

Further, merely because stations' principal community contours overlap over water does not mean that the stations do not provide vibrant service to the relevant market. To the contrary, as demonstrated in Exhibit C attached hereto, the service contours of fifteen stations, in addition to the five stations implicated by the multiple ownership analysis, overlap most or all of the island of St. Croix.<sup>41</sup> Thus, these stations clearly provide aural service to the island of St. Croix in competition with the Stations.

The report prepared for Petitioner by Dr. Fratrack does not appear to take this into account.<sup>42</sup> Accordingly, to the extent Dr. Fratrack assumed that the inhabitants of St. Croix were not receiving the signals of the stations set forth in Exhibit C, his report should be rejected by the Commission. Moreover, to the extent that Dr. Fratrack is proposing to determine the scope of a local market under the Commission's local radio ownership rule

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<sup>40</sup> See *Hilo Broadcasting*, Letter, 20 FCC Rcd 13582, at 5-8 (AD 2005) (granting a waiver of city grade contour overlap over water to permit common ownership of two Hawaiian stations where common ownership would not be permissible under the Commission's local radio ownership rule absent such waiver); *Tidewater Broadcasting Company*, Memorandum Opinion and Order, 2 FCC.2d 364, ¶ 4 (1966) (upholding a waiver of applicable multiple ownership rules where impermissible contour overlap occurs mainly over a large body of water and adjacent, uninhabited marshlands); *Generation II Radio, San Diego, Inc. Action*, 62 FCC.2d 691, 692 (1976) (granting a waiver of impermissible overlap of two stations' contours where the overlap occurs primarily over waters).

<sup>41</sup> See Exhibit C.

<sup>42</sup> Petition, Relevant Geographic Markets for St. Thomas and St. Croix Radio Acquisitions at 2-3 ("Using a predicted contour approach leads to counting stations that overlap each other only over the Caribbean Sea, thereby not affecting any of the populations of either island," and "radio stations on one island evaluating their programming lineup will not consider the lineup of stations of programming offered on the other island if potential listeners cannot receive the other islands signals").

based on the programming format of various stations, his report also should be rejected.<sup>43</sup> No Commission rule or precedent adopts this kind of analysis.

### III. CONCLUSION

For the reasons set forth herein, the Commission should summarily deny the Petition and expeditiously grant the Application under the Commission's *Second Thursday* policy.

Respectfully submitted,



Phillip R. Marchesiello.

Carlos F. Uriarte

Akin Gump Strauss Hauer & Feld LLP

1333 New Hampshire Avenue, NW

Washington, DC 20036

(202) 887-4000

*Counsel for Caledonia Communications  
Corporation*

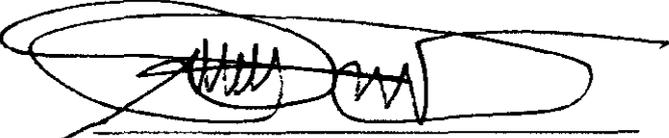
April 20, 2006

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<sup>43</sup> *Id.*

## DECLARATION OF KEVIN A. RAMES

I am Kevin A. Rames, President and Chairman of the Board of Caledonia Communications Corp. In that capacity, I have reviewed the foregoing Opposition to the Petition to Deny of Robert J. Hoffman ("Opposition"). I hereby declare, under penalty of perjury, that, to the best of my knowledge, information and belief, all of the factual information contained in the Opposition is true and accurate.



Kevin A. Rames, Esq.  
President and Chairman of the Board  
Caledonia Communications Corp.

Dated: April 20, 2006

**CERTIFICATE OF SERVICE**

I, Carlos Uriarte, hereby certify that copies of the foregoing Opposition to Petition to Deny have been sent via first class U.S. mail, postage prepaid, this 20<sup>th</sup> day of April, 2006, to the following:

Ronald W. Belfon  
Belfon & Evert  
1217 Bjerger Gade, K.Q.  
St. Thomas, VI 00802

William R. Richardson, Jr.  
Aaron A. Hurowitz  
Wilmer Cutler Pickering Hale and Dorr LLP  
2445 M Street, N.W.  
Washington, D.C. 20037

Peter H. Doyle  
Chief, Audio Division  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

James Shook  
Investigations/Hearing Division  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 3-B443  
Washington, D.C. 20554

  
Carlos Uriarte

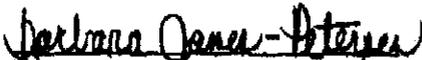
# **EXHIBIT A**

**AFFIDAVIT**

1. The undersigned, Barbara James-Petersen, the General Manager of Family Broadcasting, Inc., being first duly sworn, deposes and says as follows:
2. Family Broadcasting, Inc. acknowledges that the WSTX-AM (970) and WSTX-FM (100.3) radio broadcasting licenses are subject to an Order of Revocation, which Order is pending appeal. It is also acknowledged that the "Second Thursday" Doctrine will allow for the transfer of the licenses to Caledonia Communication Corporation so long as the stockholders of Family Broadcasting, Inc. receive no funds from the transfer and the creditors of Family Broadcasting, Inc. are not disadvantaged thereby. The shareholders of Family Broadcasting, Inc. expect no payment or other benefit from the sale of the assets, and are fully supportive of the application of the "Second Thursday" Doctrine to the sale of the assets of Family Broadcasting, Inc. to Caledonia Communication Corporation.

Further. Affiant Sayeth Naught.

FAMILY BROADCASTING, INC.

