

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

In the Matter of)	
)	
Applications for Assignment of Licenses)	File Nos. BAL-20060302ACQ
WSTX(AM) and WSTX-FM,)	BALH-20060302ACP
Christiansted, U.S. Virgin Islands)	
)	
 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)	
 For Renewal of Licenses for)	 Facility ID Nos. 20589
WSTX(AM) and WSTX-FM)	20601
)	File Nos. BR-20030930ARH
)	BRH-20040219AAE

MEMORANDUM OPINION AND ORDER

Adopted: June 1, 2010

Released: June 4, 2010

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant the application filed by Family Broadcasting, Inc. (“Family”) and Caledonia Communications Corporation (“Caledonia”) seeking consent to assignment of the licenses for Stations WSTX(AM) and WSTX-FM (“the Stations”) from Family to Caledonia pursuant to the Commission’s *Second Thursday* doctrine. We find that, subject to the reporting condition described below, the proposed assignment will serve the public interest and that, as required by *Second Thursday*, the individuals charged with misconduct at the Stations in the above-captioned revocation proceeding, EB Docket No. 01-39, will have no role in the Stations’ operation after the assignment to Caledonia and will either derive no benefit from the proposed assignment or only an indirect benefit that is outweighed by equitable considerations favoring Family’s innocent creditors. Additionally, we terminate the revocation proceeding, subject to consummation of the proposed assignment. We also grant license renewals for the Stations pursuant to Section 309(k) of Act, and involuntary transfer of control applications (File Nos. BTC-20070412ABW and BTCH-20070412ABX) reflecting the death of Gerald Luz James.

II. BACKGROUND

2. Family is the licensee of Stations WSTX(AM) and WSTX-FM in Christiansted, U.S.

Virgin Islands. On February 13, 2001, the Commission issued an Order to Show Cause directing Family to show at a hearing before an Administrative Law Judge (ALJ) why its licenses should not be revoked for misrepresentation or a lack of candor and for repeated or willful violations of the Commission's rules.¹

3. Family thereafter filed applications (File Nos. BTC-20010315AAK and BTCH-20010315AAJ) with the Media Bureau seeking Commission authorization to transfer control of Family from its stockholders, Gerald Luz James, Sr. and his wife Asta James, to their four adult children. One of the children, Barbara James-Petersen, became president and general manager of the Stations in March 2001. None of the other children were employed at or had any other connection with the Stations.

4. Before the start of an evidentiary hearing in the revocation proceeding, Family admitted the misconduct described in the Commission's Order to Show Cause. Accordingly, on August 7, 2001 the Administrative Law Judge (ALJ) issued a Summary Decision resolving the specified issues against Family and ordered revocation of the licenses for the Stations.²

5. On August 28, 2001, Family filed exceptions to the ALJ's Summary Decision. On March 28, 2002, the Commission affirmed the Summary Decision insofar as the ALJ had determined that the licenses for both stations must be revoked if Gerald Luz James, a conceded wrongdoer, remained in control of the licensee.³ The Commission also determined, however, that Family's pending application to transfer control raised genuine issues of material fact warranting a hearing. Accordingly, the Commission granted in part Family's exceptions and designated the transfer applications for consolidated hearing before the ALJ to determine whether grant of the transfer applications would serve the public interest.⁴

6. On March 4, 2003, Family filed applications to assign the licenses to Caledonia pursuant to the Commission's Distress Sale Policy.⁵ The ALJ postponed the hearing in the remanded revocation proceeding to permit the Media Bureau to review the proposed assignment. The Media Bureau dismissed the assignment applications (File Nos. BAL-20030304AAX and BALH-20030304AAW) on October 27, 2003.⁶ Family filed an Application for Review of the Bureau's decision on November 20, 2003.

7. On March 16, 2004, the ALJ conducted an evidentiary hearing on the issues designated by the Commission. On May 13, 2005, the ALJ issued an Initial Decision on Remand finding that grant

¹ *Family Broadcasting, Inc (Order to Show Cause and Notice of Opportunity for Hearing)*, 16 FCC Rcd 4330 (2001), *recon. dismissed*, 16 FCC Rcd 12801 (2001).

² *Family Broadcasting, Inc.*, 16 FCC Rcd 15619 (ALJ 2001).

³ *Family Broadcasting, Inc. (Memorandum Opinion and Order and Hearing Designation Order)*, 17 FCC Rcd 6180 (2002). The Commission indicated that it would revoke the licenses for the Stations, based on the ALJ's Summary Decision as affirmed therein, if it were ultimately determined that grant of the transfer applications would not serve the public interest. *Id.* at 6192 ¶ 34.

⁴ *Id.* The Commission designated several additional issues for resolution by the ALJ, including whether Family under the direction of Barbara James-Peterson would be controlled or influenced by Gerald Luz James; whether the transferors would benefit indirectly or directly if the transfer application was approved; whether Ms. James-Peterson, in her previous capacity as general manager, misrepresented facts or lacked candor with the Commission, operated the stations in violation of Commission rules, and/or willfully failed to respond to official correspondence and inquiries; and whether Ms. James-Peterson would have sufficient managerial and financial capacity to operate the stations independently of any control or influence from the transferors and in accordance with the Communications Act, the Commission's rules and the terms of their authorizations.

⁵ The policy is set forth in *Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1978). *See also Commission Policy regarding Advancement of Minority Ownership of Broadcasting*, 92 FCC 2d 849, 851 (1982).

⁶ *See* Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau to Daniel A. Huber (Oct. 27, 2003).

of Family's 2001 transfer applications (File Nos. BTC-20010315AAK and BTCH-20010315AAJ) would contravene the public interest and that the licenses for the Stations should be revoked.⁷ In particular, the ALJ found that Family had not met its burden of demonstrating that if the licenses were transferred to the children, Gerald Luz James would not continue to influence and control the stations' operations. The ALJ further found that Family had not demonstrated that Barbara James-Petersen would be able to operate the stations independent of any control or influence from her parents, Gerald and Asta James, and in accordance with the Commission's rules and policies, as well as the terms of the stations' authorizations. The ALJ also found that Barbara James-Petersen was vicariously responsible for violations that continued after she became president and general manager in March 2001, although he found insufficient evidence that she had lacked candor or made material misrepresentations to the Commission.⁸

8. Family filed exceptions to the Initial Decision on Remand on June 9, 2005. Family does not challenge the ALJ's disposition of any of the specified issues in the revocation proceeding. Rather, it contends that the ALJ erred in issuing the Initial Decision before the Commission acted on pleadings relating to Family's 2003 application to assign the licenses for the Stations to Caledonia pursuant to the Commission's Distress Sale Policy.

9. On January 17, 2006, Family requested withdrawal of the distress sale application and dismissal of the pending Application for Review because Family had filed for Chapter 11 bankruptcy protection and had executed a new asset purchase agreement with Caledonia. Acting on delegated authority, the Media Bureau dismissed the Application for Review on February 3, 2006.⁹

10. On March 2, 2006, Family filed a new application ("Application") seeking Commission consent to assign the licenses to Caledonia (File Nos. BAL-20060302ACQ and BALH-20060302ACP) pursuant to the Commission's *Second Thursday* doctrine.¹⁰ The proposed transaction consists of: (1) a Time Brokerage Agreement, executed April 12, 2005, under which Caledonia agreed to operate the Stations pending Commission approval of the proposed assignment; and (2) an amended Asset Purchase Agreement, executed April 12, 2005, under which Family agreed to sell the Stations and assign the underlying licenses to Caledonia for a purchase price equal to the amount due and owing from Family to creditors under a Chapter 11 plan approved by the bankruptcy court. The Asset Purchase Agreement was amended in June 2006 to provide expressly that Caledonia "shall not directly or indirectly pay any portion of the purchase price for the Stations to [Family], Luz James, Asta James, or Barbara James-Petersen, but instead shall, under the supervision of the Court, distribute the purchase price to the creditors of [Family] as set forth in the then-current plan of reorganization."¹¹

11. On April 7, 2006, Robert J. Hoffman, a resident of St. Croix, filed a petition to deny the

⁷ *Family Broadcasting, Inc. (Initial Decision on Remand)*, 20 FCC Rcd 9463, 9478-80 (ALJ 2005).

⁸ *Id.* at ¶¶ 48-49, 52-53, 58-59. The continuing station violations included operating the stations at variance from the terms of their authorizations, not responding to the Commission's inquiries about violations at the stations, not repairing the protective fence that surrounds the WSTX(AM) antenna, and not repairing or replacing malfunctioning EAS equipment.

