

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

In re)
)
Family Broadcasting, Inc.) EB Docket No. 01-39
)
Order to Show Cause Why the Licenses for)
Stations WSTX(AM) and WSTX-FM,)
Christiansted, U.S. Virgin Islands,)
Should Not Be Revoked)

ORDER

Adopted: June 13, 2001; Released: June 15, 2001

By the Commission:

1. This order dismisses on procedural grounds the petition for reconsideration, filed March 15, 2001 by Family Broadcasting, Inc. Family requests that the Commission set aside the Order to Show Cause and Notice of Opportunity for Hearing, FCC 01-44 (released February 13, 2001), and afford it a reasonable opportunity to correct the various technical and other deficiencies specified in the Show Cause Order. The Enforcement Bureau filed an opposition on March 16, 2001, and Family filed a reply on March 20, 2001.

2. Family is the licensee of Stations WSTX(AM) and WSTX-FM serving Christiansted, U.S. Virgin Islands. By its Order to Show Cause the Commission initiated a proceeding to determine whether the licenses for these stations should be revoked and afforded Family an opportunity to participate in a hearing. The Commission determined, based upon evidence suggesting that Family had willfully and repeatedly violated the Commission's rules and misrepresented facts to, and/or lacked candor with the Commission, that an evidentiary hearing was warranted to determine the extent to which the licensee had violated the Commission's rules and whether it was qualified to retain its license. The evidence suggested that Family may have: (1) misrepresented facts to and/or lacked candor with the Commission regarding the relocation of Station WSTX-FM's transmitter from its authorized site, (2) demonstrated a pattern of evasiveness by repeatedly failing to respond to official Commission correspondence and inquiries; and (3) operated both stations substantially at variance from the terms of their authorizations

for roughly four years and committed numerous other technical violations, including violations that raise safety considerations.

3. In its petition for reconsideration, Family concedes that it has operated Station WSTX-FM from a location not authorized in its license and that inaccurate statements were made to the Commission principally regarding the reason why the FM transmitter was removed from its authorized location. Attached to the petition for reconsideration is a declaration from Family's majority stockholder, Gerard Luz A. James, explaining that he did not intend to deceive the Commission but was humiliated by Family's eviction from the authorized site due to nonpayment of rent. Mr. James has resigned as an officer and director of the company. Family has filed an application for Commission consent for Mr. James and his wife to convey all of their stock to their children, who allegedly were not involved in or aware of any wrongdoing. The eldest daughter, Barbara James-Petersen, is taking charge of the stations' operation and has enlisted the help of a consulting engineer and communications counsel in expeditiously correcting all violations.¹ Thus, although the petition for reconsideration does not challenge any aspect of the Order to Show Cause, it requests that the Commission postpone the hearing proceeding to give Family an opportunity to correct all violations at the stations.² It also suggests that the Commission may wish to delay action on the petition for reconsideration until the Commission and the Enforcement Bureau are satisfied that all violations at Stations WSTX(AM) and WSTX-FM have been satisfactorily corrected. Family, in other words, effectively seeks to avoid a monetary forfeiture of up to \$275,000 as well as an evidentiary hearing that could result in the revocation of its licenses.

4. The Enforcement Bureau is correct that the petition for reconsideration is procedurally defective. The petition for reconsideration was filed pursuant to Section 405 of the Communications Act, 47 U.S.C. § 405, providing that "[r]econsiderations shall be governed by such general rules as the Commission may establish." The filing of petitions for reconsideration is governed by Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106. Section 1.106(a) specifies that:

Petitioners requesting reconsideration of a final Commission action [or of a final action taken under delegated authority] will be acted on by the Commission [or by the designated authority]. . . . A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with

¹ Mrs. James Petersen's non-involvement in the wrongdoing and her efforts to correct all violations at the stations are averred in an attached declaration under penalty of perjury.

² Such relief is allegedly consistent with *Petroleum V. Nasby Corp.*, 10 FCC Rcd 6029 (Rev. Bd. 1995), *remanded to supplement the record*, 11 FCC Rcd 3494 (1996). In *Nasby*, the Review Board, after an evidentiary hearing before an Administrative Law Judge, conditionally renewed the license of an FM broadcast station whose principal owner, Thomas L. Root, was convicted of serious broadcast-related felonies, where Root's interest was transferred to his children and other family members, who were not involved in any wrongdoing.

respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory orders will not be entertained.

Section 1.106(a)(1) is clear that, with the one noted exception which is not relevant here, the Commission (or a designated authority) will entertain petitions for reconsideration only of final actions.

5. In its reply, however, Family urges that Section 1.106(a) is inapplicable because the Order to Show Cause and Notice of Opportunity for Hearing does not unequivocally designate the case for hearing. It submits that, although the Commission's order provides an opportunity for a hearing, it also permits Family to waive its hearing right and to seek mitigation instead. But the order in question clearly "commence[s] a hearing proceeding to determine whether the licenses held by Family ... for Stations WSTX(AM) and WSTX-FM, Christiansted, U.S. Virgin Islands, should be revoked." Order, at ¶ 1. Family can avoid a hearing only if it is willing to waive its rights, which it has not, so far, done. Even assuming the Commission's order could be construed as something other than a hearing designation order, it is clearly interlocutory.³ On this basis alone Family's petition for reconsideration is procedurally deficient pursuant to Section 1.106(a) and may be dismissed.

6. Notwithstanding Family's contention, *Service Electric Cable TV, Inc.*, 51 FCC 2d 763 (1975), does not support the relief requested here. There, the Commission, acting pursuant to Section 1.106(a), dismissed a petition for reconsideration of a designation order. Insofar as the petitioner had requested the addition or deletion of specific issues or to have the designated hearings supplanted with a show-cause procedure, the Commission stated that "designation of a question for hearing is an interlocutory action against which a petition for reconsideration will not be entertained." As in *Service Electric*, the order in question here does not adversely affect the petitioner's right to a hearing and, as discussed above, the order is clearly interlocutory.

7. Family nonetheless claims that *Service Electric* is precedent for the relief requested here. It relies on the Commission's suggestion that some matters raised in the petition for reconsideration could be properly considered by the then-existing Review Board in connection with the petitioner's pending motion to enlarge issues. Given the elimination of the Review Board, Family surmises that its request for equitable relief (that is, a further opportunity to correct the violations at the stations) must be directed to

³ See *James A. Kay*, 14 FCC Rcd 1291 (1998) (dismissing as unauthorized a petition for reconsideration challenging the validity of a hearing designation order); *WWOR-TV, Inc.*, 6 FCC Rcd 4878 ¶ 3 (1991) (dismissing as unauthorized a petition for reconsideration challenging an order remanding the case for further hearings because such order was interlocutory in nature); *Communications Satellite Corp.*, 49 FCC 2d 221 ¶ 6 & n.2 (1974) (dismissing as unauthorized a petition for reconsideration of a Commission order dispensing with an Initial Decision, concluding that such order should be treated as a hearing order "since it requir[ed] the immediate resumption and expedited completion of the suspended hearing" but indicating that the petition would still be unauthorized as the order would be interlocutory in nature even if it were not considered to be a hearing order).

the full Commission.⁴ But Family does not seek analogous relief here. Rather, it seeks to avoid an evidentiary hearing on its fitness to retain its license and any possibility of a monetary forfeiture by having the Commission set aside the Order to Show Cause and afford the licensee an opportunity to correct the numerous violations at the stations. *Service Electric* thus affords no basis for the Commission to entertain the merits of Family's request to set aside what is clearly not a final action.

8. ACCORDINGLY, IT IS ORDERED, That the Petition for Reconsideration, filed March 15, 2001, by Family Broadcasting, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁴ Notwithstanding the elimination of the Review Board, matters analogous to those involved in *Service Electric* could be directed to the presiding judge in this case in the form of a motion to modify the hearing issues. See Section 1.243(k), 47 C.F.R. § 1.243, authorizing the presiding officer to act on motions to enlarge, modify or delete the hearing issues.