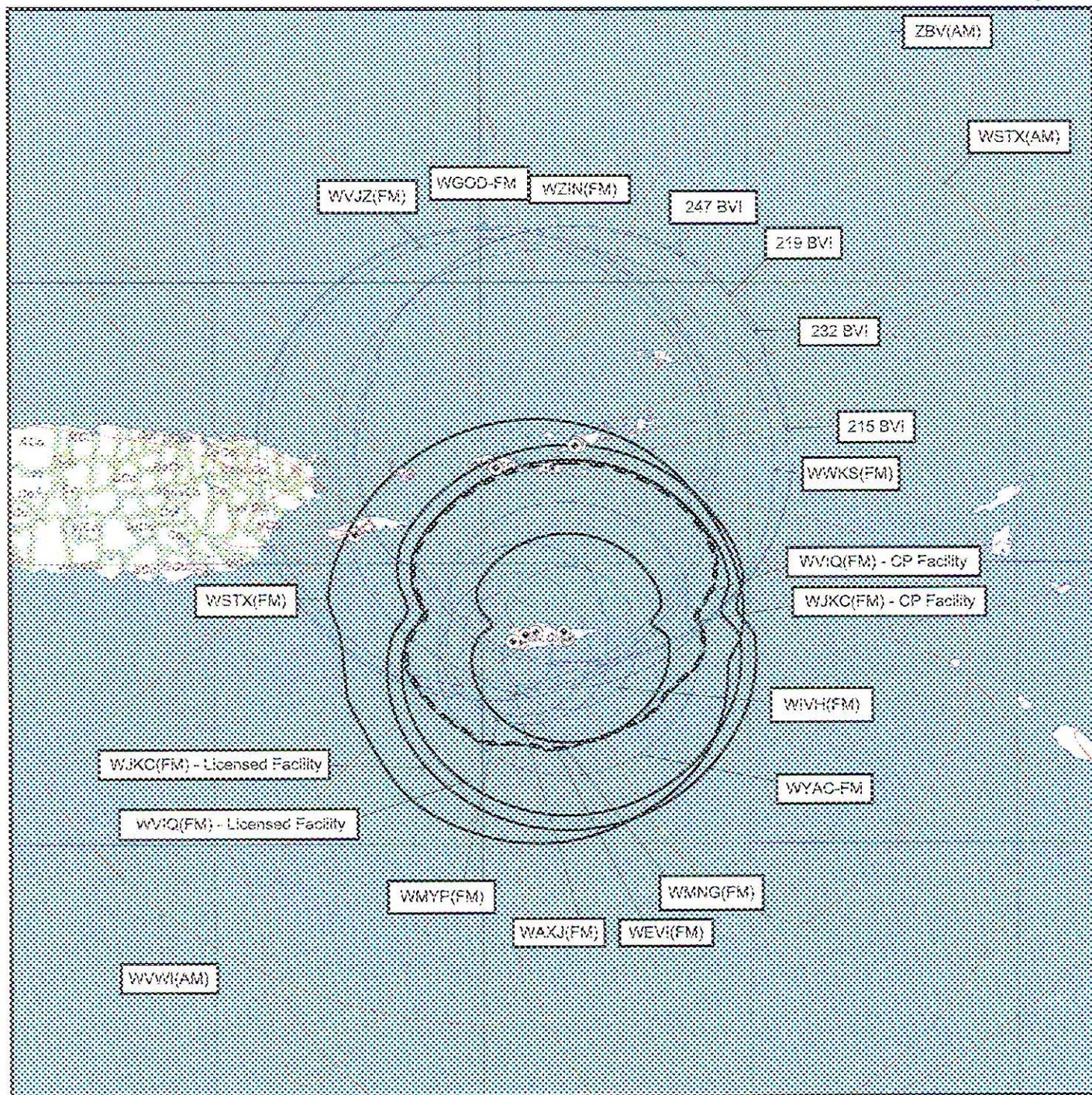
  
Barbara James-Petersen  
General Manager

## **EXHIBIT B**



## **EXHIBIT C**

Figure 1



45 0 45 90 135 180 225 270  
Kilometers

### NORMALLY PROTECTED FM CONTOURS AND 2 mV/m AM CONTOURS

CALEDONIA COMMUNICATION CORPORATION

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 2

**Tabulation of subject stations to be commonly owned**

	Call Sign	Community of License	State	Status	Channel/Frequency
1	WSTX-FM	CHRISTIANSTED	VI	LIC	262
2	WSTX (AM)	CHRISTIANSTED	VI	LIC	970 kHz
3	WJKC(FM)	CHRISTIANSTED	VI	LIC	236
4	WVIQ(FM)	CHRISTIANSTED	VI	LIC	258
5	WMNG (FM)	CHRISTIANSTED	VI	LIC	285

**Tabulation of other AM and FM facilities providing service**

	Call Sign	Community of License	State	Status	Channel/Frequency
1	WIVH (FM)	CHRISTIANSTED	VI	LIC	211
2	NEW (FM)	BRITSH VIRGIN ISLAND	BVI		215
3	NEW (FM)	BRITSH VIRGIN ISLAND	BVI		219
4	WYAC-FM	CHRISTIANSTED	VI	LIC	228
5	NEW (FM)	BRITSH VIRGIN ISLAND	BVI		232
6	NEW (FM)	BRITSH VIRGIN ISLAND	BVI		247
7	WGOD-FM	CHARLOTTE AMALIE	VI	LIC	250
8	WMYP (FM)	FREDERIKSTED	VI	LIC	252
9	WWKS (FM)	CRUZ BAY	VI	LIC	267
10	WEVI (FM)	FREDERIKSTED	VI	LIC	269
11	WAXJ (FM)	FREDERIKSTED	VI	LIC	278
12	WZIN (FM)	CHARLOTTE AMALIE	VI	LIC	282
13	WVJZ (FM)	CHARLOTTE AMALIE	VI	LIC	287
14	ZBV (AM)	TORTOLA	VI	LIC	780 kHz
15	WVWI (AM)	CHARLOTTE AMALIE	VI	LIC	1000 kHz