

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

ORDER TO SHOW CAUSE AND NOTICE OF OPPORTUNITY FOR HEARING

Adopted: February 8, 2001

Released: February 13, 2001

By the Commission:

I. INTRODUCTION

1. In this Order to Show Cause and Notice of Opportunity for Hearing ("Order"), we commence a hearing proceeding to determine whether the licenses held by Family Broadcasting, Inc. ("Family") for Stations WSTX(AM) and WSTX-FM, Christiansted, U.S. Virgin Islands, should be revoked. The evidence before us suggests that Family has willfully and repeatedly violated the Commission's rules and misrepresented facts to and/or lacked candor with the Commission. Accordingly, we believe that an evidentiary hearing is warranted to determine the extent to which Family has violated the Commission's rules and to determine whether Family is qualified to be and remain a Commission licensee.

II. BACKGROUND

2. Station WSTX(AM) is authorized to operate with 5 kilowatts daytime power and 1 kilowatt nighttime power and an antenna height above ground level of 106.5 meters from a site at Fort Louise Augusta in Christiansted, U.S. Virgin Islands. The geographic coordinates of the Fort Louise Augusta site are 17°45'23" North latitude and 064°41'38" West longitude. Station WSTX-FM is authorized to operate with 50 kilowatts effective radiated power and an antenna height above ground level of 41 meters from a site at Blue Mountain in Christiansted. The geographic coordinates of the Blue Mountain site are 17°45'20" North latitude and 064°47'55" West longitude. The stations share a common main studio at Fort Louise Augusta.

3. On February 13, 1995, an agent from the FCC's San Juan, Puerto Rico Office ("San Juan Office") visited WSTX-FM's authorized transmitter site at Blue Mountain. The site manager told the agent that Family had been evicted from the Blue Mountain site due to nonpayment of rent; that the site manager had filed an action in court and received a court order authorizing him to keep the FM transmitter unless and until Family paid the rental monies owed; and that WSTX-FM had been off the air since October 15, 1994, when the site manager cut the power to the FM transmitter. On August 16, 1995, the Mass Media Bureau sent a letter of inquiry ("LOI") to Family which noted that FCC records did not reveal

any request for special temporary authority (“STA”)¹ to discontinue operations at WSTX-FM or any notification that WSTX-FM had resumed operations and requested that Family clarify its operational status within 30 days.² Family did not respond to this LOI. In an amendment to its December 4, 1995, license renewal application,³ Family stated that WSTX-FM had experienced “severe problems with equipment because of its close proximity and exposure to the sea, and has therefore been on and off the airwaves intermittently. To add to this difficulty has been renegotiations relative to the lease for the location of the FM transmitter.” Family stated that it had therefore decided that application should be made to the Commission to relocate WSTX-FM’s transmitter. No such application was ever filed with the Commission. On May 30, 1996, the Mass Media Bureau designated the renewal application for WSTX-FM for hearing to determine whether Family had the capability and intent to resume the broadcast operations of WSTX-FM.⁴ On December 6, 1996, in response to a joint request by Family and the Mass Media Bureau, the Administrative Law Judge (“ALJ”) issued an order suspending all procedural dates in the hearing proceeding to afford Family a final opportunity to resume operation of WSTX-FM.⁵ Family returned WSTX-FM to the air on January 18, 1997. On June 18, 1997, the ALJ issued a summary decision terminating the hearing proceeding and granting the license renewal application for WSTX-FM.⁶