⁹ *Memorandum Opinion and Order*, DA 06-291 (MB/Audio Division rel. Feb. 6, 2006). On February 16, 2006, the Media Bureau approved applications (BAL-20050513ABQ and BALH-20050513ABR) assigning the licenses for the Stations from Family Broadcasting, Inc. to Family Broadcasting, Inc., Debtor-In-Possession.

¹⁰ *Second Thursday Corporation*, 22 FCC 2d 515 (1970), *recon. denied*, 25 FCC 2d 112 (1970). Robert J. Hoffman filed a Petition to Deny on April 7, 2006, Family filed an Opposition on April 20, 2006, and Hoffman filed a Reply to Opposition on May 2, 2006.

¹¹ June 19, 2006 Letter from Ms. Barbara James-Petersen, Family Broadcasting, and Kevin Rames, Esq., Caledonia Communication Corporation to Michael Wagner, Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission, Exhibit B (Amendment to 2005 Asset Purchase Agreement, effective June 1, 2006).

Application.¹² Hoffman contends that this transaction cannot be approved under the *Second Thursday* doctrine due to the adverse adjudication of Family's qualifications after evidentiary hearings.¹³ He also contends that approval of the Application would result in undue concentration of ownership in the St. Croix radio market in the hands of Jonathan Cohen, who is the sole shareholder of the licensees for FM stations WJKC, WMNG, and WVIQ and who, with his wife, was then a 49% shareholder of Caledonia.¹⁴

12. The bankruptcy court approved Family's Third Amended Plan of Reorganization on July 19, 2006.¹⁵ Under the Plan, Family's creditors will receive 100 percent of the purchase price paid by Caledonia, along with a portion of the proceeds from Caledonia's interim operation of the Stations.¹⁶ In its disclosure statement describing the Plan, Family set forth the specifics of each pre-petition claim eligible for discharge in bankruptcy.¹⁷ The proceeds from the sale of the Stations to Caledonia will be used to pay Family's creditors approximately \$87,000 for unsecured claims, \$174,000 for priority tax claims, and \$23,000 for administrative claims.¹⁸ All creditors will be "paid in full."¹⁹ Family also has provided declarations under penalty of perjury from Gerald Luz James, Asta James, and Barbara James-Peterson (hereinafter, "the Jameses") waiving any right to any portion of the proceeds of the sale of the Stations to Caledonia.²⁰

13. By letter, dated October 19, 2006, Family reported that, as a result of recent developments in the ongoing Chapter 11 bankruptcy proceeding, the court order confirming Family's Third Amended Plan of Reorganization is not subject to further challenge, and that Commission consent to the proposed Caledonia assignment is the primary outstanding condition to the Plan becoming effective and to Family's innocent creditors being fully paid. The letter also reported the death on September 17,

¹² See Petition to Deny (April 7, 2006). On April 18, 2003, Hoffman filed a petition to deny Family's 2003 assignment applications (BALH-20030304AAW and BAL-20030304AAX), which the Bureau dismissed as moot. Letter, dated October 27, 2003, from Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission to Daniel A. Huber, Counsel for Family Broadcasting, Inc.

¹³ Petition to Deny at 5-11. Hoffman also points to the ALJ's determination that "the fact that this case has been fully litigated on disqualifying issues, distinguishes this case from the *Second Thursday* precedent and line of cases," which the ALJ deemed applicable only "to assignments pending a bankruptcy that are requested before hearing evidence on an alleged disqualification." *Family Broadcasting, Inc.*, FCC 05M-24 at 5 (rel. April 22, 2005) (finding that Family's impending bankruptcy filing did not justify a further stay of the deadline for the submission of proposed findings of fact/conclusions of law).

¹⁴ Petition to Deny at 11-12. As reflected below, Mr. Cohen is currently a 24.5% shareholder given the April 2006 divestiture by his wife of all equity interest in Caledonia.

¹⁵ See August 21, 2006 Letter from Barbara James-Peterson and Kevin A. Rames to Marlene Dortch, Secretary, Federal Communications Commission, Attachment A (court order confirming reorganization plan).

¹⁶ *Id.* at Attachment B (Third Amended Plan of Reorganization at 3).

¹⁷ *Id.* (Third Amended Disclosure Statement). See also June 19, 2006 Letter from Ms. Barbara James-Petersen, Family Broadcasting, and Kevin Rames, Esq., Caledonia Communication Corporation to Michael Wagner, Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission,, (Exhibit A).

¹⁸ *Id.* (Third Amended Disclosure Statement at 7-12).

¹⁹ *Id.* (Third Amended Disclosure Statement at 10).

²⁰ June 19, 2006 Letter from Ms. Barbara James-Petersen, Family Broadcasting, and Kevin Rames, Esq., Caledonia Communication Corporation to Michael Wagner, Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission, Exhibit D (Affidavits of Jameses G. Luz A. James, Sr., Asta James, Barbara James-Petersen).

2006 of Family's majority stockholder and former president, Gerald Luz James, Sr.²¹

14. On April 12, 2007, following action by the Probate Division of the Superior Court of the Virgin Islands, Family filed involuntary transfer of control applications. Family seeks approval for the Stations' *pro forma* transfer to Barbara James-Petersen, Administrator of the Estate of Gerald Luz James, Sr.

15. On March 25, 2008, Caledonia provided information to clarify discrepancies within the Application raised by the staff during its review of the Application,²² submitted a conforming amendment to the Application, and requested confidentiality as to certain material submitted in response to the staff's inquiry as to the parties that hold ownership, debt, equity and/or positional interests in, or exercise control over, Caledonia.²³ Subsequently, on June 19, 2008, Caledonia clarified that Kevin Rames will be solely responsible for financing the Purchase Price of the stations and requested confidential treatment of documents provided to establish Mr. Rames's financial ability to provide any necessary funding.²⁴

III. DISCUSSION

16. In their Application, Family and Caledonia seek approval of the assignment of licenses for the Stations pursuant to the principles enunciated in the *Second Thursday* doctrine and request termination of the revocation proceeding. We find, for the reasons set forth below, that the proposed assignment of licenses from Family to Caledonia will serve the public interest. As required by the *Second Thursday* doctrine, we find that the individuals charged with misconduct at the Stations in the revocation proceeding will have no role in the Stations' operation after the assignment to Caledonia and will either derive no benefit from the proposed assignment or only an indirect benefit that is outweighed by equitable considerations favoring Family's innocent creditors. Grant of the application is subject to the reporting condition described herein, which will alert the Commission to circumstances that may require further scrutiny to ensure compliance with our multiple ownership rules and adequate competition in the local radio market. We terminate the revocation proceeding in EB Docket No. 01-39. We also grant license renewals for the Stations pursuant to Section 309(k) of Act, and the involuntary transfer of control applications (File Nos. BTC-20070412ABW and BTCH-20070412ABX) reflecting the death of Gerald Luz James.

A. The *Second Thursday* Doctrine

17. The Commission's *Second Thursday* doctrine is an exception to the general policy prohibiting the sale of a station by a licensee whose qualifications are under investigation if issues concerning the licensee's character qualifications remain unresolved or have been resolved adversely to

²¹ See Letter from Barbara James-Peterson and Kevin A. Rames to Marlene Dortch, Secretary, Federal Communications Commission (Oct. 19, 2006).

²² Letter, dated March 5, 2008, from Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, to Caledonia Communication Corporation and Family Broadcasting, Inc., DIP

²³ See Letter, dated March 25, 2008, from Phil Marchesiello, Counsel for Caledonia Communication Corporation, to Tom Hutton, Deputy Chief, Audio Division, Media Bureau, Federal Communications Commission. (Hereafter "Response Letter"). Letter/Request for Confidential Treatment, dated March 25, 2008, from Phil Marchesiello, Counsel for Caledonia Communication Corporation, to Tom Hutton, Deputy Chief, Audio Division, Media Bureau, Federal Communications Commission.

²⁴ Letter, dated June 19, 2008, from Phil Marchesiello, Counsel for Caledonia Communication Corporation, to Taft Snowdon, Media Bureau, Federal Communications Commission [Hereafter "Clarification Letter"]; Letter/Request for Confidential Treatment, dated June 19, 2008, from Phil Marchesiello, Counsel for Caledonia Communication Corporation, to Taft Snowdon, Media Bureau, Federal Communications Commission.

the licensee.²⁵ That general policy reflects the Commission's understanding that permitting a licensee to evade the consequences of alleged or adjudicated misconduct by transferring his interest or assigning his license will diminish the deterrent effect that revocation or renewal proceedings should have on broadcast licensees.²⁶

18. In *Second Thursday Corp.*,²⁷ the Commission established an exception to the general policy for a licensee in bankruptcy. This exception permits the transfer of a license if "the individuals charged with misconduct will have no part in the proposed operation and will either derive no benefit from favorable action on the application or only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors."²⁸ The *Second Thursday* doctrine "accommodates the policies of the federal bankruptcy law with those of the Communications Act."²⁹ Application of the *Second Thursday* doctrine requires "an *ad hoc* balancing of the possible injury to regulatory authority that might flow from wrongdoers' realizing benefits against the public interest in innocent creditors' recovery from the sale and assignment of the license to a qualified party."³⁰ "The qualifications of the original licensee are irrelevant to this determination."³¹

19. Applying the *Second Thursday* test to these proceedings, we find that grant of the Application is in the public interest. First, the record unequivocally demonstrates that none of the individuals charged with misconduct in operating WSTX(AM) and WSTX-FM will have any role in operating the Stations following the assignment to Caledonia. The reorganization plan, approved by the bankruptcy court on July 19, 2006, provides that the reorganized Family will not have any assets. Gerald Luz James is deceased. Barbara James-Petersen will be President and Vice Chairman of the Board of Family, but it will no longer own the licenses for the Stations. Asta James will not have a management role in Family.³² Although the Asset Purchase Agreement permits Caledonia to hire Family employees following the assignment, it prescribes no role for any of the Jameses and does not permit Caledonia to hire any of them as employees of the stations. Nothing in the record suggests that Caledonia has retained, or intends to retain, Asta James or Barbara James-Petersen to serve in any capacity at the Stations.³³ As required by *Second Thursday*, therefore, we find that the Jameses will not have any role in the Stations following the assignment.

20. Second, the record shows that no individual or entity associated with Family will benefit directly or indirectly from the proposed assignment. Under the reorganization plan, Family's creditors

²⁵ The general policy was upheld in *Jefferson Radio v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964).

²⁶ *Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026, 1027 (D.C. Cir. 1981), citing, *Northland Television, Inc.*, 42 RR 2d 1107, 1110 (1978). See also *Northwestern Indiana Broadcasting Corp.*, 60 FCC 2d 205, 209-10 (1976).

²⁷ 22 FCC 2d 515 (1970).

²⁸ *Id.* at 516.

²⁹ *LaRose v. FCC*, 494 F.2d 1145, 1147 n.2 (D.C. Cir. 1974).

³⁰ *Id.* at 1149.

³¹ *Id.* at 1148 n.4.

³² Rule 1.65, 47 C.F.R. § 1.65, requires that applicants report substantial and significant changes in information furnished to the Commission. Pursuant to that rule, the Applicants reported Mr. James's death, indicated this would necessitate the filing involuntary transfer of control application, but did not address any change the status of either Barbara James-Petersen or Asta James. Letter, dated October 19, 2006, from Barbara James-Petersen, General Manager, Family Broadcasting, Inc., and Kevin A Rames, President and Chairman, Caledonia Communications Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission.

³³ Asset Purchase Agreement, ¶¶ 1.9 (defining Stations Employees as "employees who work in the business and operations of the Station"), 13.2 (Buyer's Right to Employ).

shall receive 100 percent of any revenue from Caledonia's operation of the Stations pursuant to the Time Brokerage Agreement.³⁴ The amended Asset Purchase Agreement specifies that Caledonia "shall not directly or indirectly pay any portion of the purchase price for the Stations to Seller [Family], Luz James, Asta James, or Barbara James-Petersen, but instead shall, under the supervision of the Court, distribute [it] to [Family's] creditors."³⁵

21. Moreover, the Jameses have submitted sworn statements specifically waiving any right to any portion of the sale proceeds.³⁶ They affirmatively state that since the filing of the bankruptcy petition the only payments that Caledonia has made to Family were for the payment of the Stations' monthly operating expenses as required by the Time Brokerage Agreement.³⁷ Consistent with Family's ultimate obligations as the licensee,³⁸ the Agreement provides that Family, rather than Caledonia, will directly disburse payments for certain ongoing expenses. The Applicants represent, however, that Caledonia closely monitors these monthly payments to ensure that funds designated to pay operating expenses were

³⁴ The Current Plan requires that, upon court confirmation of the plan, Caledonia shall establish a segregated Reserve Account into which it will deposit all net operating income until the plan is effective. At that time Caledonia will distribute all funds in the Reserve to Family's creditors in the sequence set forth in the Plan. Third Amended Plan of Reorganization, Articles II, IV. Letter, dated June 19, 2006, from Ms. Barbara James-Petersen, Family Broadcasting, and Kevin Rames, Esq., Caledonia Communication Corporation to Michael Wagner, Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission (Exhibit E).

³⁵ June 19, 2006 Letter from Ms. Barbara James-Petersen, Family Broadcasting, and Kevin Rames, Esq., Caledonia Communication Corporation to Michael Wagner, Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission, Exhibit B (Amendment to 2005 Asset Purchase Agreement, dated June 1, 2006). The amended Agreement also deletes a provision, inadvertently carried over from the 2003 Asset Purchase Agreement (executed in connection with the Parties' now abandoned distress sale proposal), under which Caledonia would have served as Family's collection agent for certain account receivables for 120 days following consummation of the assignment. *Id.* at 3-4 & Exhibit B.

³⁶ *Id.* at Exhibit D (Affidavits of G. Luz A. James, Sr., Asta James, Barbara James-Petersen). Each affidavit also states that the declarant has not received any indirect or direct payment or other benefit from Caledonia related to Caledonia's acquisition of the Stations, will not do so in the future, and is unaware of any relative having received or expecting to receive any direct or indirect payment or other benefit from Caledonia as a result of Caledonia's acquisition of the Stations. See also Opposition to Petition to Deny, filed April 20, 2006, by Caledonia Communications Corporation (Exhibit A, Affidavit of Barbara James-Petersen) ("The shareholders of Family Broadcasting, Inc. expect no payment or other benefit from the sale of the assets, and are fully supportive of the application of the "Second Thursday" Doctrine . . . [which it is acknowledged] will allow for the transfer of the licenses to Caledonia Communications Corporation so long as the stockholders of Family Broadcasting, Inc. receive no funds from the transfer and the creditors of Family Broadcasting, Inc. are not disadvantaged thereby.")

³⁷ June 19, 2006 Letter to Michael Wagner, at 4-5. The text of the agreement corroborates that Caledonia must "advance to the Licensee all, reasonable, customary and usual operating expenses of the Stations" and Family must "make all necessary payments" and furnish reasonably requested documentation of the claimed monthly expenses. Time Brokerage Agreement, ¶ 1(a) ("During each month . . . Programmer agrees to advance to Licensee all reasonable, customary and usual operating expenses of the Stations. . . . Subsequent to the payment of the Operating Expense Payment by the Programmer, Licensee shall make all necessary payments for the Licensee's Operating Expenses. . . . Licensee agrees to provide Programmer such records, receipts, copies of contracts and other information and documentation as Programmer may reasonably request in order to enable it to verify the Monthly Expense Reports.") A copy of the Time Brokerage Agreement is attached to the assignment applications as Exhibit 14.

³⁸ See, e.g., *Manahawkin Communications Corporation*, 17 FCC Rcd 342, 348 ¶ 11 (2001) (cautioning licensees engaged in time brokerage agreements to retain ultimate decision-making authority, including over finances). See also *Revision of Radio Rules and Policies*, 7 FCC Rcd 2755, 2761 n.30 (1992) (rules require licensees to retain control over station regardless of any time brokerage agreements that may exist).

used for that purpose and did not otherwise benefit Family or the Jameses.³⁹ Such payments will cease upon grant of the instant *Second Thursday* application but will continue up until April 2010 if Family retains the licenses.⁴⁰ In this respect, we read the Time Brokerage Agreement as prescribing ongoing obligations independent of Caledonia's possible acquisition of the Stations and calling for monthly payments of no relevance to whether the Jameses will benefit from grant of the assignment application. Such payments would be relevant only insofar funds ostensibly paid for current operating expenses were misdirected to Family's benefit. Nothing in the record, however, shows that funds distributed to Family for payment of the Stations' ongoing monthly expenses were used for another purpose or otherwise raises substantial or material questions regarding any payments authorized by the Time Brokerage and Asset Purchase Agreements.

22. In addition, each affidavit submitted by the Jameses expressly "waives any claims as a creditor of Family" and affirmatively states that the affiant is not a creditor of Family.⁴¹ The current reorganization plan is explicit, moreover, that the equity holders are not entitled to cash distributions upon discharge.⁴² This removes any question of the Jameses qualifying as creditors under the plan, or of Asta James being repaid for the stockholder loans referenced in the Initial Decision. These loans, of course, are relevant under *Second Thursday* only insofar as they are repaid as a result of the assignment. In this regard, the parties have set forth the specifics of each pre-petition claim that could be discharged through bankruptcy.⁴³ This information includes the identity of the claimant, a description of his or her relationship to Family, the nature and amount of the claim, and the existence of any personal guarantee by the Jameses as security for payment of the claim. The reported information reflects, first, that none of the Jameses has personally guaranteed any pending claim and, second, that none has any interest in any pending claim, or relationship with any entity with an interest in any pending claim.⁴⁴ Discharge through bankruptcy of these claims will not directly benefit the Jameses.⁴⁵

23. In light of this evidence, we reject Hoffman's argument that the Jameses have not made the requisite showing of no benefit to any adjudicated wrongdoer. The record unequivocally demonstrates that the Jameses will not benefit financially directly or indirectly from this transaction.

³⁹ June 19, 2006 Letter to Michael Wagner, Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission, from Barbara James-Petersen, Family Broadcasting, and Kevin Rames, Esq., Caledonia Communication Corporation at 5.

⁴⁰ *Id.* Time Brokerage Agreement, ¶ 1(a) (reflecting that "this Agreement terminate[s] upon the transfer of the Stations to the Programmer [Caledonia] pursuant to the Asset Purchase Agreement" and providing for the payment at Closing of the amounts due and owing under the Monthly Expense Report).

⁴¹ June 19, 2006 Letter to Michael Wagner, at Exhibit D (Affidavits, dated June 19, 2006, from G. Luz James ¶ 3, Asta James ¶ 7, and Barbara James-Petersen, ¶ 11) ("I am not a creditor of Family and I waive any claims as a creditor of Family.")

⁴² August 21, 2006 Letter from Ms. Barbara James-Petersen, Family Broadcasting, and Kevin Rames, Esq., Caledonia Communication Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, Attachment A (Third Amended Plan of Reorganization, at Articles I, II).

⁴³ June 19, 2006 Letter to Michael Wagner (Exhibit A). The materials also explain apparent discrepancies, noted in the staff's May 18, 2006 letter, in the amount of unsecured claims listed in filings with the bankruptcy court and in the pending assignment applications, indicating that these result from ongoing discussions between Family and its creditors.

⁴⁴ The Jameses assert that this information is also correct with respect to the family members of each of the Jameses, including "Luz James, Jr., Emmeth James, Kelsey James, and their family members, none of whom have any direct or indirect interest in any of the Claims." Letter, dated June 19, 2006, at 2 & n.5.

⁴⁵ We also note that all administrative expenses incurred in the stations' operation following submission of the bankruptcy petition are being paid from operating revenues and will not be outstanding upon consummation of the proposed assignment. Letter, dated June 19, 2006, to Michael Wagner, at n. 6.

24. Hoffman also argues that the Amended Plan of Reorganization provides for the satisfaction of tax claims, thereby relieving adjudicated wrongdoers of potential liability. In response to this argument, the Jameses submitted an affidavit of the accountant hired to represent Family in the bankruptcy proceeding. It clarifies that the only taxes for which Family's principals might be personally liable were incurred after the filing of the bankruptcy petition and will not be discharged by the Amended Plan of Reorganization.⁴⁶ Consequently, these potential tax liabilities have no bearing on whether *Second Thursday* relief is appropriate here.

25. Moreover, even if the Jameses would receive indirect tax benefits from grant of the Application, we would find that those benefits are "outweighed by equitable considerations in favor of innocent creditors."⁴⁷ Equitable considerations strongly favor granting this Application. First, granting the Application will protect Family's innocent creditors (most notably, the Internal Revenue Service and the Virgin Islands Bureau of Internal Revenue), whose debts will be fully satisfied if the assignment is approved but who will receive virtually no recovery if it is denied. The licenses are "by far the most valuable asset of" Family, and denying the Application would "effectively deprive[] creditors of any significant recovery of the moneys they have advanced."⁴⁸

26. Second, grant of the Application will ensure continued operation under Caledonia's direction of local radio stations that otherwise will go dark. If we revoked Family's licenses, service would be disrupted while the Commission selects new, qualified licensees for WSTX(AM) and WSTX-FM. Despite the reduced processing burden to the Commission under the competitive procedures that govern commercial AM and FM broadcast applications, replacement license applications for WSTX(AM) and WSTX-AM may be filed only during the auction windows, initiated at the Commission's discretion when there are sufficient frequencies to warrant scheduling an auction.⁴⁹ Consequently, both stations could remain dark for an indefinite period if there are delays in announcing auction windows or no applications are filed to serve Christiansted. Avoiding the resulting disruption in service to that community is a significant public interest benefit that vindicates our responsibilities under the Communications Act. Avoiding loss of service to the public is a recognized benefit of our *Second Thursday* doctrine, as is conservation of administrative resources necessary to process license applications to replace the revoked authorizations.⁵⁰

27. The public interest balance is not altered by the speculative claim by Hoffman that the federal government might realize more through auction of the two licenses than through payment of undisputed income tax claims.⁵¹ That possibility does not outweigh either the equitable considerations that favor Family's other creditors or the significant public interest benefits that further our regulatory

⁴⁶ Opposition to Petition to Deny, filed April 20, 2006, by Caledonia (Exhibit B). Family retained Francisco Depousior to provide accountancy services in connection with *In re Family Broadcasting, Inc.*, U.S. Bankruptcy Case Number 105-00004 pending in the U.S. Bankruptcy Court for the District of the Virgin Islands.

⁴⁷ *Second Thursday*, 22 FCC 2d at 516.

⁴⁸ *LaRose*, 494 F.2d at 1150.

⁴⁹ 47 C.F.R. §§ 73.3571(h)(processing of new and major AM broadcast station applications);73.3573(f)(2) (processing of non-reserved FM broadcast station applications).

⁵⁰ *Second Thursday*, 25 FCC 2d at ¶ 7 (resumption of AM service and commencement of FM service cited as public interest consideration which, along with substantial equities in favor of innocent creditors, were found to outweigh any indirect benefits to possible wrongdoers); *Public Service Enterprises, Inc.*, 69 FCC 2d 967 (1978) (noting obvious public interest benefits of avoiding loss of service to the public and saving of resources entailed in processing construction permit applications to restore lost service in allowing assignment where the licensee was not declared bankrupt until after the Initial Decision). See also *Oyate, Inc.*, 3 FCC Rcd 6759 ¶ 27 (1988); *Hertz Broadcasting of Birmingham, Inc.*, 57 FCC 2d 183, 184 ¶ 5 (1976).

⁵¹ See Opposition to Petition to Deny at 8.

responsibilities if the *Second Thursday* Application is approved.

28. Our determination that the parties qualify for *Second Thursday* relief moots the need to resolve any issues designated in the revocation proceeding. We may therefore terminate the revocation proceeding in Docket No. EB 01-39 without reviewing the Initial Decision on Remand of Chief ALJ Sippel, which does not become effective.⁵² Termination of the revocation proceeding is subject to the parties consummating the transaction approved herein.

29. *Timing of the Second Thursday Assignment.* In his petition to deny, Hoffman argues that Family may not rely on the *Second Thursday* doctrine because Family is an “adjudicated wrongdoer.”⁵³ We disagree. We find that the pending revocation proceeding is not a bar to considering the assignment applications. Commission and judicial precedent make clear that application of the *Second Thursday* doctrine may be appropriate even after an adverse adjudication of issues specified in a renewal or revocation proceeding.⁵⁴

30. We find that this case is analogous to the decision by the United States Court of Appeals for the D.C. Circuit in *LaRose v. FCC*. In that case, the court directed the Commission to entertain a *Second Thursday* application proffered by a trustee-in-bankruptcy after the Commission denied a license renewal based on misconduct by the licensee’s principals.⁵⁵ The trustee, who had waived an evidentiary hearing on the licensee’s qualifications due to cost considerations, petitioned for reconsideration of the license non-renewal and submitted a second proposal for sale and assignment of the license. The court found that the trustee “could not be faulted for his repeated attempts to persuade the FCC that the balance of public interests lay on his side of the scales.”⁵⁶ The court did not express any judgment as to the Commission’s rejection of the trustee’s original proposal, but concluded that the “Commission’s refusal to consider the second proposal frustrates the public interests recognized in *Second Thursday* itself.”⁵⁷ The court held that the Commission’s broad mandate to regulate in the public interest required the Commission to balance the public interest objectives embodied in the Communications Act and federal

⁵² See 47 C.F.R. § 1.276(d) (providing that the timely filing of exceptions shall stay the effectiveness of the Initial Decision until the Commission’s review thereof has been completed). In accordance with our practice, we do not vacate ALJ’s Summary Decision, *Family Broadcasting, Inc.*, 16 FCC Rcd 15619 (ALJ 2002), *aff’d in part, Family Broadcasting, Inc. (Memorandum Opinion and Order and Hearing Designation Order)*, 17 FCC Rcd 6180, 6192 ¶¶ 34 (2002). See *Crystal Communications, Inc.*, 12 FCC Rcd 2149, 2151 ¶ 6 (1997) (finding that the Commission should generally follow federal court practice and not vacate adverse findings absent a showing of special circumstances).

⁵³ See Petition to Deny at 5.

⁵⁴ *La Rose v. FCC*, 494 F. 2d 1145 (D.C. Cir. 1974) (directing the Commission to reopen a renewal proceeding to consider a trustee-in-bankruptcy’s second request to assign the station pursuant to *Second Thursday* submitted after a Commission decision denying the renewal application); *Public Service Enterprises, Inc.*, 69 FCC 2d 967 (1978) (granting *Second Thursday* application submitted after the ALJ’s Initial Decision denying license renewal application); *Shell Broadcasting, Inc.*, 38 FCC 2d 929 (1973) (granting *Second Thursday* assignment application after a renewal hearing and prior to termination of the renewal proceeding). We acknowledge that the ALJ held otherwise in this case, but he did not cite any precedent requiring the denial of a post-adjudication *Second Thursday* request. *Family Broadcasting, Inc.*, FCC 05M-24 (rel. Apr. 22, 2005) (finding that Family’s anticipated bankruptcy filing did not merit a further stay of the deadline for the submission of proposed findings of fact/conclusions of law); *Initial Decision*, 20 FCC Rcd at 9467 ¶ 11 (noting earlier rejection of *Second Thursday* arguments). In view of our action herein terminating the revocation proceeding, we have no reason to review any aspect of the Initial Decision or any ruling in this case.

⁵⁵ See 494 F.2d at 1146-47, 1150.

⁵⁶ *Id.* at 1149.

⁵⁷ *Id.* at 1150.

bankruptcy law by entertaining the second proposal.⁵⁸

31. Similarly, we find here that Family diligently sought to correct problems at the stations in a cost effective and timely manner, and to avoid the cost associated with an evidentiary hearing. It filed a series of applications seeking to assign the licenses to individuals or entities acceptable to the Commission as a means of expeditiously correcting problems at WSTX(AM) and WSTX-FM alleged in the Order Show Cause. And, pending Commission consideration of those applications, Family executed agreements with Caledonia whereby the stations remained on the air and operated in accordance with applicable Commission regulations and policy. Approval of the instant Application in these circumstances does not impinge in any way on our regulatory responsibilities to ensure that licensees operate in the public interest or contravene the public interest objectives embodied in the *Second Thursday* doctrine.

32. We do not agree with Hoffman that Family can be faulted for pursuing bankruptcy and filing the *Second Thursday* Application years after the revocation proceedings began.⁵⁹ Instead of challenging violations alleged in the 2001 Order to Show Cause, Family admitted the misconduct at the outset, removed Mr. James as an officer and director, installed Mr. James's daughter as president and general manager, and proposed to assign the licenses, subject to Commission approval, to the James's adult children. On this basis, Family sought Reconsideration of the Order to Show Cause and Summary Decision from the ALJ. When those efforts were unsuccessful and the Commission designated the transfer applications for hearing as part of the ongoing revocation proceeding,⁶⁰ Family sought to avoid the potentially costly hearings necessary to gift the licenses for Stations to family members by instead proposing to assign them to Caledonia in exchange for no more than 75 percent of the Stations' fair market value under the Commission's distress sale policy. Evidentiary hearings were held in the revocation case only after the Media Bureau on October 27, 2003 dismissed the proposed distress sale to Caledonia as contrary to the public interest.⁶¹

33. Resolution of Family's difficulties was prolonged to a degree by its filing of an

⁵⁸ *Id.*

⁵⁹ We reject as unsupported Hoffman's suggestion that Family has somehow manipulated the timing of its bankruptcy filing in a manner that contravenes principles underlying *LaRose*. He relies on Family's delay in seeking bankruptcy protection coupled with what it describes as "significant" benefits already accruing to Family pursuant to the Parties' Asset Purchase Agreement and Time Brokerage Agreements, initially executed in connection with the now-withdrawn distress sale proposal. However, as noted above, the record before us does not reflect that payments made under those agreements were other than as the Parties have represented, or have any relevance in determining whether the proposed assignment qualifies for *Second Thursday* relief. Moreover, as the Commission has recognized, undergoing bankruptcy imposes certain burdens that provide a disincentive to the sort of gamesmanship that Petitioner speculates may have occurred here. *Worldcom, Inc.*, 18 FCC Rcd 26,484, 26,499 ¶ 21 (2003).

⁶⁰ *Family Broadcasting, Inc. (Order)*, FCC 01-188 (June 15, 2001) (dismissing on procedural grounds a March 15, 2001 Petition for Reconsideration in which Family requested that the Commission postpone the hearing proceeding to give Family an opportunity to correct all violations at the stations, and reported the resignation of James as an officer and director of Family and the filing of an application for Commission consent to assign the stock held by James and his wife to their adult children, who were allegedly not involved in, or aware of the wrongdoing at the Stations); *Family Broadcasting, Inc.*, 16 FCC Rcd 15619 (ALJ 2001) (denying Family's Motion for Summary Decision, granting the Enforcement Bureau's Motion for Summary Decision, and revoking the licenses), *aff'd in part, Family Broadcasting, Inc. (MO&O/HDO)*, 17 FCC Rcd at 6191-92 ¶ 34 (finding revocation to be premature in light of the pending transfer applications but specifying issues to determine the qualifications of the proposed transferees).

⁶¹ October 27, 2003 Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, to Daniel A. Huber, attorney, Family Broadcasting, Inc.

application seeking Commission review of the staff's dismissal ruling. But the staff's ruling effectively precluded Family from arranging another distress sale in that it turned on the nature of licensee's conceded wrongdoing rather than on Caledonia's qualifications or any aspect of the proposed assignment. Nor did Family have other options to avoid potentially costly hearings in the revocation proceeding until its financial circumstances necessitated the bankruptcy filing. Moreover, Family may not have anticipated the delay entailed when it filed an application for review of the staff's October 2003 ruling. And, in any event, consistent with our broad mandate to regulate in the public interest and in accordance with the public interest objectives embodied in other federal statutes, we will not penalize innocent creditors for Family's pursuit of a transaction slightly more advantageous than the instant *Second Thursday* application. This would be inappropriate given the licensee's sustained efforts to address the deficiencies identified in the 2001 Order to Show Cause through a series of financially less advantageous transfers rather than through the prolonged, potentially costly litigation necessary for Family to retain its licenses. In short, the record does not support a conclusion that Family is utilizing federal bankruptcy law merely to escape the consequences of its failure to abide by obligations imposed by the Communications Act, or by the Commission's rule and policies.⁶²

34. Further supporting our decision to entertain the Application is the death of Gerard Luz James. This development does not enable us to dispense completely with the *Second Thursday* analysis -- Asta James's ownership interest in Family and Barbara James-Petersen's managerial role at the stations were pertinent to the issues adjudicated adversely to Family in the ALJ's Initial Decision on Remand. Nevertheless, Mr. James was the central figure in the alleged wrongdoing in these proceedings. In the Initial Decision on Remand, the ALJ determined that Mr. James remained primarily responsible for violations that continued after Barbara James-Petersen became president and general manager of the Stations, and that her vicarious responsibility for violations did not extend to misrepresentation or lack of candor. The death of the individual whose conceded wrongdoing was at the core of the ALJ's decision to revoke Family's licenses is an exceptional circumstance supporting our consideration of the Application.

35. In sum, the proposed assignment reasonably accommodates public interest objectives embodied in federal bankruptcy law and in the Communications Act, and fully comports with Commission precedent.⁶³ Given the overriding importance of our statutory responsibilities regarding the provision of broadcast service, as well as the equitable considerations favoring Family's non-government creditors, we find that grant of the Application is in the public interest.

36. *Compliance with Local Radio Ownership Rule/Undue Market Concentration.* In his petition to deny, Hoffman also asserts that the proposed assignment would promote undue concentration in the St. Croix radio market and would violate the Commission's local radio ownership rule.⁶⁴ These allegations are based on the multiple ownership exhibit submitted with the assignment application. According to that exhibit, Jonathan Cohen held an attributable interest in Caledonia and in the licensees of Stations WJKC(FM), WMNG(FM), and WVIQ(FM), all of which are licensed to serve Christiansted. In these circumstances, the proposed acquisition of WSTX(AM) and WSTX(FM) would have given Cohen attributable interests in four FM stations and one AM station licensed to serve that community.⁶⁵ For the reasons stated below, we find that Cohen does not have an attributable interest in Caledonia and, therefore, that granting the proposed assignment will not run afoul of our local radio ownership rule.

⁶² See *LaRose*, 494 F.2d at 1146 n.2.

⁶³ See, e.g., *Martin W. Hoffman*, 12 FCC Rcd 5224, 5229 ¶ 11 (1997) ("*LaRose v. FCC* does not stand for the proposition that the Commission should subrogate its policies in order to accommodate other Federal policies").

⁶⁴ See Petition to Deny at 11-17.

⁶⁵ *Id.* at 11-12 (arguing that the proposed assignment would violate 47 C.F.R. § 73.3555(a)(1)(iv), which provides that in a market with 14 or fewer full power radio stations a person may not have a cognizable interest in more than five commercial radio stations or more than three commercial stations in the same service (AM or FM)).

37. The record reflects that Cohen currently has only a minority equity interest in Caledonia that would not be attributable unless he has a role in financing the transaction that is sufficient to trigger the Commission's equity/debt plus ("EDP") rule.⁶⁶ According to ownership changes reported in an amendment filed May 9, 2006, Amanda Friedman, wife of Jonathan Cohen, has divested all equity interest in Caledonia and will no longer serve as an officer or director of the corporation.⁶⁷ This means that single-majority shareholder, Kevin Rames, individually owns and votes a 75.5 percent interest in Caledonia. Jonathan Cohen holds the remaining 24.5 percent of both the votes and total assets of Caledonia.

38. Materials submitted by the Applicants in response to the Bureau's Inquiry Letter⁶⁸ confirm that Rames exercises sole control over Caledonia⁶⁹ and affirmatively state that there are no corporate matters that require more than a majority vote other than the sale of all or substantially all of Caledonia's assets, which requires a 66 2/3 percent vote.⁷⁰ The parties clarify that, apart from Jonathan Cohen and Kevin Rames, no other individual or entity holds attributable or non-attributable equity or debt interests in Caledonia. The parties also identify Rames's wife and daughter as holding the only other attributable interests in Caledonia,⁷¹ and affirmatively state that there are no control groups arising from

⁶⁶ 47 C.F.R. 73.3555 (Note 2(i) ("[T]he holder of an equity or debt interest or interests in a broadcast licensee ... shall have that interest attributed if: (1) The equity (including all stockholdings, whether voting or non-voting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value, defined as the aggregate of all equity plus all debt, of that media outlet; and (2)(i) the interest holder also holds an interest in a broadcast licensee ... operating in the same market").

⁶⁷ Amendment to Application, filed May 9, 2006, Exhibit 1 ("Section III, Question 4(a) has been amended to reflect that Ms. Amanda Friedman will not be a shareholder of Caledonia Communication Corporation and will not serve as a secretary or director of the company. Instead, Mr. Jonathan Cohen will hold a 24.5% interest in the company and Mr. Rames will hold the other 75.5 %. Because Ms. Friedman was a minority shareholder and, as the majority shareholder, Mr. Kevin Rames will continue to hold sole control over Caledonia, this change constitutes a minor amendment to the assignment application as filed."); Amendment, filed March 25, 2008 (modifying Exhibit 15 to reflect that "[n]o individual or entity that holds an attributable interest in Caledonia holds an attributable in any other broadcast license or in any daily newspaper").

⁶⁸ See Letter, dated March 5, 2008, from Peter H. Doyle, *supra* n. 22., at 2 (directing the parties to submit a clarifying written statement that lists all attributable and non-attributable interests in Caledonia (including all equity and debt interests, as well as the existence of control groups) and all officers and directors, describes stockholder voting rights, and identifies any corporate matters requiring more than a majority vote; and to submit all documents relating to Caledonia's plans for financing the proposed transaction).

⁶⁹ Letter, dated March 25, 2008, from Phillip R. Marchesiello, Counsel for Caledonia Communication Corporation, to Tom Hutton, Deputy Chief, Audio Division, Media Bureau, Federal Communications Commission, Attachment C (Certificate of Incumbency and Corporate Ownership of Caledonia Communication Corporation, dated March 24, 2008, reflecting that, as of that date, the Board of Directors consists of Kevin A., Janis, and Arielle Rames are Board Members, its officers are Kevin A. Rames (President) and Janis Rames (Secretary-Treasurer) and its stockholders are Kevin A. Rames (755 shares) and Jonathan Cohen (245 shares)); Attachment D (Caledonia Corporation Stock Certificates including (i) certificates, dated April 15, 2006 and March 5, 2003, that allot 755 shares to Kevin A. Rames and 245 shares to Jonathan Cohen, respectively; (ii) cancelled stock certificates, dated March 5, 2003, that allot 510 shares to Kevin A. Rames and 245 shares to Amanda Friedman, respectively, with the latter certificate bearing Ms. Friedman's April 15, 2006 endorsement of her 245 shares to Kevin A. Rames). (Hereafter "Response Letter")

⁷⁰ Response Letter at 5, citing Title 13 V.I.C. Section 281 of the General Corporation Law of the Virgin Islands.

⁷¹ Janis Rames, wife of Kevin Rames, is an officer, and director of Caledonia, and, as reported in an amendment filed March 25, 2008, his daughter, Arielle Rames, is a director. Neither Janis nor Arielle have voting or equity interests in the corporation. See 47 C.F.R. 73.3555, Note 2(g) (providing that officers and directors of a broadcast licensee are considered to have a cognizable interest in any entity with which they are so associated).

joint or combined interests.⁷² They represent further that there are no officers or directors of Caledonia other than the Rameses, and that no changes in these positions are contemplated in connection with the proposed assignment. Given the presence of single-majority shareholder, Kevin Rames, Jonathan Cohen's minority ownership interest in Caledonia is non-attributable.⁷³

39. The parties are aware that in order for Mr. Cohen to preserve his non-attributable status with respect to Caledonia, Mr. Cohen cannot provide Caledonia with financing that, when combined with 24.5 percent equity interest in Caledonia, will cause his total debt and equity interest to exceed 33 percent of the entity's total assets (i.e., equity plus debt).⁷⁴ In response to the staff's request for documents relating to Caledonia's plans to finance the proposed transaction, the Applicants estimate they will need less than \$300,000 to consummate the transaction. Caledonia initially anticipated that this relatively modest sum could be financed through capital investments by Caledonia principals, and submitted current bank letters from Cohen's bank and Rames's bank to support the certification of financial qualifications provided in the original assignment application, along with a separate request for confidential treatment of the bank letters.⁷⁵

40. To allay concerns that Cohen's role in financing the transaction might jeopardize his non-attributable status, Caledonia subsequently indicated that Kevin Rames will be fully responsible for financing the Purchase Price of the Stations and that Jonathan Cohen will not be involved in financing the acquisition.⁷⁶ To establish that Rames has sufficient cash on hand to pay the anticipated purchase price of the Stations, Caledonia submitted a summary statement from a personal brokerage account as of June 16, 2008, along with a separate Request for Confidential Treatment of the statement.⁷⁷ Caledonia also provided a declaration, dated June 18, 2008, in which Kevin Rames certifies that Caledonia will not accept any direct or indirect financing from Jonathan Cohen for the purposes of the acquisition of the stations; that he will personally finance, either through a capital contribution or loan to Caledonia, any additional funds needed by Caledonia to consummate its acquisition of Stations WSTX(AM) and WSTX-FM; and that the attached brokerage account summary represents a true and accurate statement as of June 16, 2008.⁷⁸ Finally, Caledonia indicates it is willing to accept any reasonable condition on the grant of

⁷² Response Letter at 4.

⁷³ *Review of the Commission's Regulations Governing Attribution of Broadcasting and Cable/MDS Interests*, 16 FCC Rcd 22310 ¶ 1 (2001) (reinstating the single majority shareholder exemption under which no minority interest is cognizable, subject to the equity/debt plus rule, if there is a single holder of more than 50 percent of the outstanding voting stock of the corporate broadcast licensee, cable television system, or newspaper in which the minority interest is held); *Promoting Diversification of Ownership In the Broadcast Services*, 23 FCC Rcd 5922, 5931 ¶ 18 (2008).

⁷⁴ 47 C.F.R. 73.3555, Note 1(i) (“[T]he holder of an equity or debt interest or interests in a broadcast licensee ... shall have that interest attributed if: (1) The equity (including all stockholdings, whether voting or non-voting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset valued, defined as the aggregate of all equity plus all debt, of that media outlet; and (2)(i) the interest holder also holds an interest in a broadcast licensee ... operating in the same market”).

⁷⁵ Response Letter at 6-7 & Attachment E. As originally submitted with the Response Letter, Attachment E, consisting of the two bank letters, was blank. The actual bank letters were attached to a separate Letter/Request for Confidential Treatment, dated March 25, 2008, from Phil Marchesiello, Counsel for Caledonia Communication Corporation, to Tom Hutton, Deputy Chief, Audio Division, Media Bureau, Federal Communications Commission.

⁷⁶ Letter, dated June 19, 2008, from Phil Marchesiello, Counsel for Caledonia Communication Corporation, to Taft Snowdon, Media Bureau, Federal Communications Commission, at 3. (Hereafter “Clarification Letter”).

⁷⁷ The Statement, designated Exhibit B of the Clarification Letter, is left blank. The actual Statement is attached to the Request for Confidential Treatment, also submitted June 19, 2008, in a letter from Caledonia's Counsel to Taft Snowdon, Media Bureau, Federal Communications Commission.

⁷⁸ Clarification Letter, Exhibit A. (Declaration of Kevin A. Rames).

the application that would require that Caledonia obtain prior Commission approval if any action by Jonathan Cohen or by Caledonia were to cause Mr. Cohen to have an attributable interest in Stations WSTX(AM) and WSTX-FM.

41. In view of the foregoing, we are satisfied that Cohen will not have a role in financing the proposed transaction or acquire a debt interest that, when combined with his 24.5 percent minority equity interest in Caledonia, would exceed 33 percent of the total asset value of Caledonia and trigger the Commission's EDP rule. On this basis we find Cohen does not have an attributable interest in Caledonia or in Stations WSTX(AM) and WSTX-FM. We therefore need not decide the permissibility of the proposed transaction under the local radio station ownership rule if Cohen held attributable interests in the Stations.⁷⁹ Instead, we impose a reporting condition that requires notification to the Commission within 30 days of any entity or individual with attributable media interests, other than Kevin Rames, Janis Rames or Arielle Rames, acquiring an attributable interest, by any means, in the corporation. This will alert the Commission to any action by Jonathan Cohen or Caledonia that results in Jonathan Cohen (or a related entity or individual) holding attributable interests in one AM station and four of the seven FM stations serving all or most of the population of St. Croix, or the acquisition of such interest by another individual or entity, and thus permit any further scrutiny that may be necessary to ensure compliance with our multiple ownership rules and preservation of competition in the local radio market.⁸⁰ As such, the reporting condition adequately safeguards the competitive objectives that underlie the local radio ownership rule and, hence, the public interest. We therefore find that, with the reporting condition, the proposed acquisition of WSTX(AM) and WSTX(FM) is in the public interest, convenience, and necessity, as required by Section 310(d) of the Act.

B. License Renewal Applications

42. Also pending before the Commission are renewal applications for Stations WSTX(AM) and WSTX-FM. In view of our determination regarding the *Second Thursday* application and for the reasons set forth below we grant the renewal applications.

43. As a preliminary matter, we note that Section 73.3539(a) of the rules requires that applications for renewal of licenses for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed." On September 30, 2003, Family filed an application seeking renewal of the licenses for WSTX(AM) and WSTX-FM. This satisfied the prescribed October 1, 2003 deadline for license renewal applications for radio stations located in the U.S. Virgin Islands.⁸¹ When Family realized that it had incorrectly included renewal information for both stations on the same renewal form, it submitted a second renewal form for WSTX-FM on February 18, 2004, or more than two weeks after the February 1, 2004 license expiration

⁷⁹ The parties dispute how many stations may be commonly owned, given that many of the contour overlaps that would ordinarily define the relevant market size occur only over water.

⁸⁰ The principal community contours of only 13 radio stations – 9 FM stations and 4 AM stations – actually reach the island of St. Croix. Five of the nine FM stations serve the entire island of St. Croix: WSTX, WJKC, WVIQ, WIVH and WYAC. The principal community contours of two other FM stations -- WMNG and WMYP -- encompass most of the island. The contours of the remaining two stations – WAXJ and WEVI – reach only part of St. Croix. The principal community contours of four AM stations – WDHP, WSTX, WRRR and WVWI – also encompass the entire island. With the exception of WVWI(AM), all of the stations are licensed to Christiansted or another community on St. Croix. If after consummation Jonathan Cohen (or a related person or entity) were to acquire an attributable interest in the corporation, Caledonia would (through Cohen, et al.) hold attributable interests in five stations licensed to serve Christiansted: Stations WJKC(FM), WVIQ(FM), WMNG(FM), WSTX-FM and WSTX(AM). Such a combination would warrant further scrutiny to ensure preservation of competition in this market.

⁸¹ 47 C.F.R. §§ 73.3539(a), 73.1020(a)(3)(i).

date.⁸²

44. Because Family formally requested renewal of both stations, and remitted the appropriate fees for each individual station by the October 1, 2003 filing deadline and before the February 1, 2004 license expiration date, we find no actual violation of either Section 73.3539(a) of the Rules or Section 301 of the Act that warrants any sanction.⁸³ We note, however, that licensees are responsible for filing required forms in a timely manner, and may be subject to forfeitures in appropriate circumstances.⁸⁴ Late-filed renewal applications disrupt the orderly processing of such applications contemplated by the staggered deadlines prescribed by Section 73.1020. To minimize such disruptions, the Commission rigorously enforces these provisions and does not excuse actual violations of Section 301 of the Act or Section 73.3539(a) even if fairly minor⁸⁵ or attributable to licensee confusion or inadvertence.⁸⁶ We remind Family and Caledonia of the high degree of care we expect of broadcast licensees. In the circumstances presented here, however, we find no basis for any sanction.

45. In evaluating an application for license renewal, our decision is governed by Section 309(k) of the Act. That provision specifies that the Commission shall grant renewal of the license if, upon review of the renewal application, it finds that during the preceding license term, that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or of the Rules; and (3) there have been no other violations by the licensee of the

⁸² Form 303-S, filed February 18, 2004, Exhibit I (also noting that the appropriate renewal fees were remitted for both stations with the application filed on October 1, 2003). Generally, an applicant may list only one broadcast station on a particular renewal form, except to request joint renewal of an FM or TV translator station and its co-owned primary FM, TV or LPTV station. FCC Form 303-S, Instruction A. *See also* Public Notice, DA 03-1437 (Apr. 30, 2003), “Media Bureau Announces Certain Revisions to Instruction to Form 303-S—Application for Renewal of License for Broadcast Stations.”

⁸³ A broadcast station requires an authorization from the Commission to operate. *See* 47 U.S.C. § 301.

⁸⁴ The base forfeiture amounts for failure to file a required form and for operation without an instrument of authorization are \$3,000 and \$10,000, respectively. *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section 1.

⁸⁵ *See, e.g., College Wesleyan Church (NAL)*, DA 06-2455 (MB Dec. 6, 2006) (\$1500 forfeiture proposed for apparent Section 73.3539(a) violation where the license renewal application was filed three days before the license expiration date); *Bowdoin College (NAL)*, DA 07-124 (MB Jan. 22, 2007) (\$1500 forfeiture proposed for apparent Section 73.3539(a) violation where the license renewal application was filed after the application was due but before the license expired and the licensee incorrectly believed the renewal application filing deadline coincided with the license expiration date); *Burgess Broadcasting (NAL)*, DA 07-53 (MB Jan. 12, 2007) (forfeiture for the full \$3000 amount proposed for apparent Section 73.3539(a) violation, but a reduced forfeiture of \$4000 from the base \$10,000 amount proposed for unauthorized operation in violation of Section 301 where the licensee continued to operate the station for more than one year before filing the appropriate application).

⁸⁶ *Discussion Radio, Inc.*, 19 FCC Rcd 7433 (2004) (Commission waived Section 73.1020 and 73.3539 for the purpose of accepting and acting on a renewal application filed more than one year after the license expiration date where the delay was attributable to the licensee not receiving any Commission correspondence, but proposed forfeitures of \$1500 and \$5,000, respectively, for the apparent Section 73.3539(a) and Section 301 violations); *Regent Licensee of Chico (NAL)*, DA 06-2380 (MB Nov. 29, 2006) (\$4,000 forfeiture proposed for apparent unauthorized operation in violation of Section 301 where the licensee inadvertently omitted its FM translator station from its timely-filed FM license renewal application and licensees are permitted to seek renewal of the translator station on the same form as that for the primary station being rebroadcast); *Joselyn Gordon*, 19 FCC Rcd 23557 (EB 2004) (\$4,000 forfeiture proposed for use of an unauthorized frequency by a land mobile station holding a license to operate on a different frequency).

Act or the Rules, which, taken together, would constitute a pattern of abuse.⁸⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”⁸⁸

46. Here, notwithstanding this licensee’s difficulties, our action authorizing the proposed assignment to Caledonia pursuant to our *Second Thursday* policy permits the grant of license renewals for WSTX(AM) and WSTX-FM pursuant to section 309(k)(2). Specifically, given our determination herein that the proposed transaction serves the public interest without regard to Family’s basic qualifications, we grant the pending renewal applications subject to the condition that the parties consummate the transaction and the licenses be transferred to Caledonia.⁸⁹

C. Involuntary Transfer of Control Applications

47. On April 12, 2007, following action by the Probate Division of the Superior Court of the Virgin Islands, Family filed an application seeking approval for the Stations’ *pro forma* transfer to Barbara James-Petersen, Administrator of the Estate of Gerald Luz James, Sr. The application was placed on Public Notice on April 17, 2007 and Family, at the staff’s request, filed a non-substantive amendment to modify the name of the proposed transferee on May 29, 2007. No petition to deny or other objection was filed in response to the Public Notice. Attached to the applications is a death certificate, dated September 17, 2006, and Letters of Administration, dated March 15, 2007, from the probate court “authorizing that Barbara James-Petersen administer the Estate of the late G. Luz A. James, Sr., according to law.” Approval of the involuntary *pro forma* transfer of control will permit Ms. James-Petersen to exercise temporary control over the stations through her role as the court-appointed Administrator of the Estate of Mr. James, subject to oversight by the Superior Court of the Virgin Islands. The transfer applications, although not filed within 30 days of Mr. James’s death, as required by Section 73.3541(b), were tendered within 30 days of the probate court’s action. And, as required by Section 73.3541(a), Family promptly notified the Commission in writing of Mr. James’s death. In these circumstances, we find that good cause supports grant of the late-filed involuntary transfer of control applications for this limited purpose.⁹⁰

IV. CONCLUSION

48. Based on our review of the application for consent to assign Family’s stations pursuant to

⁸⁷ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁸⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁸⁹ Given our finding that the grant of the renewal application is warranted under Section 309(k)(2) of the Act because it is conditioned on transfer of the licenses, we need not determine whether Family committed “serious violations” of our rules or violations that constituted “a pattern of abuse” for purposes of Section 309(k)(1). Accordingly, by our action herein we set aside the Initial Decision without resolving the issues specified in the revocation proceeding. In the event, however, that the transaction is not consummated, the hearing proceeding will resume and the Commission will review the ALJ’s determination that Family’s licenses should be revoked.

⁹⁰ Grant of the *pro forma* transfer serves the public interest but will not affect disposition of the revocation proceeding if the assignment to Caledonia is ultimately not consummated. See *Happy Valley Broadcasting*, 68 FCC 2d 1516, 1519 (terminating renewal proceeding at the request of the involuntary transferee subject to the condition that the licensee take appropriate steps to assign her ownership interest to qualified applicant, where her husband’s death had relieved him of any sanction the Commission might impose and where no wrongdoer would benefit from the assignment).

the *Second Thursday* doctrine, the associated assignment applications and the related pleadings, we conclude that the proposed transaction complies with the Communications Act and all Commission rules and policies. We conclude that the applicants are fully qualified and that grant of the assignment of the licenses for WSTX(AM) and WSTX-FM from Family to Caledonia, subject to compliance with the reporting condition set forth herein, will serve the public interest, convenience and necessity.

V. ORDERING CLAUSES

49. ACCORDINGLY, IT IS ORDERED, That the Application, filed March 7, 2006, by Family Broadcasting, Inc. and Caledonia Communication Corporation seeking Commission consent to assign the licenses for Stations WSTX(AM) (Facility ID No. 20589) and WSTX-FM (Facility ID No. 20601), Christiansted, Virgin Islands, pursuant to the *Second Thursday* doctrine IS GRANTED to the extent reflected herein and the assignment applications (File Nos. BAL-20060302ACQ and BALH-20060302ACP) ARE GRANTED SUBJECT TO THE CONDITION that Caledonia Communication Corporation must notify the Commission within 30 days of any entity or individual with attributable media interests, other than Kevin A. Rames, Janis Rames and Arielle Rames, acquiring, by any means, an attributable interest in the corporation. A copy of the notification should be directed to Tom Hutton, Deputy Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

50. IT IS FURTHER ORDERED, that the Petition to Deny, filed April 7, 2006, by Robert J. Hoffman IS DENIED; that the Motion for Stay of Proceedings, filed March 7, 2006, by Family Broadcasting, Inc. IS DISMISSED.

51. IT IS FURTHER ORDERED, that the Amendment, tendered for filing March 25, 2008, by Caledonia Communication Corporation IS ACCEPTED.

52. IT IS FURTHER ORDERED, that the Requests for Confidential Treatment, filed March 25, and June 19, 2008, by Caledonia Communication Corporation ARE GRANTED; and that, pursuant to 47 C.F.R. § 0.459, the attached material designated “Attachment E” and “Exhibit B” WILL BE WITHHELD FROM PUBLIC INSPECTION until March 25, 2011 and June 19, 2011, respectively.⁹¹

53. IT IS FURTHER ORDERED, That the applications (File Nos. BTC-20070412ABW and BTCH-20070412ABX) for Involuntary Transfer of Control of Stations WSTX(AM) and WSTX-FM from Family Broadcasting, Inc., Debtor In Possession to the Estate of G. Luz James, filed April 12, 2007 and amended May 29, 2007, ARE GRANTED.

⁹¹ The requests for confidential treatment comply with the requirements of Section 0.459, 47 C.F.R. § 0.459, and are supported by good cause. Attachment E consists of two bank letters submitted in response to the March 5, 2008, letter from the Media Bureau requesting all documents that concern Caledonia’s plans to finance the proposed transaction, including “documents that support the financial certification provided by Caledonia in the Application.” Exhibit B was submitted contemporaneously with the June 19, 2008 Clarification Letter, in which Caledonia stated that Kevin Rames would be solely responsible for funding Caledonia’s acquisition of the Stations. It consists of a summary financial statement of a personal brokerage account held by Rames and was submitted to demonstrate that Rames has sufficient funds on hand to pay the anticipated purchase price of the Stations. As required by Section 0.459(a), the actual bank letters and brokerage statement that comprise Attachment E and Exhibit B, respectively, were enclosed in separate letters. In this respect Caledonia physically segregated the material that was the subject of a confidential request from the remainder of the material provided with the two Letters by including a blank Attachment E with the first Letter and a blank Exhibit B with the second Letter. Attachment E and Exhibit B contain sensitive, commercial material that the concerned individual would not ordinarily disclose to the public, to third parties, or to any government entity. Release of this commercially sensitive financial information could provide the business rivals of Mr. Cohen and of Mr. Rames in the relevant broadcast market with confidential, financially sensitive information to the competitive detriment of either or both broadcasters.

54. IT IS FURTHER ORDERED, That the hearing proceeding in EB Docket No. 01-39 IS TERMINATED and the Exceptions, filed June 6, 2005, by Family Broadcasting, Inc. ARE DISMISSED as moot, provided that if the proposed assignment of the licenses for Stations WSTX(AM) and WSTX-FM from Family Broadcasting, Inc. to Caledonia Communication Corporation is not consummated, the action taken herein shall be void and the proceeding will return to the status quo ante.

55. IT IS FURTHER ORDERED, That, pursuant to Section 309(k) of the Communications Act, as amended, the license renewal application of Family Broadcasting, Inc. for Stations WSTX(AM) and WSTX-FM (File Nos. BR-20030930ARH and BRH-2004219AAE) ARE GRANTED, subject to consummation of the proposed assignment of the licenses for Stations WSTX(AM) and WSTX-FM from Family Broadcasting, Inc. to Caledonia Communication Corporation.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary