

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 )

### Appearances

*Daniel A. Huber, Esquire*, on behalf of Family Broadcasting, Inc.; and  
*James W. Shook, Special Counsel*, on behalf of the Enforcement Bureau

### INITIAL DECISION ON REMAND OF CHIEF ADMINISTRATIVE LAW JUDGE RICHARD L. SIPPEL

**Issued:** May 12, 2005

**Released:** May 13, 2005

### PRELIMINARY STATEMENT

#### Background

1. On February 8, 2001, the Commission commenced this proceeding to determine whether broadcast licenses held by Family Broadcasting, Inc. (“Family”) should be revoked, and whether an order of forfeiture should be issued against Family. *Order to Show Cause and Notice of Opportunity for Hearing*, 16 FCC Rcd 4330, *recon. denied*, 16 FCC Rcd 12810 (2001) (“OSC”).

2. All issues under the OSC were adjudicated by *Summary Decision*, ordering that the licenses for Stations WSTX(AM) and WSTX-FM be revoked. *Family Broadcasting, Inc.*, 6 FCC Rcd 15619 (Admin. L.J. Sippel 2001) (“*Summary Decision*”). The stations were being operated by Family’s president, Gerald Luz James (“Luz James”), in disregard of a licensee’s “core responsibility” to provide uninterrupted broadcasting. It was found that Luz James had violated the licensee’s duty of candor to the Commission in “purposefully and repeatedly” providing false and misleading reports and information on basic station maintenance such as transmitter location, extent of hurricane damage, and nonpayment of rent. It was also found that Luz James and Family Broadcasting, Inc. had failed to take care to protect the public from harmful emissions with adequate fencing, and had failed to provide an emergency alert system (“EAS”). *Id* at 15634.

3. The *Summary Decision* also determined that a proposed transfer of control of Family's licenses from its principal stockholders, Luz James and his wife, Asta James, to their four adult children, was not permissible (Files BTC-20010315AAJ and BTCH-20010315AAK) ("Transfer Applications"). See *Summary Decision*, 16 FCC Rcd at 15635-36 (repeated wrongdoings and untruths of Luz James cannot confidently be corrected by assignment to children who rely on continuing parental generosity).

4. The *Summary Decision* did not impose any forfeiture, and the Commission did not reject that ruling on forfeiture. *Summary Decision*, 16 FCC Rcd at 15635, *aff'd.*, 17 FCC Rcd 6180 (2002).

5. The Commission procedurally set aside the *Summary Decision* to the extent that it revoked Family's licenses, concluding that in light of the proposed transfer of control from Luz and Asta James to their adult children, revocation should not occur without further hearing to consider whether grant of the Transfer Applications met Commission standards and would serve the public interest. *Family Broadcasting, Inc., Memorandum Opinion and Order and Hearing Designation Order*, 17 FCC Rcd 6180 (2002) ("HDO").

6. The Commission affirmed the *Summary Decision's* conclusion that revocation was warranted if Luz James remained in control. The Commission also affirmed the *Summary Decision's* substantive findings and conclusions that Family had misrepresented facts and/or lacked candor and had violated numerous Commission rules in its operation of its stations, holding that:

*Mr. Luz James's removal as officer, director and principal stockholder does not moot the disqualifying impact of his intentional misrepresentation and cavalier disregard of basic public interest responsibilities.*

17 FCC Rcd at 6187. (Emphasis added.)

### Remand Issues

7. The Commission then remanded to the Presiding Judge the following issues:
- (a) To determine whether, if the transfer of control applications are approved, Family Broadcasting Inc. will be influenced or controlled by Gerard Luz James;
  - (b) To determine whether transferors Gerard and Asta Luz James, as either creditors or debtors of Family Broadcasting Inc. or in any other capacity, will benefit, directly or indirectly, if the transfer of control applications are approved;

- (c) To determine whether transferee Barbara James-Petersen, in her capacity as general manager from July 1998 until March 2001, misrepresented facts and or lacked candor with the Commission concerning the operation of WSTX(AM) and WSTX-FM;
- (d) To determine whether transferee Barbara James-Petersen, in her capacity as general manager from July 1998 until March 2001, willfully or repeatedly operated WSTX(AM) and WSTX-FM at variance from the terms of their licenses;
- (e) To determine whether transferee Barbara James-Petersen, in her capacity as general manager from July 1998 until March 2001, willfully or repeatedly violated Sections 1.89 and/or 73.1015 of the Rules by failing to respond to official Commission correspondence and inquiries;
- (f) To determine whether transferee Barbara James-Petersen will operate WSTX(AM) and WSTX-FM independently of any control or influence from transferors Asta and Gerard Luz James;
- (g) To determine whether transferee Barbara James-Petersen will have sufficient financing and managerial capacity to ensure enclosure within an effective locked fence of WSTX(AM)'s antenna as required by Section 73.49;
- (h) To determine whether transferee Barbara James-Petersen will have sufficient financing and managerial capacity to ensure the installation and maintenance of operational EAS equipment for Stations WSTX(AM) and WSTX-FM as required by Section 11.35;
- (i) To determine whether Family Broadcasting, Inc. under the direction of transferee Barbara James-Petersen will operate WSTX(AM) and WSTX-FM in accordance with the Rules, the Communications Act, and the terms of their authorizations as required by Sections 73.1350(a), 73.1560(a), 73.1560(b), and 73.1690(b); and
- (j) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether approval of the transfer of control application will serve the public interest.

17 FCC Rcd at 6191-92. The burdens of proceeding and proof as to each issue were assigned to Family. *Id.*

### Minority Distress Applications

8. On February 24, 2003, Family filed a Petition for Extraordinary Relief seeking to use the Minority Distress Sale Policy,<sup>1</sup> to assign Family's licenses to Caledonia Communication Corporation, an entity alleged to have minority-control, and claiming to be a qualified distress sale purchaser. The petition was filed after release of the *HDO*, and before any testimony was taken. The petition was granted, and the minority distress applications were filed on or about March 4, 2003. See *Order* FCC 03M-09, released February 26, 2003.

9. The Chief, Audio Division, Media Bureau dismissed the Family/Caledonia transfer applications (BAL-20030304AAX and BALH-20030304AAW). See Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau to Daniel A. Huber, Esq. (Oct. 27, 2003) ("Chief's Letter"), determining that Family and Caledonia have not demonstrated a public interest in permitting licensee that has engaged in serious misconduct by violating numerous Commission rules, to receive money for the assignment and sale of Family's stations. There was no dispute that through Luz James, Family "repeatedly deceived the Commission, ignored Commission correspondence, and operated stations at variance from their authorizations, and repeatedly violated other Commission rules, including rules that are designed to protect the public from exposure to RF radiation." *Id.* Family and Caledonia sought Commission review of the Chief's denial.

### Remand Hearing

10. On March 16, 2004, the Presiding Judge conducted an evidentiary hearing on the remand issues designated in the *HDO*, wherein Family and the Bureau presented witness testimony and documentary exhibits.<sup>2</sup> There also was received into evidence two post-hearing exhibits sponsored by the Bureau. *Order*, FCC 04M-11, released March 31, 2004. The Presiding Judge thereafter stayed post-hearing briefing dates in order to accommodate an appeal to the Commission of the Media Bureau Chief's denial of distress sale relief. See *Order*, FCC 04M-16 (rel. Apr. 30, 2004); *Order*, FCC 04M-21 (rel. July 1, 2004); *Order*, FCC 04M-29 (rel. Oct. 1, 2004); *Order*, FCC 04M-40 (rel. Dec. 6, 2004). A final deadline of April 4, 2005, was set for submission of proposed findings of fact and conclusions of law, in the event that the Commission had not by then disposed of the case. See *Order*, FCC 04M-40 (rel. Dec. 6, 2004), *erratum* (Jan. 12, 2005). The Commission has not yet ruled on the Family/Caledonia applications for review. Nor has the Commission stayed this proceeding pending its review.

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<sup>1</sup> The Commission policy is set forth in *Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979, 983 (1978). See also *Commission Policy Regarding Advancement of Minority Ownership of Broadcasting*, 92 FCC 2d 849, 851 (1982).

<sup>2</sup> Family exhibits are referred to as (Family Exh. \_\_) and Bureau exhibits are referred to as (EB Exh. \_\_). Hearing transcript pages will be referred to as (Tr. \_\_).

### Family's Intentional Default

11. On April 4, 2005, the Enforcement Bureau filed timely its proposed findings of fact and conclusions of law, under *Order FCC 04M-40, supra*. Family defaulted and filed only a request for stay in lieu of proposed findings and conclusions. The fact that Family elected on its own to such a further stay on the deadline date, without even the courtesy of notifying OALJ, shows an intent to default on filing proposed findings and conclusions. In ruling on the motion, the Presiding Judge rejected arguments under the *Second Thursday*<sup>3</sup> doctrine (filing for bankruptcy before hearing to justify stay and assignment), and also rejected any "right" of Family to hereafter file, at its option, proposed findings of fact and conclusions of law.<sup>4</sup> See *Memorandum Opinion and Order*, FCC 05M-24, released April 22, 2005. Family's intentional default also shows that Family, under "management" of Ms. James-Petersen, is not willing or capable of compliance with Commission rules of practice.

### FINDINGS OF FACT

#### Family's Burdens of Proof

12. Family must demonstrate that if the Transfer Applications are granted and Family's licenses are transferred to the children, Luz James will not continue to influence or control the stations' business and operations, and Barbara James-Petersen, his daughter, will be able to operate the stations independent of any control or influence from Luz James. Ultimately, notwithstanding the demonstrated dominance of Luz James, an adjudicated wrongdoer, Family must demonstrate that under Ms. James-Petersen's direction, it will operate the captioned stations in accordance with the Communications Act, the Commission's rules, and the terms of the stations' authorizations. As found below, Family has failed to meet its burdens of proof on issues of control, and on related issues of failures to comply with Commission rules, and on operating the stations at variance from licensure. Consequently, a grant of the Transfer Applications cannot serve the public interest, they must be denied, and the stations' licenses must be revoked.

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<sup>3</sup> *Second Thursday Corp.*, 22 FCC 2d 515; 25 F.C. C. 2d 112 (1970).

<sup>4</sup> *Communi-Centre Broadcasting v. F.C.C.*, 856 F.2d 1551 (D.C. Cir. 1988).

13. Family also was assigned the burden of proving that Ms. James-Petersen, as general manager of the stations from July 1998 to March 2001, did not intentionally or willfully misrepresent facts or lack candor concerning the stations' operations, and did not willfully violate Sections 1.89 and/or 73.1015 of the Commission's rules by failing to respond to official Commission correspondence and inquiries.<sup>5</sup>

### **Family's History**

14. Family acquired Stations WSTX(AM) and WSTX-FM in September 1990. (EB Exh. 2 at 1; EB Exh. 3 at 1.) Luz James decided to purchase the stations after he had worked at them during the 1950s. (EB Exh. 4 at 81.) Ms. James-Petersen had no role in the stations' purchase. (Tr. 120-121.)

15. Before acquisition of the stations by her parents, Ms. James-Petersen resided in Maryland with her husband and three children. Shortly after her parents acquired the stations and Family became licensee, Ms. James-Petersen and her three children moved to St. Croix. Since returning to St. Croix, she has resided, rent free, with her parents. (Tr. 150-151; EB Exh. 4 at 90; EB Exh. 5.)

16. As of March 16, 2004, Ms. James-Petersen's children were 23, 17 and 14. The eldest is a student at Grambling State University. The youngest is and has been severely asthmatic, and suffers from hypertension. Ms. James-Petersen has no health insurance, and her parents pay for her son's medical care and prescription medications. (Tr. 157-158, 163.)

### **Family's Internalized Management**

17. On February 8, 2001, the Commission issued the *OSC*, under which the *Summary Decision* was issued. Upon issuance of the *OSC*, Luz James immediately resigned as president. He was succeeded by his daughter, Ms. James-Petersen as Family's president in March 2001. (EB Exh. 4 at 32.) Three younger brothers, Luz James, Jr., a St. Croix resident, Emmeth James, of New York, and Kelsey James, a physician in Kentucky, became nominal corporate officers. (EB Exh. 5 at 13-14.) None of the brothers is involved with the business or with operating the stations. (EB Exh. 4 at 33-35; EB Exh. 7 at 13, 19, 34; Tr. 96, 105.)

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<sup>5</sup> Because of the unremitting dominance of Luz James over his daughter Barbara James-Petersen, she will not be found by this fact-finder to have willfully or intentionally misrepresented or lacked candor in communicating with the Commission staff. Evidence of intent or willfulness on her part is light to lacking. Also, it is difficult to assign willfulness and intent when she is dependent on Luz James for daily sustenance and needed care for her sick child, and she is dominated by a "headstrong" father while acting as general manager of the stations.

18. Due to pressing personal reasons, Ms. James-Petersen was and is frequently away from St. Croix. From March 1 to April 10, 2001, she was in Washington, D.C. after her husband suffered a heart attack. She came to Washington, D.C. in May 2001 for her one-day deposition, remained in Washington, D.C., and returned to St. Croix in August 2001. She revisited Washington, D.C. in September 2001. She frequently travels here in order to obtain medical assistance for her son. She plans to one day return with her son to be near Children's Hospital. (Tr. 159; EB Exh. 4 at 8; EB Exh. 5 at 21.)

19. When in St. Croix, she is at the stations every day. "I'm there seven days a week at least eighteen hours a day." She suffers from migraine headaches, which kept her away from the stations for most of the time between November 2003 and March 2004. When she is not at the stations, Family's program director and production manager, Alva Clarke, conducts the stations' business. Ms. James-Petersen is present at the stations between six to eight hours on those days, when she is there. (EB Exh. 9 at 19-20, 140, 210; Tr. 167-169.)

### **Purchase Financing**

20. To purchase the stations, Luz James obtained a bank loan, secured by properties that he and/or his wife owned. (Tr. 102.) The bank has foreclosed on one of the properties and the matter is now in court. (Tr. 113.) Ms. James-Petersen believes that foreclosure satisfied the Family's debt to the bank, and stated that one of her parents' other properties may be subject to a security interest. (Tr. 119.) She has no knowledge of whether Family paid off its borrowing in order to buy the radio stations. Luz James tells her only what he wants to disclose. She has not been given any documents related to the foreclosure litigation, despite asking. (EB Exh. 9 at 221-22.) It is clear that Ms. James-Petersen has no control over the working capital of Family's broadcast stations.

### **Stock Ownership**

21. Family sold shares of its stock to family and friends of Luz and Asta James, who collectively hold approximately 7% of the voting stock. (Tr. 129.) Family actually issued shares of stock to each "outside" shareholder, but it never formally issued shares of stock to Luz James or his wife, who control ninety three percent of the stock. (Tr. 132-33.) Family also raised money through shareholder loans, and corporate tax work papers indicate more than \$400,000 in loans from stockholders. Ms. James-Petersen does not know to whom these obligations may be owed, or if Family even owes any shareholders any money. (EB Exh. 4 at 39, 42-43.) It can only be inferred that the records of Family's ownership and its liabilities are in a state of disarray.

### James-Petersen's Experience

22. Ms. James-Petersen worked at the stations from September 1990 to August or September 1992. Although she holds the titles of president and general manager, her father controls both stations through pervasive *de facto* control. During 1990-1992, Family only paid the "general manager" her salary sporadically. In 1992, she left Family because she did not feel comfortable with the limited role her father had given her. From 1993 to 1997, she went to work for her brother, former Senator Gerard Luz James, Jr., and served as his chief of staff. Before returning to the stations, she conducted legal research for her father. (Tr. 152; EB Exh.4, at 7, 68; EB Exh. 7 at 18; EB Exh. 9 at 10-11.)

23. While working for her brother, Family was evicted from the site that was authorized for Station WSTX-FM. The eviction was due to non-payment of rent. During the mid-1990s, the station was periodically silent, and its license was renewed by the Commission in 1997, only after a hearing. *See Family Broadcasting, Inc.*, 11 FCC Rcd 18700 (Admin. L.J. Luton 1997). Upon resumption of operations in January 1997, Family simulcast its FM station with its AM Station from the latter's site, a self-help operation that was not in accord with FCC licensure. (EB Exh. 2 at 8, 47; EB Exh. 3 at 4-5; EB Exh. 8 at 64.)

### FCC Inspections

24. Family's stations were inspected twice in 1997. Both stations were found to be operating at significant variances from their license authorizations, *i.e.*, unlawfully. Station WSTX-FM was operating from an unauthorized site and at 100 Watts, which was 0.2% of its authorized power. Family had been evicted from its authorized site several years earlier. (Family Exh. 1 at 2.) Station WSTX(AM) was operating at 2,800 Watts, which was 56% of its authorized power. Station WSTX(AM) also was using an antenna that was 36 meters high, significantly below its authorized height. The FCC inspector found that Family had no operable EAS/EBS equipment installed, and had failed to enclose its antenna within a secured fence. (EB Exh. 1 at 1-2; EB Exh. 2 at 50-55)

25. The FCC sent written results of the first inspection to Luz James, advising him of the violations. The notification included checklists for each station to achieve compliance. Luz James acknowledged to the inspector that he had received this official FCC correspondence. But he did not submit a progress report on compliance, as requested. (EB Exh. 1 at 2; EB Exh. 2 at 49.)

26. After the second inspection, Family received two notices of violations ("NOVs") that were sent by certified mail. Family received both NOVs. But the FCC received no reply to either. (EB Exh. 1 at 3; EB Exh. 2 at 10; EB Exh. 3 at 6.)



### Ms. James-Petersen As GM

27. In June – July 1998, Ms. James-Petersen returned to the stations as general manager. (EB Exh. 4 at 7; Tr. 134.) Her return followed a meeting involving herself, her brother, Luz James, Jr., and Alva Clarke in which all agreed that Luz James should curtail his involvement with the stations. Luz James agreed to reduce his role. Ms. James-Petersen was to supervise daily operations, ensure that personnel reported on time, and see that commercial spots were aired as scheduled. (EB Exh. 8 at 66-70; EB Exh. 9 at 8-9, 58-60, 62, 63.) Yet her father remained in *de facto* control and clearly was and is “calling all of the shots.”

### Subsequent FCC Inspections

28. On September 8, 1998, the FCC returned for another inspection. Ms. James-Petersen informed the inspecting agent that she was the new general manager and would be assuming day-to-day operations. She was informed that previous inspections had discovered stations operating below authorized power. (Tr. 138.) Again, it was found that the AM station was operating at only 45% of its authorized power. The AM facility utilized an antenna that was far below its authorized height. The FM station was still operating at a mere 0.2% of its authorized power, and it was broadcasting from an unauthorized site. EAS equipment had been powered down and had not been in operation since July 17, 1998. In plain view, the chain link fence that surrounded the AM antenna for the purpose of protecting the public had a hole in it. (EB Exh. 1 at 3-4.)

29. On April 13, 2000, the stations were again inspected. Luz James had undergone heart surgery in January, was recovering at the time of the inspection, and funds previously earmarked for repairing the AM station’s tower had been used for his surgery. She and her brothers were about to take over full operation of the stations. EAS equipment was found again to be malfunctioning, though she had called in an engineer to fix the problem. Station WSTX-FM continued to operate at 0.2 percent of authorized power from the same unauthorized site, while Station WSTX(AM)’s power also was operating far below its authorized power. And without excuse, the dangerous opening in the antenna fence had not yet been repaired. (EB Exh. 1 at 4-5; EB Exh. 4 at 62.)

30. NOVs were issued for violations at both stations, sent by certified mail and by facsimile. (EB Exh. 2 at 76-81.) Ms. James-Petersen’s signature appears on the certified mail return receipts. But the FCC did not even receive a response to the NOVs. (EB Exh. 1 at 6.) Ms. James-Petersen, in a suspended state of unawareness, claimed that she did not realize until receipt of the NOVs that Station WSTX-FM was not operating at its authorized site, or that it was operating below its authorized power. (EB Exh. 4 at 58-59.)

31. On May 15, 2000, Family sought special temporary authorizations (“STAs”) to permit nonconforming operations. Luz James prepared and signed the letters. (EB Exh. 2 at 15-16, 82-89; EB Exh. 3 at 9.)

32. Family received STAs to operate the stations at variance with authorizations, and Commission records reflect that since May 2000, STAs have either been granted or requested. (EB Exh. 2 at 90-93; Official Notice.)

33. Following issuance of STAs, the Enforcement Bureau followed up with a letter of inquiry which focused on possible misrepresentations contained in the STA requests. A copy of the Bureau’s letter was sent by facsimile to Ms. James-Petersen. She received it but did not respond. (EB Exh. 2 at 17, 94-97.) Luz James was supposed to respond, but he did not do so. (EB Exh. 9 at 52.) This represents another default.

### **Findings On Remand Issues**

#### **Issue (a)**

#### **(Family will continue to be controlled by Luz James)**

34. Ms. James-Petersen learned during her lifetime that her father, Luz James, is “extremely headstrong.” She pointedly observed, under oath, that “he can be a slick one,” and that he is “a male chauvinist”. (EB Exh. 9 at 56, 79; Tr. 131, 157.) Luz James even boasted -- “in my family, I control my family.” (EB Exh. 5 at 175.)

35. Luz James is now at the stations as an announcer and to play his selected music. (Tr. 91-92.) He also functions as a salesman. (Tr. 155-56.) Selected programmers continue to be charged less than regular commercial programmers, a favoritism which Luz James has no intention of changing. And station employees still call Luz James to resolve problems, even if Ms. James-Petersen, the general manager, is present at the stations. (Tr. 93-94; EB Exh. 5 at 65, 71; EB Exh. 9 at 60.)

36. Regular business is conducted at the home of Luz and Asta James, who have ready access to all books and records. Even payroll records and advertising contracts are maintained at home. These records are kept in a filing cabinet and in boxes, unsecured by locks. (Tr. 87-89.) Bills are sent to a post office box for which Ms. James-Petersen and Luz James have keys. Luz James assists with the stations’ finances, and will ask her if there is enough money to cover payroll and bills. (Tr. 95-98, EB Exh. 9 at 163.) Luz and Asta James remain as signatories on the Family checking account. (EB Exh. 9 at 204-05, 240.)

37. These are all classic *indicia* of *de facto* control. The Commission has held that “control encompasses any form of actual or legal control over basic operating policies.” *Trinity Broadcasting*, 14 FCC Rcd 13570, 13603 (1999). And under the Commission’s Regulatory policy:

[T]he word control as used herein is not limited to majority stock ownership, but includes *actual working control in whatever manner exercised.*” (Emphasis added.)

47 C.F.R. § 73.3555 n. 1. The evidence of this hearing record clearly establishes that one of the most important *indicia* of *de facto* control, working capital or “money,” is permeating the relationships of Ms. James-Petersen to her parents, Luz and Asta James, both personal and business. Neither she or her children, nor the stations would survive without continued financial support. Therefore, it is apparent that Family and Ms. James-Petersen would continue to be influenced and/or controlled by Luz and Asta James if the Transfer Applications are granted.

#### **Issue (b)**

#### **(Luz and Asta James may benefit financially from transfer of control)**

38. Family apparently owes over \$100,000 to stockholders who have made loans to the corporation. (EB Exh. 4 at 137, 153.) Ms. James-Petersen testified that the last federal tax return filed was for 1997 or 1998. (Tr. 99.) As of January 2003, Luz James had information concerning Family’s debt that he had not shared with her. (EB Exh. 9 at 170.) Luz James never explained which debts Family owed that were related to the purchase of the stations. (Tr. 102.) The evidence shows that only Luz James knows the true financial status of Family, and he is not sharing.

39. However, such evidence is too remote and too speculative to support a specific finding that Luz and Asta James will wrongfully benefit financially in any way from a transfer of control. If there be some incidental benefits, these would be difficult to prove, and there is no violation of the Act or Commission rule shown or alleged. Findings under this issue would be speculative, would detract from the main issue of control, and could result in confusion. *See* FRE 402.

**Issue (c)****(Ms. James-Petersen never intentionally misrepresented facts or lacked candor with the Commission)**

40. Ms. James-Petersen was unaware that she was misrepresenting when she informed the staff that the stations constitute the only valuable asset held by her father for the benefit of his children and grandchildren. (Family Exh. 1 at 2 and Exh. 2 at 1.) Later she acknowledged that Family's stations are not the only valuable asset held by her father for the benefit of his children and grandchildren. She testified truthfully that her parents own several other parcels of real estate on St. Croix and intend to will the properties to their children and grand-children. (Tr. 126.) Her explanation for having represented that the stations as the only valuable asset was reasonable if she "was referring to businesses as opposed to real estate property that [her] parents owned." Her explanation is plausible, and she corrected the record.

41. A misrepresentation or lack of candor requires "an actual intent to deceive the Commission." *See Amendment of Section 1.17*, 18 FCC Rcd 4016, 4020 (2003). "Material" is defined as "important" or "having influence or effect;" and a "material misrepresentation is defined as "one relating to matter which is so substantial or important as to influence the party to whom it is made." 18 FCC Rcd at 4020 n. 4. What is necessary to find in order to have "disqualifying misconduct" is "the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity," the *sine quae non* factors necessary for finding fraudulent intent. *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980). These factors are not found with respect to the misstatement of Ms. James-Petersen concerning to her parents' estate properties.

42. A mere statement in a revocation proceeding that she is "unaware" of having misrepresented would certainly not influence or impress any prosecutor or decision-maker, and therefore no fraudulent intent is found. Nor does the fact that Ms. James-Petersen misspoke about parental estate assets prove a misrepresentation or absence of candor, even though the information may not be accurate. It is plausible that Ms. James-Petersen was mentally focused on assets that are only broadcasting assets of Family, not assets which are the universe of her parents' estate. Certainly, the staff was at no time induced to take or defer regulatory action based on her erroneous information concerning these "assets." And ultimately, when pressed on the issue, Ms. James-Petersen disclosed all the assets that she knew of, including the real estate holdings of her parents.

43. In addition, the argument for finding misrepresentation or lack of candor on the part of Ms. James-Petersen misses the necessary ingredients of deliberateness and fraudulent intent, particularly where as here, the influence and control of Luz James extended over everything that the stations' general manager said and did relating to the stations. The lack of evidence of concealment or intent to conceal, and observations of demeanor, preclude adverse findings of intentional misrepresentation or lack of candor on the part of Ms. James-Peterson.

**Issue (d)****(Ms. James-Petersen operated stations at variance from licensure)**

44. Luz James denied that his daughter had responsibility to correct matters found deficient by FCC inspections. (EB Exh. 5 at 162.) But she was general manager of record when the inspections occurred in 1998 and in 2000, when both stations were operating under serious variances. (EB Exh. 1 at 3-4.) There were “some things that needed to be rectified,” and she knew that both stations were operating below authorized power. (Tr. 136-138.) Yet when the stations were reinspected in 2000, no improvements were found, because none had been made. It is officially noticed that Hurricane Lenny had caused damage to Station WSTX(AM). Yet, Ms. James-Petersen acknowledged that she had not taken steps to operate the stations at licensed power. (Tr. 142.) To her credit, in the final analysis, on her watch, Family received STAs permitting variances with authorizations. (EB Exh. 2 at 90-93.) And official notice establishes that Commission records reflect that STAs have either been granted or requested since May 2000. This evidence indicates that Ms. James-Petersen was trying to comply, *albeit* not successfully.

45. Ms. James-Petersen shares responsibility with her father for these variances. This record is replete with evidence that Luz James controls everything and that it is impossible to ascribe responsibility to his daughter for not making costly repairs and maintenance. Ms. James-Petersen might commit Family to spend money or incur financial obligations with respect to station equipment only with Luz James’ approval and direction. In lacking financing, she was not directly responsible for failures to comply with Family’s licensure authorizations involving capital expenditures. She was, however, at all times vicariously responsible as president and general manager for conducting broadcast operations in accordance with the Act, the rules, and the terms of authorization.

**Issue (e)****(Ms. James-Petersen failed to respond to FCC inquires on violations)**

46. Family received NOV’s dated May 1, 2000. (EB Exh. 2 at 15, 76-81.) While admitting that she received a copy of Bureau letter of inquiry addressed to Luz James, she asserted that she gave the letter to her father and assumed that he would take care of the matter. (Tr. 135.) Family never responded to the Bureau’s letter. (EB Exh. 2 at 17, 94-97; EB Exh. 3 at 9-10.)

47. Based on the evidence of Luz James' control, Ms. James-Petersen would be expected to have cleared all FCC communications with her father, Luz James. She gave the letter to him, as would be expected. Knowing his past non-diligence, Ms. James-Petersen was negligent in not pursuing the matter with her father to make a timely response. But she could not control what Luz James stated in his responses, or when he would reply. The primary wrongdoer in failing to respond to FCC inquiries was the *de facto* manager, Luz James. His daughter was not in a realistic position to control Family's answering of NOV's.

#### **Issue (f)**

##### **(Ms. James-Petersen cannot independently operate stations)**

48. Luz James and his wife pay stations' expenses as needed. (Tr. 95.) Ms. James-Petersen acknowledged that "when we fall behind, then, you know, she [Mrs. James] would step in and she would assist." (Tr. 95.) She intended to move the stations' checking account to a different bank and to specify herself and her brother Luz James, Jr. as the account's only authorized signers. But her parents still have signature authority on the current Family checking account. (EB Exh. 9 at 204-05.)

49. This evidence is definitive of "actual working control" exercised through parental dictation, and particularly parental financing of necessary working capital. 47 C.F.R. § 73.3555 n. 1. This *de facto* control over working capital, in addition to the day to day controlling conduct of a "headstrong" Luz James, shows that working control will remain with Luz James after any formal assignment to the children of Luz and Asta James.

#### **Issue (g)**

##### **(Ms. James-Petersen has no independent capacity to repair and maintain effective antenna fence)**

50. During inspections in 1998 and in 2000, an FCC agent discovered openings in a protective fence that surrounded the WSTX(AM) antenna. Because Luz and Asta James control the working capital necessary for Family to make such repairs, Ms. James-Petersen has no capacity to make necessary capital repairs independent of her parents. Ms. James-Petersen was general manager in charge of the stations' operations and maintenance, and by virtue of her office, she was responsible. But the necessary financing is under control of Luz James, and he was the person in control who had the ability to make fence repairs.

**Issue (h)****(Ms. James-Petersen has no independent capacity to install and maintain EAS equipment)**

51. The FCC inspection of 1998 found EAS equipment that was not operating, and the inspection of 2000 found the same EAS equipment to be malfunctioning. (EB Exh. 1 at 3-5.) It will be necessary for Luz James to provide financing for installing and maintaining EAS equipment. Ms. James-Petersen could not do so without authorization, cooperation, and financing of Luz James. Nothing will correct Family's malfunctioning EAS equipment by an assignment, because the condition of EAS equipment still will depend upon Luz James.

**Issue (i)****(Ms. James-Petersen cannot assure operating in accordance with Commission rules)**

52. Ms. James-Petersen testified that she did not know whether Family was operating its stations with approved STAs, a matter that she felt was "up to the attorneys to handle." (Tr. 146.) Commission records reflect that Family obtained STA extensions which were valid from June 12, 2000, through November 17, 2004. Family sought STAs by letters dated May 23, 2003. These STAs granted on May 17, 2004, were designated to expire on November 17, 2004. Commission records also reflect that Family sought STAs on March 14, 2005. The Media Bureau granted an STA on March 22, 2005, that was designated to expire on September 22, 2005. The March 2005 STA did not cover the period between November 17, 2004 and March 2005. Therefore, there was a lapse of several months during which Family was in technical violation. (Official Notice.) Ms. James-Petersen was vicariously responsible for the lapses.

53. Results of inspections conducted by FCC investigators since Ms. James-Petersen became general manager establish that the stations have not operated at all times in accordance with FCC's rules and terms of authorization. Ms. James-Petersen has failed to offer reliable evidence to show that she can operate and control Family's stations to assure reasonable compliance with FCC rules and the terms of license authorizations.

**Issue (j)****(Transfer of control not in the public interest)**

54. The ultimate issue is whether a transfer of control from Luz and Asta James to his children, with the stations being managed by Ms. James-Petersen, will serve the public interest. The facts determined under the remand issues reflect that Ms. James-Petersen and her siblings are totally dependent upon Luz and Asta James for financing stations' operations. The adjudicated facts also establish that after resignation from all positions at Family, Luz James, acting as patriarch, continues to operate, control, influence, and essentially dominate all aspects of the stations' business and broadcasting operations. This fact record establishes by a preponderance of reliable evidence that the transfer of control would not be effective, and therefore would not be in the public interest.

55. This fact record also establishes that Ms. James-Petersen is an unreliable assignee who cannot assure that the stations' would operate in accordance with the Act and/or Commission's rules, or in accord with station license authorizations. Therefore, the public interest requires the unconditional denial of Transfer Applications for assignment to the children of Luz and Asta James.

**CONCLUSIONS OF LAW****Control Issues**

56. The ultimate issue to be resolved is who will *de facto* manage Family's stations should the Commission grant the Transfer Applications. The weight of the evidence establishes that Ms. James-Petersen cannot manage Family's business or broadcasting free of her parents', and particularly her father's – Luz James – domineering influence. It is concluded that Luz and Asta James, through financing and familial influence, virtually dictatorial in the case of Luz, have had and will continue to have commanding influence, control and at times dominance over Family's business and broadcast operations.

57. Family has not met its burden of proof regarding control of Family Broadcasting, should the Transfer Applications be granted. In *Petroleum v. Nasby*, 10 FCC Rcd 6029, 6033 (Rev. Bd. 1995), *remanded*, 11 FCC Rcd 3494 (1996), and in *Faulkner Radio, Inc.*, 88 FCC 2d 612, 618 (1981), the Commission found that license renewal was appropriate only after concluding that wrongdoers were going to be completely removed and isolated from station operations. In the case of *Nasby, supra*, the Commission required transfer of the wrongdoer's control stock (including children's and relative's stock) to unrelated persons. There, wrongdoer Tom Root was shown to exercise no control and could



no longer influence the licensee's affairs after assignment.<sup>6</sup> Here, after assigning all control stock to his children, wrongdoer Luz James would remain at the station, be involved in broadcast operations, act as banker and record keeper, and choose programming. Luz James would control and/or significantly influence all aspects of the day-to-day broadcast and business operations of Family, as well as the life of their daughter while she serves nominally as the stations' general manager. Consequently, under *Nasby, supra*, issues (a) and (f) regarding control of Family after transfer, are resolved against Family.

### Other Remand Issues

58. The weight of the evidence with respect to other issues shows that while Ms. James-Petersen was nominally responsible for Family's operations as president and general manager, the stations were operated at variance from the licenses. Family also failed to respond to FCC inquiries about violations and Family failed to repair fencing and install EAS equipment. As president and general manager, Ms. James-Petersen bears vicarious responsibility for violations occurring on her watch. However, the evidence establishes that her father, Luz James, was *de facto* primarily responsible for these violations.

59. Luz James has been shown to be the person in *de facto* control, and it is unclear at what point he was not exercising such control, and at what point Ms. James-Peterson became her own person. It does appear that Luz James was *de facto* responsible for misrepresentations made by Family, whether communicated by himself or through his daughter. There is not sufficient evidence in this record to prove that Ms. James-Peterson willfully or intentionally lacked candor, or willfully or intentionally misrepresented in reporting the status of station operations to the Commission, or in responding to Commission inquiries.

### ULTIMATE CONCLUSIONS

60. In offering proof in support of its burdens, Family failed to demonstrate by a preponderance of the evidence that it will not be influenced or controlled by Luz James, and that Ms. James-Petersen will be able to operate the stations free of control or influence of her parents. Therefore, Family has failed to meet its burden of proof to show that as transferee Ms. James-Petersen will operate the stations in accordance with Commission regulations, 47 C.F.R. §§ 73.1350(a), 73.1560(a), 73.1560(b), and 73.1690(b). Family also has failed in its burden of proof to show that after assignment of licenses, Ms. James-Petersen will be capable of operating the stations independent of her father, an adjudicated wrongdoer.

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<sup>6</sup> The Review Board specifically decided not to permit stock retentions by members of the Root family and would grant renewal only upon complete divestiture of Root stock to unrelated third parties. See 10 FCC Rcd at 6033.

61. Recently, in a related significant matter, Family intentionally defaulted by failing to file proposed findings and conclusions on April 4, 2005. Such malfeasance constitutes further convincing evidence that Ms. James-Petersen fails to accept a licensee's responsibility for complying with FCC rules, even in this adjudication wherein Family's licenses are at stake. *Cf. Memorandum Opinion and Order* FCC 05M-24, *supra*. Once again, Family is found to have failed to demonstrate that its continued status as licensee will serve the public interest, this record being replete with evidence to the contrary.

62. Therefore, it is in the public interest that Family Broadcasting, Inc.'s Transfer Applications be denied, and that all of its licenses be revoked.

### ORDER

IT IS ORDERED that the proposed Transfer Applications seeking to transfer control and ownership of Family Broadcasting, Inc. from its principal stockholders, Gerald Luz James and his wife Asta James, to their four adult children, Barbara James-Petersen, Luz James, Jr., Emmeth James, and Kelsey James (File Nos. BTC-20010315AAJ and BTCH-20010315AAK) involving Stations WSTX(AM) and WSTX-FM at Christiansted, U.S. Virgin Islands, ARE DENIED.

IT IS FUTHER ORDERED that FCC licenses held by Family Broadcasting, Inc. for Stations WSTX(AM) and WSTX-FM at Christiansted, U.S. Virgin Islands, ARE REVOKED.<sup>7</sup>

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel  
Chief Administrative Law Judge

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<sup>7</sup> This *Initial Decision on Remand* shall become effective and this proceeding *shall be terminated* 50 days after its release if exceptions are not filed within 30 days thereafter, unless the Commission elects to review the case on its own motion. 47 C.F.R. § 1.276(b).