

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

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|--|---|---------------------|
| In the Matter of |) | |
| |) | |
| 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 |) | |

**SUMMARY DECISION
OF
ADMINISTRATIVE LAW JUDGE RICHARD L. SIPPEL**

Issued: August 3, 2001

Released: August 7, 2001

PRELIMINARY STATEMENT

1. This hearing was commenced by Order to Show Cause and Notice of Opportunity for Hearing (“OSC”) adopted by the Commission on February 8, 2001, and published at 16 F.C.C. Rcd 4330 (2001). On March 15, 2001, Family filed a Petition for Reconsideration asking that the OSC be set aside and that Family be afforded a reasonable opportunity to correct deficiencies specified in the OSC. In Order FCC 01-188, released June 15, 2001, the Commission rejected Family’s request and dismissed the petition.

Cross Motions for Summary Decision

2. This is a ruling on Cross Motions for Summary Decision filed on July 10, 2001, by Family Broadcasting, Inc. (“Family”) and the Enforcement Bureau (“Bureau”). Order FCC 01M-14, released May 30, 2001. Opposition briefs were filed on July 30, 2001. Order FCC 01M-22, released July 18, 2001. The issues concern revocation and forfeiture.

Issues

3. The issues set in the OSC are the following:

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 §§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 §§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 §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 §11.35 of the Rules by failing to install and maintain operational EAS [Emergency Alert System] equipment for WSTX(AM) and WSTX-FM;

F. To determine whether Family Broadcasting, Inc. willfully or repeatedly violated §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.

4. Family does not contest the merits of the charges underlying these issues. In fact, Family has cooperated fully in responding to an extensive set of requests for admissions [47 C.F.R. §1.246] which are sufficient to establish violations of Commission rules without the need for an evidentiary hearing.

Revocation and Forfeiture

5. The Bureau requests that Family's licenses be revoked. Family argues that there are equities in its favor which reject revocation as an appropriate remedy.

6. The OSC also requires a finding as to whether aside from revocation, a forfeiture order in an amount not to exceed \$275, 000 should issue against Family for willful and/or repeated violations of various sections of the Commission's rules (47 C.F.R. §§1.89, 11.35, 73.49, 73.1015, 73.1350(a), 73.1650(a), 73.1690(b)(2), and/or 73.3526).

FINDINGS OF FACT

7. The record evidence consisting of Admissions and Family's Declarations of March 12, 2001 (Barbara James-Petersen) and of March 14, 2001 (Gerald Luz A. James) establish that in 1990, Gerald Luz A. James ("Luz James") and his wife Asta K. James ("Asta James") purchased stations WSTX(AM) and WSTX-FM and that from 1990 to 1998, Mr. Luz James personally carried out all of the stations' regulatory compliance with the Commission.

8. In July 1998, Barbara James-Petersen ("James-Peterson"), daughter of Luz and Asta James, became the full-time general manager of the stations. Currently, Ms. James-Peterson continues to be the general manager, and since March 14, 2001, she has served nominally as Family's president.¹

9. Four on-site inspections were conducted by agents from the Commission's San Juan, Puerto Rico Office on August 19, 1997, December 4, 1997, September 8, 1998, and on April 13, 2000. At each inspection, violations of the Commission's rules were detected and reported to Family, many of which were repeats.

10. The specific findings of fact below are based upon responses of Family to the Bureau's Request for Admission of Facts and Genuineness of Documents that were served on March 23, 2001. Family's Answers to Requests for Admissions were timely served on April 3, 2001, and are found to be true and accurate.²

Issue A

11. Family misrepresented facts concerning Family's reported relocation of its transmitter and antenna site as a result of a hurricane when the facts show that electrical power was lost and Family was evicted from its site for Luz James' failure to pay rent.

¹ Family has filed an application to transfer control of Family from Luz and Asta James to their four adult children, one whom is Barbara James-Petersen. Family recognizes that where character qualifications issues have been designated against a licensee in a renewal or revocation hearing, the license cannot be assigned (or control of the licensee transferred) until the licensee is found qualified. Jefferson Radio Co. v. FCC, 340 F.2d 781 (D.C. Cir. 1964).

² See Memorandum Opinion and Order, FCC 01M-09, released April 25, 2001 (Presiding Judge accepts as an established fact each of the Bureau's requests to admit).

12. Family has admitted the following:³

a. Family represented on May 28, 1998, that Hurricane Marilyn caused the relocation of WSTX-FM's transmitter from its licensed site to the site of WXTX(AM)'s tower, and such claim was false.

b. Family represented on May 28, 1998, that Hurricane Marilyn caused the relocation of WSTX-FM's transmitter from its licensed site to the site of WXTX(AM)'s tower, and Mr. Luz James knew that such representation was false.

c. Family's representation on May 15, 2000, that damage from Hurricane Lenny on November 18, 1999, to WSTX-FM's transmitter, studio-to-transmitter link and tower, caused Family to relocate WSTX-FM's transmitter and antenna was false.

d. Mr. Luz James knew that Family's representation of May 15, 2000, regarding the relocation of WSTX-FM's transmitter and antenna was false.

e. Family did not relocate WSTX-FM's transmitter from its authorized site to the Fort Louise Augusta site as a result of damage caused to WSTX-FM's tower, studio-to-transmitter link and transmitter during Hurricane Lenny on November 18, 1999.

f. Family has operated WSTX-FM's transmitter from the Fort Louise Augusta site since at least January 18, 1997.

g. On or around October 15, 1994, the owner of WSTX-FM's authorized transmitter site cut the electrical power to WSTX-FM's transmitter and other equipment at that site due to Family's failure to make required rental payments for the site.

h. On or around October 15, 1994, pursuant to court order, the owner of WSTX-FM's authorized transmitter site seized WSTX-FM's transmitter and other equipment at that site pending Family's payment of overdue rent for the site.

i. On or around October 15, 1994, Family was evicted from the authorized transmitter site for WSTX-FM for failure to make required rental payments for the site.

j. Family has not operated WSTX-FM's transmitter from its authorized site since at least October 15, 1994.

³ See Bureau's Motion, Para. 4.

Issue B

13. Family failed to respond to Commission Notices of Violations (“NOV”) issued in 1997, and again in 2000.⁴

14. Family has admitted the following:⁵

a. Receipt of a letter dated August 25, 1997, from the Commission’s San Juan, Puerto Rico Office, concerning the August 19, 1997, inspection of WSTX(AM) and WSTX-FM.

b. Family did not respond to the August 25, 1997, letter.

c. Family received a December 8, 1997, NOV issued to Family by the Commission’s San Juan, Puerto Rico Office, concerning the December 4, 1997, inspection of WSTX(AM).

d. Family did not respond to the December 8, 1997, NOV for WSTX(AM).

e. Family received a December 8, 1997, NOV issued to Family by the Commission’s San Juan, Puerto Rico Office, concerning the December 4, 1997, inspection of WSTX-FM.

f. Family did not respond to the December 8, 1997, NOV for WSTX-FM.

g. Family received a May 1, 2000, NOV issued to Family by the Commission’s San Juan, Puerto Rico Office, concerning the April 13, 2000, inspection of WSTX(AM).

h. Family did not respond to the May 1, 2000, NOV concerning WSTX(AM).

i. Family received a May 1, 2000, NOV issued to Family by the Commission’s San Juan, Puerto Rico Office, concerning violations observed during the April 13, 2000, inspection of WSTX-FM.

j. Family did not respond to the May 1, 2000, NOV concerning WSTX-FM.

⁴ Luz James failed to answer the NOVs as required under §1.89(b). There is no evidence of fraudulent misrepresentations. Therefore, the reference to §73.1015 requiring truthful responses is inapposite because the violation is only in failing to respond to the NOVs.

⁵ See Bureau’s Motion, Para. 5.

k. Family received a July 19, 2000, letter to Family from Commission staff directing Family to respond to questions regarding the relocation of WSTX-FM's transmitter from its authorized transmitter site.

l. Family did not respond to the July 19, 2000, letter.

m. A true and accurate copy of the July 19, 2000, letter was transmitted directly to Ms. James-Peterson by facsimile.

n. The Admissions Requests and Admissions Answers establish that Family, through its agents, Luz James and Barbara James-Petersen, received, but failed to respond, to the aforesaid NOV's as well as to the aforesaid official Commission requests for written statements of fact.⁶

Issue C

15. Family willfully or repeatedly violated §§73.1350(a), 73.1560(a), 73.1560(b) and/or 73.1690(b)(2) of the Commission's rules by operating WSTX(AM) and WSTX-FM at variance from the terms of their authorizations.

16. Family has admitted the following:⁷

a. The Commission granted a Special Temporary Authority ("STA") to Family for WSTX(AM) from June 17, 1993, through July 31, 1993.

b. Upon expiration of its STA for WSTX(AM), Family did not resume operation of WSTX(AM) in accordance with its license.

c. Upon expiration of its STA for WSTX-FM, Family did not resume operation of WSTX-FM in accordance with its license.⁸

⁶ At the time she received the NOV's, Ms. James-Petersen was Luz James' replacement as general manager.

⁷ See Bureau's Motion, Para. 6.

⁸ WSTX-FM was operating in accordance with an STA issued in 1989. Correspondence from the Commission dated June 10, 1993, accounts for substandard operations since 1989, and reflects that Luz James had promised to erect an antenna for WSTX-FM by September 1994. See Bureau's Motion, Attachment E. It appears that as of January 7, 1994, Family continued to be operating WSTX-FM at substandard facilities and without a current STA.

- d. Family, in a January 7, 1994, letter, did not advise the Commission that WSTX(AM) was not being operated in accordance with its license.
- e. Family, in a January 7, 1994, letter, did not advise the Commission that WSTX-FM was not being operated in accordance with its license.
- f. Family, in an October 20, 1994, letter, did not advise the Commission that WSTX(AM) was not being operated in accordance with its license.
- g. Family's representation in its October 20, 1994, letter, "Now that our AM portion is up to snuff ..." was false.
- h. Luz James knew that the claim "Now that our AM portion is up to snuff ..." was false.
- i. On August 19, 1997, an agent from the Commission's San Juan, Puerto Rico Office conducted an on-site inspection of WSTX(AM) and WSTX(FM).
- j. At the time of the August 19, 1997, inspection, Family did not have an STA to operate WSTX-FM at variance from the terms of its license.
- k. At the time of the August 19, 1997, inspection, Family did not have an STA to operate WSTX(AM) at variance from the terms of its authorization.
- l. At the time of the December 4, 1997, inspection, Family did not have an STA to operate WSTX-FM at variance from the terms of its authorization.
- m. At the time of the December 4, 1997, inspection, Family did not have an STA to operate WSTX(AM) at variance from the terms of its authorization.
- n. At the time of the September 8, 1998, inspection, Family did not have an STA to operate WSTX-FM at variance from the terms of its license.
- o. At the time of the September 8, 1998, inspection, Family did not have an STA to operate WSTX(AM) at variance from the terms of its authorization.
- p. At the time of the April 13, 2000, inspection, Family did not have an STA to operate WSTX-FM at variance from the terms of its authorization.
- q. At the time of the April 13, 2000, inspection, Family did not have an STA to operate WSTX(AM) at variance from the terms of its authorization.
- r. From July 19, 1996, until June 12, 2000, Family did not have an STA to operate WSTX(AM) at variance from the terms of its license.

s. From June 18, 1997, until June 12, 2000, Family did not have an STA to operate WSTX-FM at variance from the terms of its license.

t. From December 13, 2000, to [March 23, 2001], Family [did not have] an STA to operate WSTX(AM) with facilities other than those appearing on its license.

u. From December 13, 2000, to [March 23, 2001], Family [did not have] an STA to operate WSTX-FM with facilities other than those appearing on its license.

v. Family has not operated WSTX-FM's transmitter from its authorized site since at least October 15, 1994.

Issue D

17. Family willfully or repeatedly failed to enclose WSTX(AM)'s antenna within an effective locked fence.

18. Family has admitted the following:⁹

a. At the time of the August 19, 1997, inspection, WSTX(AM) was transmitting with approximately 2800 watts output power.

b. At the time of the August 19, 1997, inspection, WSTX(AM) was transmitting using an antenna tower with a height of approximately 110 feet above ground level.

c. At the time of the August 19, 1997, inspection, there was no fence enclosing WSTX(AM)'s antenna tower.

d. At the time of the December 4, 1997, inspection, WSTX(AM) was transmitting with approximately 2800 watts output power.

e. At the time of the December 4, 1997, inspection, WSTX(AM) was transmitting using an antenna tower with a height of approximately 110 feet above ground level.

f. At the time of the December 4, 1997, inspection, a chain link fence enclosing WSTX(AM)'s antenna tower was under construction but was not yet completed.

g. Family, in a May 28, 1998 letter, sought to assure the Commission that a fence completely enclosed the AM radiator thereby preventing public access thereto.

⁹ See Bureau's Motion, Para. 7.

h. To the extent that Family represented to the Commission that a fence completely enclosed the AM radiator, thereby preventing public access thereto, such suggestion was false.

i. To the extent that Family represented to the Commission that a fence completely enclosed the AM radiator, thereby preventing public access thereto, Mr. Luz James knew such suggestion was false.

j. Ms. James-Petersen accompanied the Commission's agent during the September 8, 1998, inspection.

k. At the time of the September 8, 1998, inspection, WSTX(AM) was transmitting with approximately 2250 watts output power.

l. At the time of the September 8, 1998, inspection, WSTX(AM) was transmitting using an antenna tower with a height of approximately 110 feet above ground level.

m. At the time of the September 8, 1998, inspection, there was a chain link fence surrounding WSTX(AM)'s antenna tower, but the fence had an opening which permitted access to the antenna tower.

n. Ms. James-Petersen accompanied the Commission's agent during the April 13, 2000, inspection.

o. At the time of the April 13, 2000, inspection, WSTX(AM) was transmitting with approximately 325 watts output power.

p. At the time of the April 13, 2000, inspection, WSTX(AM) was using a long-wire antenna.

q. At the time of the April 13, 2000, inspection, there was a chain link fence surrounding WSTX(AM)'s long-wire antenna, but the fence had an opening which permitted access to the antenna.

Issue E

19. Family willfully or repeatedly violated §11.35 of the Commission's rules by failing to install and maintain operational Emergency Alert System ("EAS") equipment for WSTX(AM) and WSTX-FM.

20. Family has admitted to the following:¹⁰

¹⁰ See Bureau's Motion, Para. 8.

- a. At the time of the August 19, 1997, inspection, Family did not have any EAS equipment installed at the stations' main studio.
- b. Family received a letter dated August 25, 1997, to Family from the Commission's San Juan, Puerto Rico Office, concerning the August 19, 1997, inspection of WSTX(AM) and WSTX-FM.
- c. Family did not respond to the August 25, 1997 letter.
- d. At the time of the December 4, 1997, inspection, Family did not have any EAS equipment installed at the stations' main studio.
- e. Family received a Notice of Violation ("NOV") dated December 8, 1997, issued to Family by the Commission's San Juan, Puerto Rico Office, concerning the December 4, 1997, inspection of WSTX(AM).
- f. Family received the December 8, 1997, NOV for WSTX(AM).
- g. Family did not respond to the December 8, 1997, NOV for WSTX(AM).
- h. Family received a Notice of Violation ("NOV") dated December 8, 1997, issued to Family by the Commission's San Juan, Puerto Rico Office, concerning the December 4, 1997, inspection of WSTX-FM.
- i. Family received the December 8, 1997, NOV for WSTX-FM.
- j. Family did not respond to the December 8, 1997, NOV for WSTX-FM.
- k. Ms. James-Petersen accompanied the Commission's agent during the September 8, 1998, inspection.
 - l. At the time of the September 8, 1998, inspection, EAS equipment was installed at the stations' main studio but the equipment was not operational.
- m. Ms. James-Petersen accompanied the Commission's agent during the April 13, 2000, inspection.
 - n. At the time of the April 13, 2000, inspection, EAS equipment was installed at the stations' main studio but the equipment was not operational.

Issue F

21. Family willfully and repeatedly failed to maintain public inspection files.
22. Family has admitted to the following:¹¹
 - a. At the time of the August 19, 1997, inspection, Family did not have a public inspection file for either station.
 - b. On April 13, 2000, an agent from the Commission's San Juan, Puerto Rico Office conducted an on-site inspection of WSTX(AM) and WSTX-FM.
 - c. Ms. James-Petersen accompanied the Commission's agent during the April 13, 2000, inspection.
 - d. At the time of the April 13, 2000, inspection, Family did not have a public inspection file for either station at the stations' main studio.

Issues G and H

23. These issues raise only the conclusory questions of whether, in light of the evidence adduced relative to the preceding issues, Family is basically qualified to remain a Commission licensee and whether Family's licenses for WSTX(AM) and WSTX-FM should be revoked.¹²

Factual Findings in Mitigation

24. Since Family acquired the stations in 1990, Mr. Luz James has operated them as the controlling shareholder. He served as Family's president and as Family's principal he is legally responsible for all regulatory compliance.

25. From 1997 to 2000, after four on-site inspections, Luz James either failed to respond to or answered untruthfully multiple requests for information. As indicated by the above findings, the violations found constituted serious deviations from the terms of the licenses including failures to install, operate and maintain EAS equipment, failures to maintain public inspection files, and a failure to erect and maintain a fence suitable to protect the public from harmful radiation emissions.

¹¹ See Bureau's Motion, Para. 9.

¹² See Bureau's Motion, Para. 10.

26. However, there were circumstances attendant to those violations that must be considered. In September 1990, the stations were seriously damaged by Hurricane Hugo and the tower for WSTX(AM) was blown over. The same tower damage was repeated by Hurricane Marilyn. In November 1999, Hurricane Lenny overturned the AM tower for a third time. To avoid a fourth recurrence, Family sought to reduce the tower height. It is officially noted that Family has filed an application to reduce the height of the AM tower from 305 ft. to 180 ft.

27. In 1998, in an effort to correct an eroding situation, Barbara James-Petersen became the station manager. She repaired a gap in a security fence as soon as she learned of its threat to the public safety. She timely saw to providing a new power supply to the EAS printer which is now operable. She had the public inspection file reconstructed so that it is now complete. And according to her Declaration, she has taken steps to restore the FM station to its authorized power by construction of a new transmitting facility.

28. Since assuming the position of station general manager and being designated Family's president, Barbara James-Petersen has utilized communications counsel to conduct a compliance audit with a view towards bringing the stations into full compliance. Luz James has resigned as president and has given his stock to his children. Ms. James-Petersen filed applications for Commission authority to reduce the height of the AM tower (File No. BPH-20010622AAF) and to remove the FM station to a site on Recovery Hill (File No. BPH-20010316AAD). By an informal promise, Asta James should make available the funds needed for station improvements.

29. Family represents that it donates broadcasting time to FEMA (30 minutes during five days of each week) to communicate relief efforts to the portions of St. Croix in need of relief. Also, one hour per week is donated to the local Department of Public Safety. And as a further service to the community, Family now has a policy of allowing credit for advertising to local merchants who have been impacted by hurricane storm damage.

CONCLUSIONS OF LAW

30. The Commission's rules provide that in considering summary decision:

The party filing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination at the hearing.

47 C.F.R. §1.251(a)(1). As the moving parties on cross motions, the Bureau and Family each has the burden of establishing that a favorable summary decision would be appropriate based on the pleadings and the papers submitted. Summary Decision Procedures, 34 F.C.C. 2d 485, 487-88 (1972). Considerable weight will be given to the admissions of Family. Family has filed Declarations of Barbara James-Petersen and Luz James which also are given consideration but which receive less weight than the admissions.

31. The ultimate factual issue has been admitted that Family has repeatedly violated the Commission's rules with respect to the operation of its AM and FM stations on St. Croix. Thus, with respect to the Bureau's Motion, there is no genuine issue of material fact that is left to resolve by hearing. Similarly, in view of the universal admissions by Family of the Bureau's detailed factual allegations, there is no genuine issue of material fact for Family to prove. The only remaining questions concern law, policy, and the equities as to whether this record requires license revocation and/or forfeiture.

32. The evidence overwhelmingly supports findings and conclusions of serious violations. First, there is an established pattern of a lack of candor. In two separate responses to the Commission, Family falsely stated that its move to an unauthorized location occurred because a hurricane had damaged its authorized facilities, thus warranting the move. However, Family knew that its move from its authorized site did not result from hurricane damage but followed eviction for unpaid rent. Thus, Family's statements blaming Hurricane Lenny or Hurricane Marilyn were false and were known by Luz James to be false. Accordingly, the evidence shows that Family intentionally and repeatedly misrepresented material facts. See David Ortiz Radio Corp. v. F.C.C., 941 F.2d 1253, 1260 (D.C. Cir. 1991); Fox River Broadcasting, Inc., 93 F.C.C. 2d 127, 129 (1983).

33. There also is a demonstrated disregard for the public safety. From August 19, 1997, up to and including April 13, 2000, Family did not have a fence that completely enclosed the WSTX(AM) tower. In some instances, there was no fence whatsoever. In other instances, a fence existed, but it had an opening that permitted access to the antenna. Family violated §73.49 of the Commission's rules and exposed the public to danger by allowing unimpeded access to the WSTX(AM) antenna. Also, Family did not have EAS capability in violation of §11.35. These violations occurred despite the Commission's agent having informed Family on multiple occasions of its shortcomings. See KYOO Communications, Forfeiture Order, DA 01-1103, released May 1, 2001 (Enforcement Bureau); Arnold Broadcasting Company, Inc., Forfeiture Order, 16 F.C.C. Rcd 267 (Enforcement Bureau), review granted in part, denied in part, FCC 01-197, released July 5, 2001. Family repeatedly failed to respond to NOV's in violation of §1.89(b) of the Commission rules which requires written answers within ten days. See Donald W. Kaminski, Jr., Notice of Apparent Liability for Forfeiture, DA 01-1192, released May 14, 2001 (Enforcement Bureau); American Radio Brokers, Inc., Forfeiture Order, 15 F.C.C. Rcd 19712 (Enforcement Bureau 2000), recon. denied, DA 01-811, released April 3, 2001 (Enforcement Bureau).

34. The legal conclusions drawn from this record demonstrate that Family is not qualified to remain a Commission licensee and that its licenses should be revoked. Truthfulness and reliability, the prerequisites for operating a broadcast station in the public interest, are lacking. See Policy Regarding Character Qualifications in Broadcast Licensing, 102 F.C.C. 2d 1179 (1986). It cannot be ignored that Family has repeatedly deceived the Commission, ignored Commission correspondence, operated its stations at variance with the terms of their licenses, and failed to comply with rules established to promote public safety. The Bureau has made its case that Family cannot be trusted to be truthful with the Commission or to operate its stations in accordance with the Communications Act and Commission rules or with a genuine concern for public safety. Under these circumstances, revocation of Family's license should be the remedy.

See Chameleon Radio Corporation, 13 F.C.C. Rcd 13549 (1998), recon. denied, 15 F.C.C. Rcd 24173 (2000), appeal pending, No. 00-1546 (D.C. Cir. December 28, 2000); Center for Study and Application of Black Economic Development, 10 F.C.C. Rcd 2836 (Rev. Bd. 1995), recon. denied, 10 F.C.C. Rcd 6069 (Rev. Bd. 1995), review denied, 11 F.C.C. Rcd 1144 (1996); Catoctin Broadcasting Corp. of New York, 2 F.C.C. Rcd 2126 (Rev. Bd. 1987), aff'd in part, 4 F.C.C. Rcd 2553, recon. denied, 4 F.C.C. Rcd 6312 (1989); Mid-Ohio Communications, Inc., 104 F.C.C. 2d 572 (Rev. Bd. 1986), review denied, 5 F.C.C. Rcd 940, recon. dismissed in part, denied in part, 5 F.C.C. Rcd 4596 (1990).

Family's Arguments in Opposition to Revocation

35. Family contends that notwithstanding its damaging admissions that justify revocation, all future problems can be rectified by removing control from Luz James and transferring corporate control to other members of the Luz James family. To give assurance that Family will comply in the future, Family is offering to remove Luz James by assignment of ownership to members of his immediate family. The Commission generally does not allow the target of a revocation proceeding to sell or assign broadcast stations to a third party before the proceeding is favorably resolved. However, there are three exceptions to that policy, each of which, Family argues, should apply here.

36. The first exception is the Minority Distress Sale policy which permits a licensee whose license has been designated for revocation hearing to assign the license prior to the commencement of the hearing to a minority controlled entity. Martin W. Hoffman, 15 F.C.C. Rcd 22086 (2000). Here, there would be an analogous transfer of control from the wrongdoing Luz James to Luz James' children. The Presiding Judge is aware that Barbara James-Peterson and her siblings are minorities, *i.e.*, African-Americans.¹³ However, there was no assignment completed before the commencement of this proceeding and the Presiding Judge has no authority over a transfer application which is within the authority delegated to the Mass Media Bureau to decide.

37. The second exception is the Second Thursday doctrine. Second Thursday Corp., 22 F.C.C. 2d 515 (1970); 25 F.C.C. 2d 112 (1970). That policy permits a sale in the context of a bankruptcy where the wrongdoing party does not benefit from the sale. Here, the proposed transfer of stock to the children of Luz James is represented to be an outright gift. Therefore, there is no evident monetary benefit to the wrongdoer and the proposed transfer is, to that extent, consistent with the Second Thursday doctrine. But there is no trustee to assure that station income is not used to repay debts incurred by Luz James or for other personal expenses.

¹³ The Presiding Judge attended the deposition of Ms. James-Peterson, taken on May 10, 2001 at Commission headquarters, to assess demeanor of Family's key witness in anticipation of motions for summary decision. However, there are no demeanor findings required on this uncontroverted record.

38. In a third exception, Family cites an unusual case in which the Commission permitted a wrongdoer to transfer stock to third persons other than his parents, wife and children. In sorting out the Thomas Root imbroglio, the Review Board conditionally upheld a decision by an administrative law judge renewing the license of an FM broadcast station where Root, a former principal, had been sentenced to a lengthy prison term for serious broadcast-related felonies. Petroleum v. Nasby Corporation, 10 F.C.C. Rcd 6029 (Rev. Bd. 1995). The renewal was granted upon condition that the disqualified wrongdoer, who was not involved in station operations, would transfer to unrelated persons his stock, the stock of his children, and the stock beneficially owned by other family members. The Review Board specifically decided not to permit stock retention by members of the Root family and would grant renewal only upon complete divestiture of Root stock to unrelated third parties. Id. at 6033. And the Commission would accept that result, only after the case was remanded to the judge for further findings on Root's surrender of control. Petroleum v. Nasby Corporation, 11 F.C.C. Rcd 3494 (1996). Nashby does not appear to favor Family's solution for an interfamily transfer.

Family's Arguments Considered and Rejected

39. Family concedes that except for mitigating circumstances which focus on a contemplated transfer of control, the multiple violations found in this case "would clearly require revocation of the licenses" that are in issue. Family argues that the Commission will consider its pending assignment application and decide whether the assignment should be permitted under one of the exceptions to a transfer while this proceeding is pending, citing LaRose v. F.C.C., 494 F.2d 1145 (D.C. Cir. 1974). That case involved a trustee in bankruptcy assigning a license under a supervised bankruptcy sale to pay off legitimate creditors. The license was challenged in a renewal proceeding wherein serious violations of the Commission's rules were alleged. The court found that under the Second Thursday doctrine, the Commission would need to rule on the qualifications of the assignee and that denial of a license renewal would not moot the assignment issue. Id. But in this case, that determination would be made outside of this adjudicated hearing by the Mass Media Bureau as the Commission's designee. And in any event, in this case there is no adjudicated bankrupt, no trustee, no receiver and no rights of creditors to be protected. Therefore, the LaRose decision is not applicable here.

40. The common thread running through the Bureau's opposition to all three theories (Minority Distress Sale, Second Thursday, Nasby holding) is the lack of sufficient evidence in this record to conclude that the assignees, who are the children of Mr. Luz James, will be independent of their parents' control or influence. Other circumstances noted by the Bureau in questioning control are the failure or inability of Ms. James-Petersen to meet routine discovery requests, her lack of personal knowledge about Family's current net worth, its financial history, mortgage debt, or outstanding loans from stockholders. (Deposition of James-Petersen at Tr. 68-70.) She is unable to show on this record that as station manager, president and stockholder of a restructured Family, she will be independent of Luz and Asta James.

41. The factors raising doubts with respect to independence of the contemplated assignees also create genuine issues of material fact that remove Family as a candidate for a favorable summary decision on revocation. Cf. Nasby Corporation, supra which required a

remand to determine whether Mr. Root might be able to influence the licensee's affairs notwithstanding an assignment to non-family assignees. A particularly significant issue of fact here is with respect to the independence that Ms. James-Petersen would be able to exercise as a chief operating officer in view of the continuing dependence of the stations on financial support from Asta James. It is significant that Asta James has given no more than a parole assurance to provide funds to improve and operate the station. There is no way of determining without further discovery and a hearing whether that loose financial arrangement might lead to residual control by the parents. See Nasby, supra 11 F.C.C. Rcd at 3495-96.

42. Finally, substantial 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, and 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.

Overall Conclusions

43. This record provides the highest quality of proof. It is complete with respect to each issue. It establishes that the stations were operated by Luz James in disregard of the core responsibility of maintaining uninterrupted broadcasting. There was also a demonstrated lack of care for protecting the public from harmful emissions or for providing an emergency alert system. The highest licensee duty is constant candor with the Commission. In violation of that duty, Luz James was purposefully and repeatedly providing the Commission with false and misleading reports and information on significant subjects such as transmitter location and hurricane damage in an effort to cover up an unauthorized site. Luz James even used the hurricane tragedies of a battered St. Croix to hide a site eviction for nonpayment of rent. Granted, those hurricanes that were beyond the control of any broadcaster would likely cause some temporary disruption. But even allowing for such acts of God, Family's violations were persistent and intentional and the absence of candor was pervasive.

44. As a result, significant portions of the Commission's enforcement budget were spent on two Family proceedings which were assigned to administrative law judges. In 1996, the Mass Media Bureau designated Family's license for a renewal proceeding based on its discontinued broadcasting. Former Presiding Judge Edward Luton honored the pledge of Family to continue operations in compliance with Commission rules and granted Family a favorable summary decision. Family Broadcasting, Inc., 12 F.C.C. Rcd 18700 (Adm. L. J. 1997).

However, in doing so, he noted with dissatisfaction the prolonged period of station silence that was never sanctioned. Instead, in open defiance of the Commission, Family had never applied for an authorization to go off the air.

45. In this second enforcement proceeding, Family has shown that it never gained true appreciation for its broadcast licenses and again defied the Commission with self-help measures, failures to respond to inquiries, and lying about site locations. The mitigating circumstances noted and explicated above cannot overcome Family's demonstrated abandonment of the public interest.

46. Finally, for purposes of this Summary Decision, the repeated wrongdoings and intentional untruths of Luz James cannot be confidently corrected in the future by a dubious assignment of control to children who will need to rely on the continuing financial generosity and wherewithal of the wife of Luz James.¹⁴

47. It is concluded that there are not mitigating circumstances that are sufficient to offset the purposeful violations attributable to Luz James and Family as found by this record.

Forfeiture Not Appropriate

48. The Bureau argues that although the violations decided against Family merit license revocation, the impact of the violations were not sufficiently catastrophic in their consequences or potential consequences to warrant a forfeiture. The Presiding Judge concurs in not assessing a forfeiture in this case. See Oil Shale Broadcasting Co. (KWSR), 68 F.C.C. 2d 517, 528 – 29 (1978) (unlawful conduct held not worthy of forfeiture). Cf. Abacus Broadcasting Corp., 8 F.C.C. Rcd 5110, 5113 (Review Bd. 1993) (deceit softened somewhat where primary motive was to gain a tactical advantage). These cases are not directly on point but are relevant to discretion and are relied on by the Presiding Judge as support for exercising his discretion in not assessing a forfeiture here. See Standards for Assessing Forfeitures, 7 F.C.C. Rcd 5339, 5340 (1992) (broad discretion in choosing remedies and sanctions).

49. The willful violations of Family could support a forfeiture. Compare David R. Price, 7 F.C.C. Rcd 6550 (1992), recon. denied, 8 F.C.C. Rcd 2960 (1993) (revocation and forfeiture of \$8,000 where violations included failure to keep tower lighted that was near an airport). However, in view of the finality of revocation which effectively removes Luz James and Family from Commission licensing, and in view of the age and adverse health of Luz James and the mitigating circumstances of hurricane tragedies on St. Croix, and in view of the fact that the violations apparently did not result in monetary profit for this unsuccessful, small business, as a matter of discretion, a forfeiture shall not be assessed against Family Broadcasting, Inc. in this Summary Decision.

¹⁴ Family has raised the question of assignment as a defense to revocation and therefore to that extent it is addressed in this Summary Decision.

Rulings

Accordingly, IT IS ORDERED that the Enforcement Bureau's Motion for Summary Decision IS GRANTED.

IT IS FURTHER ORDERED that the Motion for Summary Decision filed by Family Broadcasting, Inc. IS DENIED.

IT IS FURTHER ORDERED that in view of the revocation of the licenses of Family Broadcasting, Inc. and the unique circumstances of this case, imposition of a forfeiture would not be appropriate and a forfeiture will not be assessed.

IT IS FURTHER ORDERED that the licenses for Stations WSTX(AM) and WSTX(FM), Christiansted, U.S. Virgin Islands ARE HEREBY REVOKED.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Administrative Law Judge

¹⁵ This Summary Decision will become effective and this proceeding terminated 50 days after its public release if exceptions are not filed within 30 days after its release and if the Commission does not review this ruling on its own motion. 47 C.F.R. §1.276 (d).