4. On August 19, 1997, an agent from the San Juan Office conducted an on-site inspection of WSTX(AM) and WSTX-FM. Mr. G. Luz A. James, the principal owner and president of Family, accompanied the agent during the inspection. During the inspection, the agent found no public inspection file and no station logs available for review. The agent also found that there was no Emergency Alert System (“EAS”) equipment installed at the stations. In addition, the agent observed that both stations were operating substantially at variance from the terms of their authorizations. WSTX-FM’s transmitter was operating from the Fort Louise Augusta site, instead of its authorized Blue Mountain site. Both stations were operating with reduced power and with unauthorized antennas. WSTX-FM was operating with 100 watts power transmitting from a one-bay antenna with a height of approximately 50 feet above ground level, and WSTX(AM) was operating with 2.8 kilowatts power transmitting from a 110-foot antenna tower. Moreover, the AM antenna tower did not have adequate fencing to prevent the public from accessing the radiator. Mr. James was unable to provide any STAs authorizing operation of the stations at variance from the terms of their authorizations. In a letter dated August 25, 1997, the San Juan Office advised Family of the violations and also advised Family of the need to request STA to operate at variance from the terms of its station authorizations. The letter directed Family to submit a report of actions taken

¹ A special temporary authorization is the authority granted to a permittee or licensee to permit the operation of a broadcast facility for a limited period at a specified variance from the terms of the station authorization. See 47 C.F.R. § 73.1635.

² Letter to Family Broadcasting, Inc. from Dennis Williams, Assistant Chief, Audio Services Division, Mass Media Bureau (August 16, 1995).

³ Family filed the amendment on March 22, 1996, in response to a request from Mass Media Bureau staff for answers to questions omitted from the license renewal application.

⁴ *Family Broadcasting, Inc.*, 11 FCC Rcd 6647 (Mass Med. Bur., 1996).

⁵ *Family Broadcasting, Inc.*, FCC 96M-263 (ALJ, released December 6, 1996).

⁶ *Family Broadcasting, Inc.*, 12 FCC Rcd 18700 (ALJ, 1997).

to correct the violations within ten days and notified Family that the stations would be reinspected at a later date. Family did not respond to the August 25, 1997, letter.

5. An agent from the San Juan Office conducted a follow-up inspection of WSTX(AM) and WSTX-FM on December 4, 1997. Mr. James again accompanied the agent during the inspection. The agent observed that EAS equipment had been purchased for the stations, but had not yet been installed. The agent also observed that both stations were operating at the same reduced power levels and with the unauthorized antennas observed during the previous inspection and that WSTX-FM's transmitter was operating from the Fort Louise Augusta site. Although a fence surrounding the AM antenna tower was under construction, public access to the AM antenna tower was still possible. Family did not have STA to authorize operation of the stations at variance from their authorizations. On December 8, 1997, the San Juan Office issued to Family two separate Notices of Violations ("NOVs"), one for the violations pertaining to WSTX(AM) and one for the violations pertaining to WSTX-FM. The NOVs directed Family to file responses describing what actions had been taken to correct the violations within ten days and warned Family that failure to respond would constitute a violation of the Commission's rules. Family did not respond to the December 8, 1997, NOVs.⁷

6. On April 23, 1998, Commission staff sent two LOIs to Family, one pertaining to violations at WSTX(AM) and one pertaining to violations at WSTX-FM as observed during the August 19, 1997, and December 8, 1997, inspections. The LOIs requested that Family provide responses indicating what steps had been taken to bring the stations into compliance with the Commission's rules. Family responded to the LOIs on May 28, 1998. Regarding WSTX-FM, Family stated that the FM transmitter and tower had been destroyed during Hurricane Marilyn in September 1995. Family indicated that it was in the process of purchasing a 30 kilowatt transmitter for WSTX-FM "within the next four months." Family further indicated that because the cost of constructing at the authorized Blue Mountain site was "prohibitive," particularly since the site was rented, "it became prudent to use our own site." Regarding WSTX(AM), Family stated that the station was restricted from operating at its authorized power because its antenna tower, which had been damaged during Hurricane Marilyn, was now only 110 feet in height. Family did not indicate whether it was taking any steps to enable WSTX(AM) to operate at its authorized power. Finally, Family stated that a fence had been erected around the AM antenna tower.

7. An FCC agent from the San Juan Office conducted another on-site inspection of WSTX(AM) and WSTX-FM on September 28, 1998. Barbara James-Petersen, General Manager and daughter of Family's principal owner/president, accompanied the agent during this inspection. The agent found that the stations' EAS equipment was installed but was not operational at the time of the inspection. Additionally, both stations were operating at the same reduced power levels and with the unauthorized antennas observed during the previous two inspections, and the FM transmitter was operating from the Fort Louise Augusta site, rather than its authorized Blue Mountain site. There was a chain link fence around WSTX(AM)'s antenna tower, but the fence had an opening which permitted access to the radiator. Mr. James appeared briefly during the inspection to show the agent various documents which purportedly demonstrated that he was taking steps to resolve the stations' low power problems. However, none of the documents presented by Mr. James indicated that the equipment needed to comply with the terms of the station authorizations had been purchased or placed on order.

⁷ The NOVs were sent by Certified Mail Return Receipt Requested. The United States Postal Service's Return Receipt Card shows that G. Luz A. James received and signed for the NOVs on December 12, 1997.

8. On April 13, 2000, an agent from the San Juan Office conducted another on-site inspection of WSTX(AM) and WSTX-FM. Ms. James-Petersen accompanied the agent during the inspection. The agent found no public inspection files or station logs available for review at the stations' main studio. Additionally, the agent observed that the stations' EAS equipment was inoperable and that the stations had no EAS Handbook. The agent further observed that both stations were still operating at variance from the terms of their authorizations. WSTX-FM's transmitter was operating from the Fort Louise Augusta site, rather than its authorized Blue Mountain site. WSTX-FM was operating with 100 watts power using a one-bay antenna with a height of approximately 20 feet above ground level, and WSTX(AM) was operating with 325 watts power using a long-wire antenna. Access to the long-wire antenna feed was possible through the same opening in the chain link fence observed during the September 28, 1998, inspection. Ms. James-Petersen indicated that WSTX(AM) had been using the long-wire antenna as an emergency antenna since December 1, 1999, because Hurricane Lenny destroyed the station's previously existing antenna tower on November 17, 1999. Ms. James-Petersen was unable to provide any STAs to authorize operation of the stations at variance from the terms of their authorizations.

9. A search of Commission records revealed that, as of April 17, 2000, no STAs had been issued to Family to permit operation of the stations at variance from the terms of their authorizations. On May 1, 2000, the San Juan Office issued to Family two separate NOV's for the violations observed during the April 13, 2000, inspection, one for the violations pertaining to WSTX(AM) and one for the violations pertaining to WSTX-FM. The NOV's directed Family to provide a written response to the San Juan Office containing a statement of the specific actions taken to correct the violations and to preclude their recurrence. The NOV's also directed Family to provide specific dates for completion of corrective action for any violations not corrected at the time of Family's response. The NOV's warned Family that failure to respond would constitute a violation of the Commission's rules. Family did not respond to the May 1, 2000, NOV's.⁸

10. On May 15, 2000, Family filed STA requests for WSTX(AM) and WSTX-FM with the Mass Media Bureau's Audio Services Division ("ASD"). In the STA request for WSTX(AM), Family requested authority to operate WSTX(AM) with an emergency antenna. Family stated that Hurricane Lenny caused extensive damage to WSTX(AM)'s antenna tower on November 18, 1999, and that it had been operating WSTX(AM) with a long-wire antenna since that time. By letter dated June 12, 2000, ASD granted Family STA to operate WSTX(AM) with an emergency long-wire antenna with reduced power⁹ until December 12, 2000.¹⁰ ASD found that the STA request, although untimely, otherwise met the requirements of Section 73.1680 of the Commission's Rules ("Rules") regarding use of emergency

⁸ The NOV's were sent by Certified Mail Return Receipt Requested. The United States Postal Service's Return Receipt Card shows that Barbara James-Petersen received and signed for the NOV's on May 8, 2000. The NOV's were also faxed to Family on May 1, 2000.

⁹ ASD noted that Section 73.1680(b)(1) of the Rules, 47 C.F.R. § 73.1680(b)(1), provides that AM stations using an emergency nondirectional antenna in lieu of authorized directional facilities shall operate with power reduced to 25 percent or less of the nominal licensed power, or a higher power, not exceeding licensed power, while insuring that the radiated field strength does not exceed that authorized in any given azimuth.

¹⁰ Letter to G. Luz A. James, Esq. from Edward P. De La Hunt, Assistant Chief, Audio Services Division, Mass Media Bureau (June 12, 2000).

antennas.¹¹ However, ASD stated that the STA granted for WSTX(AM) did not cover the period between November 18, 1999, and June 12, 2000, and is “without prejudice as to whatever action the Commission may take with respect to any unauthorized or improper operation of Station WSTX(AM).”

11. In the STA request for WSTX-FM, Family requested authority to relocate WSTX-FM from its authorized Blue Mountain site and to operate it with an emergency antenna. Family stated that Hurricane Lenny caused extensive damage to WSTX-FM on November 18, 1999. Family further stated that because of the damage to WSTX-FM’s tower, studio-to-transmitter link and transmitter, which were located on the top of Blue Mountain, it immediately decided to relocate WSTX-FM’s transmitter and antenna to a site at Fort Louise Augusta adjacent to where WSTX(AM) is located. Family also provided the “new” geographic coordinates for WSTX-FM’s transmitter site, which were identical to the coordinates for WSTX-AM’s authorized site. By letter dated June 12, 2000, ASD granted Family STA to operate WSTX-FM’s transmitter at the Fort Louise Augusta site and to operate WSTX-FM with an emergency antenna at 100 watts of power until December 12, 2000.¹² Based on Family’s claim that it relocated WSTX-FM’s transmitter from its authorized site as a result of damage caused by Hurricane Lenny, ASD found that Family’s STA request satisfied its criteria for a temporary change in transmitter site. In this regard, ASD noted that STA requests which involve a change in transmitter site must include four critical elements: (1) Loss of the licensed site must be beyond the licensee’s control; (2) STA facilities must continue to provide service to the licensed community; (3) STA facilities must maintain, as close as practicably possible, the licensed service area without extending it; and (4) STA facilities cannot involve the construction of towers intended for permanent use of the station requesting the STA. ASD also determined that, apart from being untimely, the STA request met the requirements of Section 73.1680 regarding use of emergency antennas.¹³ As with the STA granted for WSTX(AM), ASD stated that the STA granted for WSTX-FM did not cover the period between November 18, 1999, and June 12, 2000, and is “without prejudice as to whatever action the Commission may take with respect to any unauthorized or improper operation of Station WSTX-FM.”

12. The Enforcement Bureau sent a LOI to Family on July 19, 2000, in order to obtain answers to questions raised by Family’s claim in the May 15, 2000, STA request for WSTX-FM that it relocated WSTX-FM’s transmitter from its authorized site at Blue Mountain to the Fort Louise Augusta site as a result of damage caused by Hurricane Lenny on November 18, 1999. The LOI noted that information before the Commission indicates that Family has operated WSTX-FM’s transmitter at the Fort Louise Augusta site since at least 1997 and advised Family that the Commission views misrepresentation of facts by a licensee as a serious matter. The LOI directed Family to respond to questions concerning: (a) the earliest and most recent date on which Family operated WSTX-FM’s transmitter at its authorized site at Blue Mountain; (b) the date on which Family relocated WSTX-FM’s transmitter from its authorized Blue Mountain site to the Fort Louise Augusta site; (c) the reason why Family relocated WSTX-FM’s transmitter from its authorized Blue Mountain site to the Fort Louise Augusta site; (d) whether Family

¹¹ Section 73.1680 of the Rules provides for operation with emergency antenna facilities following damage to authorized antenna systems, provided that an informal request for continued use of an emergency antenna is filed with the Commission within 24 hours. 47 C.F.R. § 73.1680.

¹² Letter to G. Luz A. James, Esq. from Edward P. De La Hunt, Assistant Chief, Audio Services Division, Mass Media Bureau (June 12, 2000).

¹³ See n. 11.

currently holds a lease for its authorized Blue Mountain site and, if not, the circumstances surrounding the termination of the lease; and (e) any steps Family has taken to return WSTX-FM's transmitter to its authorized Blue Mountain site. Family did not respond to this LOI.¹⁴

III. DISCUSSION

13. The circumstances described above raise serious questions as to whether Family is qualified to be and remain a Commission licensee. It appears that Family may have misrepresented facts to and/or lacked candor with the Commission regarding its relocation of WSTX-FM's transmitter from its authorized site. Furthermore, it appears that, by repeatedly failing to respond to official Commission correspondence and inquiries, Family has exhibited a pattern of evasiveness which calls into question its willingness to deal truthfully with the Commission. Finally, it appears that Family has operated both WSTX(AM) and WSTX-FM substantially at variance from the terms of their authorizations for approximately four years and has committed numerous other violations of the Commission's rules, including violations which raise public safety concerns. The seriousness and duration of these violations, coupled with Family's failure to take corrective action despite repeated warnings from Commission staff, suggests a gross indifference to and disregard for the Commission's rules and raises questions as to whether Family can be relied upon in the future to fulfill the duties and responsibilities incumbent upon a Commission licensee.

14. *Misrepresentation/lack of candor.* The trait of truthfulness is one of two key elements of character necessary to operate a broadcast station in the public interest. See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1209-1210 (1986) ("*Character Policy Statement*") (subsequent history omitted). The acts of willful misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission. *Id.* Misrepresentation is a false statement of fact made with an intent to deceive the Commission, while lack of candor is a concealment, evasion or other failure to be fully informative, accompanied by an intent to deceive the Commission. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). In *Contemporary Media, Inc. et al. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000), the Court recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing." The Court also stated that "[i]t is well recognized that the Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency."¹⁵

15. The evidence before us raises serious questions as to whether Family misrepresented facts to and/or lacked candor with the Commission regarding the relocation of WSTX-FM's transmitter from its authorized Blue Mountain site. In its May 15, 2000, STA request, Family stated that because of the extensive damage caused by Hurricane Lenny on November 18, 1999, to WSTX-FM's tower, studio-to-transmitter link and transmitter, which were located on the top of Blue Mountain, it immediately decided to relocate WSTX-FM's transmitter and antenna to a site at Fort Louise Augusta adjacent to where WSTX(AM) is located. However, this statement is inconsistent with other information before the

¹⁴ The LOI was sent by Certified Mail Return Receipt Requested on July 19, 2000. The United States Postal Service's Return Receipt Card shows that G. Luz A. James received and signed for the LOI on July 25, 2000. The LOI was also faxed to Barbara James-Petersen on July 19, 2000.

¹⁵ *Id.* at 196, citing *Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000).

Commission. During the FCC agent's February 13, 1995, visit to WSTX-FM's authorized transmitter site at Blue Mountain, the site manager told him that Family had been evicted from the site for nonpayment of rent. In an amendment to its December 4, 1995, license renewal application, Family indicated that it intended to seek Commission authorization to relocate WSTX-FM's transmitter to a new site in part because of equipment problems resulting from its close proximity and exposure to the sea and in part because of difficulties with renegotiations for the lease for the Blue Mountain site. In its May 28, 1998, response to a LOI from Commission staff, Family stated that WSTX-FM's transmitter and tower had been destroyed during Hurricane Marilyn in September 1995 and that because the cost of constructing at the authorized Blue Mountain site was "prohibitive," particularly since the site was rented, "it became prudent to use our own site." Finally, during his on-site inspections of WSTX(AM) and WSTX-FM on August 19, 1997, December 4, 1997, September 28, 1998, and April 13, 2000, an FCC agent observed that WSTX-FM's transmitter was operating at the Fort Louise Augusta site rather than at its authorized Blue Mountain site. Thus, based on the record before us, it appears that Family did not relocate WSTX-FM's transmitter from the Blue Mountain site as a result of damage caused by Hurricane Lenny on November 18, 1999, as Family stated in its May 15, 2000, STA request. Rather, it appears that Family has operated WSTX-FM's transmitter from the Fort Louise Augusta site without Commission authorization since it returned the station to the air after more than two years of silence on January 18, 1997. The inconsistencies between the available evidence and Family's statements regarding the relocation of WSTX-FM's transmitter require further exploration in a hearing. Accordingly, we will specify appropriate issues.

16. *Failure to respond to Commission correspondence and inquiries.* Section 1.89(b) of the Rules requires the recipient of an NOV to respond in writing to that NOV within ten days of receipt or any other time period specified in the NOV.¹⁶ Section 73.1015 of the Rules provides that the Commission "may, in writing, require from any applicant, permittee, or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to any other matter within the jurisdiction of the Commission."¹⁷ The NOVs issued on December 8, 1997, and May 1, 2000, directed Family to submit responses and explicitly warned Family that failure to do so would constitute a violation of the Commission's rules. Family apparently violated Section 1.89 by failing to respond to these NOVs. In addition, the LOI sent to Family on July 19, 2000, directed Family to respond to five specific questions relating to the relocation of WSTX-FM's transmitter from its authorized Blue Mountain site. Family apparently violated Section 73.1015 by failing to respond to this LOI. Moreover, as noted above, the trait of truthfulness is a key element of character necessary to operate a broadcast station in the public interest. Family's apparently repeated failure to respond to official Commission correspondence and inquiries raises questions as to whether it will be likely to be forthright in its future dealings with the Commission. *See Character Policy Statement*, 102 FCC 2d at 1209-1210. We will specify an issue to determine whether Family willfully or repeatedly violated Sections 1.89 and 73.1015 of the Rules.

17. *Technical and other rule violations.* Reliability is the other key element of character necessary to operate a broadcast station in the public interest. *See Character Policy Statement*, 102 FCC 2d at 1209-1210. In this regard, the Commission is concerned with whether a licensee will in the future

¹⁶ 47 C.F.R. § 1.89(b).

¹⁷ 47 C.F.R. § 73.1015.

operate its station consistent with the requirements of the Communications Act of 1934, as amended,¹⁸ and the Commission's rules. *Id.* As set forth in detail below, it appears that Family has operated both WSTX(AM) and WSTX-FM substantially at variance from the terms of their authorizations for approximately four years and has committed numerous other violations of the Commission's rules. The seriousness and duration of these violations, together with Family's failure to take corrective action despite repeated warnings from Commission staff, raises questions as to whether Family can be relied upon in the future to operate its stations in accordance with the Communications Act and the Commission's rules.

18. Section 73.1350(a) of the Rules provides that "[e]ach licensee is responsible for maintaining and operating its broadcast station ... in accordance with the terms of the station authorization."¹⁹ Section 73.1560(a) provides that the antenna input power of an AM station "must be maintained as near as practicable to the authorized antenna input power and may not be less than 90% nor more than 105% of the authorized power," and Section 73.1560(b) provides that the transmitter output power of an FM station "must be maintained as near as practicable to the authorized transmitter output power and may not be less than 90% nor more than 105% of the authorized power."²⁰ Section 73.1690(b)(2) provides that any change in station geographic coordinates may only be made after the grant of a construction permit application on FCC Form 301.²¹ Based on the information before us, it appears that Family operated both WSTX(AM) and WSTX-FM substantially at variance from the terms of their authorizations in violation of Sections 73.1350, 73.1560(a) and (b) and 73.1690(b)(2) of the Rules since at least August 19, 1997. During the inspections on August 19, 1997, December 4, 1997, and September 28, 1998, WSTX(AM) was operating at a reduced power of 2800 watts, which is approximately 56% of its authorized power of 5 kilowatts, using a 110-foot antenna tower; WSTX-FM was operating at a reduced power of 100 watts, which is approximately 0.2% of its authorized power of 50 kilowatts, using a one-bay antenna with a height of approximately 50 feet above ground level. At the time of the April 13, 2000, inspection, WSTX(AM) was operating at a reduced power of 325 watts, which is approximately 6.5% of its authorized power, using a long-wire antenna; WSTX-FM was again operating at a reduced power of 100 watts, this time using a one-bay antenna with a height of approximately 20 feet above ground level. Family did not have STAs for the unauthorized antennas²² or the reduced power operation²³ until June 12, 2000. In addition, Family operated WSTX-FM's transmitter from the Fort Louise Augusta site rather than its authorized Blue Mountain site without Commission authorization from at least August 19, 1997, until ASD granted Family's STA request on June 12, 2000. Accordingly, we will specify issues to determine whether Family willfully or repeatedly operated WSTX(AM) and WSTX-FM at variance from the terms of their authorizations in violation of Sections 73.1350(a), 73.1560(a), 73.1560(b) and 73.1690(b)(2) of the Rules.

¹⁸ 47 U.S.C. § 151 *et seq.*

¹⁹ 47 C.F.R. § 73.1350(a).

²⁰ 47 C.F.R. § 73.1560(a) and (b).

²¹ 47 C.F.R. § 73.1690(b)(2).

²² *See* n. 11.

²³ Section 73.1560(d) of the Rules provides that a licensee must request STA to operate with reduced power for a period of more than 30 days. 47 C.F.R. § 73.1560(d).

19. Section 73.49 of the Rules provides that AM antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures.²⁴ During the inspections on August 19, 1997, December 4, 1997, September 28, 1998, and April 13, 2000, WSTX(AM)'s antenna was not enclosed within an effective locked fence. Family apparently violated Section 73.49 by failing to enclose its AM antenna within an effective locked fence. This apparent violation is particularly troubling given that Family has repeatedly been warned that its failure to maintain an effective locked fence around its AM antenna constitutes a serious public safety hazard.²⁵ We will specify an issue to determine whether Family willfully or repeatedly violated Section 73.49.

20. Section 11.35 of the Rules provides that broadcast stations are responsible for ensuring that EAS equipment is installed and operational.²⁶ During the August 19, 1997, and December 4, 1997, inspections of WSTX(AM) and WSTX-FM, there was no EAS equipment installed at the stations' combined main studio.²⁷ At the time of the September 8, 1998, and April 13, 2000, inspections, the EAS equipment shared by WSTX(AM) and WSTX-FM was installed but was not operational. Family apparently violated Section 11.35 by failing to install and maintain operational EAS equipment. We will add an issue to determine whether Family willfully or repeatedly violated Section 11.35.

21. Section 73.3526 of the Rules requires that broadcast licensees maintain a public inspection file at the main studio of the station and make the file available for inspection at any time during regular business hours.²⁸ No public inspection files for WSTX(AM) and WSTX-FM were available for review during the April 13, 2000, inspection. Family apparently violated Section 73.3526 by failing to maintain public inspection files for WSTX(AM) and WSTX-FM and make the files available for review. We will add an issue to determine whether Family willfully or repeatedly violated Section 73.3526.

IV. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 1.91(a) of the Rules, 47 C.F.R. § 1.91(a), and Sections 312(a) and 312(c) of the Act, 47 U.S.C. §§ 312(a) and 312(c), Family

²⁴ 47 C.F.R. § 73.49.

²⁵ We note that the Fort Louise Augusta site, where WSTX(AM)'s antenna is located, is directly adjacent to a public beach.

²⁶ 47 C.F.R. § 11.35.

²⁷ Broadcast stations which are co-owned and co-located with a combined studio may share EAS equipment. See 47 C.F.R. §§ 11.51(j) and 11.52(c).

²⁸ 47 C.F.R. § 73.3526.

Broadcasting, Inc. **IS DIRECTED TO SHOW CAUSE** why the licenses for WSTX(AM) and WSTX-FM, Christiansted, U.S. Virgin Islands, should not be **REVOKED**, at a hearing before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

- (a) To determine whether Family Broadcasting, Inc. misrepresented facts to and/or lacked candor with the Commission in its statements regarding the relocation of WSTX-FM's transmitter from its authorized site in violation of Section 73.1015 of the Rules;
- (b) To determine whether Family Broadcasting, Inc. willfully or repeatedly violated Sections 1.89 and/or 73.1015 of the Rules by failing to respond to official Commission correspondence and inquiries;
- (c) To determine whether Family Broadcasting, Inc. willfully or repeatedly violated Sections 73.1350(a), 73.1560(a), 73.1560(b) and/or 73.1690(b)(2) of the Rules by operating WSTX(AM) and WSTX-FM at variance from the terms of their authorizations;
- (d) To determine whether Family Broadcasting, Inc. willfully or repeatedly violated Section 73.49 of the Rules by failing to enclose WSTX(AM)'s antenna within an effective locked fence;
- (e) To determine whether Family Broadcasting, Inc. willfully or repeatedly violated Section 11.35 of the Rules by failing to install and maintain operational EAS equipment for WSTX(AM) and WSTX-FM;
- (f) To determine whether Family Broadcasting, Inc. willfully or repeatedly violated Section 73.3526 of the Rules by failing to maintain public inspection files for WSTX(AM) and WSTX-FM;
- (g) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Family Broadcasting, Inc. is basically qualified to be or remain a Commission licensee; and
- (h) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the licenses for WSTX(AM) and/or WSTX-FM should be revoked.

23. **IT IS FURTHER ORDERED** that, pursuant to Section 312(d) of the Act, 47 U.S.C. § 312(d), and Section 1.91(d) of the Rules, 47 C.F.R. § 1.91(d), the burden of proceeding with the introduction of evidence and the burden of proof shall be on the Enforcement Bureau as to all of the foregoing issues.

24. **IT IS FURTHER ORDERED** that, irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to Section 503(b)(3)(A) of the Act, 47 U.S.C. § 503(b)(3)(A), and Section 1.80 of the Rules, 47 C.F.R. § 1.80, whether an Order of Forfeiture in an amount not to exceed two hundred seventy five thousand dollars (\$275,000) shall be issued against Family Broadcasting, Inc. for willfully and/or repeatedly violating Sections 1.89, 11.35, 73.49, 73.1015, 73.1350(a), 73.1560(a), 73.1560(b), 73.1690(b)(2) and/or 73.3526 of the Rules.

25. **IT IS FURTHER ORDERED** that, in connection with the possible forfeiture liability noted above, this document constitutes notice of an opportunity for hearing, pursuant to Section 503(b)(3)(A) of the Act and Section 1.80 of the Rules.

26. **IT IS FURTHER ORDERED** that, to avail itself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, pursuant to Sections 1.91(c) of the Rules, 47 C.F.R. §§ 1.91(c), Family Broadcasting, Inc., in person or by its attorney, shall file within 30 days of the release of this *Order*, a written appearance stating that it will appear at the hearing and present evidence on matters specified in this *Order*. If the licensee fails to file a timely written notice of appearance, the right to a hearing shall be deemed to be waived. *See* Section 1.92(a) of the Rules, 47 C.F.R. § 1.92(a). Where a hearing is waived, the licensee may submit a written, signed statement of mitigation or justification within 30 days of the release of this *Order*. *See* Section 1.92(b) of the Rules, 47 C.F.R. § 1.92(b). In the event the right to a hearing is waived, the Chief Administrative Law Judge (or presiding officer if one has been designated) shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission. *See* Section 1.92(c) of the Rules, 47 C.F.R. § 1.92(c).

27. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent via Certified Mail Return Receipt Requested and regular first class mail to Family Broadcasting, Inc. at P.O. Box 3279, St. Croix, U.S. Virgin Islands 00822.

28. **IT IS FURTHER ORDERED** that the Secretary of the Commission shall cause to have this *Order* or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary