

Before the
Federal Communications Commission

Washington, DC 20554

In the Matter of)
)
WSUA Broadcasting Corporation) File Nos.: 0000143587, 0000143588
) Facility Ids: 55403, 202459
Application for Assignment of License for)
Stations WSUA-AM, and W232DX-FX.)
Miami, Florida)

To: The Commission
Attn: Media Bureau

REPLY TO OPPOSITIONS TO PETITION TO DENY

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July 15, 2021

Summary

Mr. Garcia files this Reply to the WSUA and ATV Oppositions to his Petition to Deny the Application. The Petition presented substantial and material evidence that Carlos Vasallo is the real party-in-interest in the transaction and that for this and other reasons Vasallo and Marcell Felipe have made material misrepresentations to the Commission and lack the requisite character qualifications to be licensees. Since the Oppositions fail to rebut the Petition's allegations and evidence, the Commission must designate the Application for hearing and hold other filings by Vasallo and their companies in abeyance pending the outcome of the hearing.

The WSUA Opposition touting the Time Brokerage Agreement with Caracol and the Declaration of Luz Elena Bermudez, claiming control of WSUA, can be given no weight because the Put Option Agreement to sell the stations filed as part of the Application was signed by Luis Gutierrez, Vice President of Caracol, for the seller, WSUA. Gutierrez has no official status with WSUA that would give him the authority to sell the stations. This is substantial evidence that Caracol is the real party-in-interest in WSUA.

ATV's argument that these individuals lacked fraudulent intent, however unlikely, is precisely what they will have the opportunity to show in the hearing. The Reply shows that Vasallo and Felipe knew well what they were doing and had prior dealings with the FCC and experience in media ownership and operation. The Opposition weakly seeks to excuse Vasallo's signing of the Put Option Agreement in the Application as an expedient because Felipe could not attend the signing. This is belied by Felipe's presence at the signing, as well as a broad delegation of authority to Vasallo to conduct all aspects of the purchase of WSUA. ATV claims that Vasallo's assertion of control over WSUA and its personnel and programming was mere puffing. This argument ignores the factual nature of the statements, as well as the installing of

Vasallo's staff and programming at the same time. Felipe stood at his side as Vasallo broadcasted his unequivocal claim that he, not Felipe was in control of and programming the radio stations.

Finally, the ATV Opposition provides a Revocable Trust Agreement in which Vasallo, as Grantor, gives Felipe, as Trustee, authority to create a trust that ultimately will fund the acquisitions of stations. This Agreement violates established FCC insulation conditions for avoiding attribution to the Grantor, including the reserved rights to revoke, modify and change trustees, as well as the requirements that the trustee not have outside business relationships with the grantor and that the agreement contain a statement that the two not communicate on matters involving the stations.

Mr. Garcia has exposed the sham arrangement in great detail. The Oppositions only dig these characters a deeper hole.

TABLE OF CONTENTS

Carlos Vasallo and America CV and Not Caracol Broadcasting, Inc. Program Radio Stations WSUA-AM and W232DX-FX	p. 1
Vasallo's Statements are Not Mere Puffing or Exaggeration.....	p. 4
Vasallo is the Real Party in Interest Behind the Application	p. 4
Felipe has a History of Serving as Vasallo's Front	p. 7
Vasallo's Interest in ATV Trust is Attributable.	p. 8

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Jose' ("Joe") Garcia ("Mr. Garcia"), by his attorneys, in accordance with Section 73.3584 of the Commission's Rules, 47 C.F.R. §73.3584, hereby replies to the Oppositions to Petition to Deny the above captioned application ("Application") filed by WSUA Broadcasting Corporation ("WSUA") and ATV Holdings, Inc. ("ATV Holdings") and its parent, ATV Holdings Trust ("ATV Trust"), (collectively "ATV").¹ The Oppositions fail to explain away the substantial and material questions of fact Mr. Garcia raises in his Petition to Deny. The Commission therefore must designate a hearing on the Application.

**Carlos Vasallo and America CV and Not Caracol Broadcasting, Inc. Program
Radio Stations WSUA-AM and W232DX-FX**

The WSUA Opposition provides WSUA's time brokerage agreement with Caracol Broadcasting, Inc. ("Caracol") as evidence that it, rather than Carlos Vasallo, controls the stations and that Caracol rather than America-CV Station Group, Inc. ("America CV") is providing the programming. It also includes a declaration by the WSUA General

¹ This Reply is timely filed. Mr. Garcia filed a Request for Extension of Time until July 15, 2021 with the Audio Division of the FCC's Mass Media Bureau. The Motion was granted on June 22, 2021.

Manager/Owner, Luz Elena Bermudez, denying that Vasallo, Marcell Felipe or America CV have made any personnel or programming decisions for WSUA. The WSUA Opposition does not address the physical evidence of Vasallo claiming to control the stations that the Petition to Deny produces. Nor does it address the fact that two America CV employees, Juan Manuel Cao and Marian de la Fuente, now have a two daily radio shows on the stations and that Vasallo claims he controls the programming. Despite ATV's claims in its Opposition to the contrary, Vasallo admits that he cannot purchase the stations. Vasallo states in an interview on his television station:

Today is a day in this channel that we must celebrate and rejoice in having the chance of... I... Really, we needed to wait for the appropriate time for the FCC to approve our programming, but anyway... In other words, the antenna has nothing to do with the programming. The antenna is the antenna and that is what we need a permit for. The programming is like the network: we do not need a permit, only a society, a company that wants to do it. And today we have been able to modify Caracol's programming. We have been able to change Caracol's programming starting today at dawn. (Emphasis added)

See Petition to Deny at p. 8 and Exhibit 3.²

This is much more than mere puffing, as the ATV Opposition claims. This is an admission that Vasallo/America CV, not Caracol is programming the station. Bermudez in her declaration claims that the "radio Broadcast time on the Stations has been purchased by Caracol," WSUA Opposition, Exhibit 2, Bermudez Declaration. Luis Gutiérrez, the vice-president of Caracol, appears to contradict Bermudez in his public statement:

For this station to have a future it needs an ally like television, because right now commercialization is too complicated for TV and Radio. But, if you have two very solid products, entering the

² That same day, it was announced that Juan Manuel Cao and Marian de La Fuente would have regular shows on the radio stations. Both have primetime shows on America CV.

market is easier because you are selling radio and television together.

Petition to Deny, p. 6 and Exhibit 3. Significantly, Bermudez does not claim that Caracol is programming the station, only that it has an agreement to do so.

Bermudez, like Felipe, is nothing more than a front. While she is nominally in control of WSUA, it was Luis Gutiérrez, the vice-president of Caracol that executed the Put Option Agreement, to sell the stations to ATV. Neither opposition offers any explanation as to why Gutiérrez, rather than the nominal controlling shareholder of WSUA, Bermudez, executed the agreement. According to the FCC's records, Gutiérrez is not an officer, director or has any authority to act on behalf of WSUA. Bermudez's claims in her declaration that she, rather than Caracol, controls the stations sound hollow in the face of the physical evidence of a Caracol officer executing the sales agreement for the stations. Likewise hollow are her claims that she has no knowledge of Felipe, Vasallo or America CV making any programming decisions at the stations. This statement, if true, just demonstrates that Bermudez is a front uninformed about programming decisions made at the stations. Such decisions are made by the principals, Caracol and America CV. It is undeniable that two America CV personalities along with their producers are employed at and have regular programs on the stations. These personnel and programming changes were made the same day that Vasallo announced on his television station that he controlled the stations and made personnel and programming decisions.

Bermudez's statement in her declaration begs the question why Felipe would agree to purchase a radio station without an agreement to assign or cancel the time brokerage agreement? The Caracol TBA is not due to expire until June 30, 2023. Yet Vasallo claims he, specifically his company America CV, is responsible for day-to-day programming decisions. A hearing is necessary to determine if Caracol assigned the TBA to Vasallo/America CV and what if any

consideration was paid for the assignment. The statements and declaration in the WSUA Opposition contradict the clear and unequivocal statements Vasallo has publicly made.

Vasallo's Statements are Not Mere Puffing or Exaggeration

ATV's Opposition casts Vasallo as a showman prone to exaggeration and puffing and whose unfortunate documented assertions of having made personnel and programming decisions as well as providing the funds to purchase the station are of no consequence. It points out that Vasallo's statements were made in public (over the air), rather than as certifications to the Commission.³ Vasallo's statements are not exaggerations or puffery as the ATV Opposition claims. The Courts have held that "[p]uffing' refers generally to an expression of opinion not made as a representation of fact." *FTC v. US Sales Corp.*, 785 F. Supp. 737, 746 (N.D. Ill. 1992); see also *In re Sterling Drug, Inc.*, 102 F.T.C. 395, 749 (1983) ("Puffing claims are usually either vague or highly subjective and, therefore, incapable of being substantiated.") See also *Cook, Perkiss and Liehe, Inc. v. Northern Cal. Collection Serv. Inc.*, 911 F.2d 242, 246 (9th Cir. 1990) (stating that "puffing has been described by most courts as involving outrageous generalized statements, not making specific claims,"). Vasallo is not puffing, he is making specific claims, that he has purchased WSUA, that he has provided the funds, and that he is programming the station. See Petition to Deny, Exhibit 3. That it is Vasallo's money that is funding the purchase is not puffing, but an established fact. As ATV states in its Opposition at p.7, "Vasallo is the Trust's contributor, so in that sense, it is his money that funds ATV Holdings Trust."

Vasallo is the Real Party in Interest Behind the Application

While Vasallo makes claims of ownership and control, Vasallo's name nowhere appears in the Application except for the signature line of the Put Option Agreement. The

³ ATV Opposition, at 11.

misrepresentation to the Commission is not Vasallo's public statements. It is the Application's willful omission of his de facto control of the stations and his real party-in-interest status. See *In re Applications of Tribune Media Co. & Sinclair Broad. Grp.*, 33 FCC Rcd 6830, 6831 (2018) (A real party-in-interest issue includes an element of misrepresentation or lack of candor). It is vital for the Commission to determine whether Felipe, Vasallo and America CV engaged in misrepresentation and/or lack of candor before the Commission. It is also necessary for the Commission to ascertain whether Caracol is the real party in interest and in control of WSUA, including whether it has made material misrepresentation to the Commission concerning its involvement in the stations, which clearly goes beyond an agreement to program the stations.

As for the matter of Vasallo signing that agreement, the ATV Opposition now claims, at 7, that Felipe had delegated signing authority to Vasallo because he, Felipe, could not attend the signing and was only able to be there at the last minute. In support it provides Exhibit E, a document by which ATV Holdings grants Vasallo broad authority to execute all documents and take all actions related to the acquisition of WSUA "as of April 4, 2021," including the filing of the FCC application. The document itself is undated, although in Felipe's declaration, Exhibit C, he maintains that it was executed on April 4, 2021. The Application, which included the Put Option Agreement bearing Vasallo's signature, was filed with the Commission on April 16, 2021.

These claims raise substantial and material questions of fact that require a hearing to resolve:

- 1) If, as the ATV Opposition contends, the purpose of ATV Holdings' delegation to Vasallo was merely to sign the Put Option Agreement because Felipe could not attend the signing, the expansive delegation suggests a much greater role for Vasallo in the transaction. Vasallo is given the power to conduct all aspects of ATV Holdings' purchase of WSUA, even though Vasallo has no legal relationship to ATV Holdings.

- 2) Why did Vasallo sign the Unanimous Written Consent of ATV Holdings in Exhibit E as “Grantor?” Only Felipe, as sole director of ATV Holdings, had the authority to take that action.
- 3) Since Felipe suddenly was able to attend the signing of the Put Option Agreement, why did he not sign as the sole officer and director of ATV Holdings?
- 4) The Unanimous Written Consent is suspicious and may have been drawn up for purposes of opposing the Petition to Deny. The signatures are not dated, unlike other documents in the exhibits, including Felipe’s declaration in Exhibit C, which is dated June 21, 2021. The Commission should seek independent, dated, emails or other corroboration of Felipe’s representation that the delegation was executed on April 4, 2021. Despite the ATV Opposition’s protestations, Felipe made a material misrepresentation to the Bankruptcy court and the Unanimous Written Consent appears to be another example of his willingness to prevaricate to achieve a desired result.⁴
- 5) Felipe represents in his declaration that the broad authority delegated to Vasallo by ATV Holdings was revocable by him at any time pursuant to a separate “unanimous written consent” of the ATV Holdings’ board of directors. Felipe asserts that this right to revocation demonstrates that Vasallo’s authority was “subject to my ultimate control.” The ATV Opposition provides no such document.
- 6) Vasallo’s involvement in the transaction and his claims of making personnel and programming decisions suggests the likelihood of an agreement between Vasallo/America CV and WSUA and/or Caracol, which is not included in the Application or otherwise filed with the Commission. The Commission should require the parties to provide such document or represent that no such document exists.
- 7) Caracol’s involvement and control of the stations and whether Caracol and/or WSUA have made material misrepresentations to the FCC concerning the de facto ownership of the stations.

Felipe has a History of Serving as Vasallo’s Front

⁴ The ATV Opposition, at pp. 11-13, feigns outrage that the Petition to Deny brought up the operational and reporting deficiencies in Vasallo/America CV’s other stations, which have filed license renewal applications, as well as Felipe’s apparent misrepresentations before a federal bankruptcy court. The ATV Opposition simply dismisses these matters as irrelevant and as “bootstrapping on top of bootstrapping,” without addressing their substance. These allegations surely bear on the reliability, integrity and candor of Felipe and Vasallo/America CV and consequently on their qualifications to hold Commission licenses. They demonstrate a pattern of rule violations and a disregard for the Commission’s rules. A disregard that is amply evident in the above captioned assignment Application.

The ATV Opposition's best, albeit poor, defense to Mr. Garcia's allegations that Vasallo is running the show unlawfully, is that both Vasallo and Felipe have years of experience in media ownership and operation. Why, poses the ATV Opposition, would the two conspire to accomplish by subterfuge, what they could do directly, above board? As the Opposition points out, Felipe, through ATV Holdings, is the licensee of WLMF-LD and W24DE-D, Miami, Florida. ATV Holdings came to be the licensee of these two stations because of a Settlement Agreement concerning the FCC's Special Displacement Window among Vasallo's company Caribevision Holdings, Inc. and two companies that were the licensees of WLMF-LD and W24DE-D. As part of the settlement agreement the companies agreed to sell WLMF-LD and W24DE-D to ATV Holdings. See ATV Opposition Exhibit D. As ATV Holdings admits in the Opposition, Vasallo has contributed 100% of the equity in ATV Trust. It should come as no surprise that WLMF-LD and W24DE-D rebroadcast the programming of Vasallo's America CV. It appears that Felipe's broadcast experience is limited to his posing as a front for his patron and client, Carlos Vasallo.

The ATV Opposition goes on to argue that because, as it claims, Vasallo and Felipe lacked the motive to deceive, there was no fraudulent intent, i.e., no willful misrepresentations. The fact remains that Vasallo is not a US citizen and the FCC has not passed on his qualifications to be a Commission licensee. Still, it is irrelevant and pointless for Mr. Garcia or the Commission to speculate on what need or benefit may have prompted the arrangement. All that is important here are the questions of real party-in-interest, de facto control, material misrepresentation to the Commission, and character qualifications of a licensee, which warrant an evidentiary hearing to sort out. It is not enough for the ATV Opposition to say, at 10, that the Petition to Deny "presents no proof that ATV or Felipe had knowledge of any false statement

made to the Commission.” Mr. Garcia’s job was to raise these substantial and material questions. It is for the hearing to prove or disprove them.

Vasallo’s Interest in ATV Trust is Attributable

The only truly substantive part of the ATV Opposition is its argument that Felipe was in control of ATV, both ATV Holdings and ATV Trust. It provides as Exhibit A, a copy of a “Revocable Trust Agreement,” by which Vasallo establishes ATV Trust and appoints Felipe as Trustee with the power to form entities such as ATV Holdings.⁵ The crux of the ATV Opposition’s argument is that Felipe, as sole Trustee of ATV Trust and sole officer and director of ATV Holdings, had the exclusive power to act on behalf of ATV Holdings and did so faithfully. The facts belie this claim.

The Revocable Trust Agreement provides in Section 2: Grantor’s Retained Rights, 2.2 Revocation, that Vasallo may revoke the Trust at any time and for any reason, subject only to the requirement to obtain prior FCC consent to revocation of any trust or company that has an interest in an FCC license. In 2.1 Amendment, Vasallo retains the power to “amend any trust created hereunder at any time or times in any manner.” Additionally, Section 8 gives Vasallo the right to remove both the initial Trustee and successor Trustees at his sole discretion, subject only to FCC consent if needed. These provisions, among other things, run afoul of Commission law and policy on ownership and control involving trust instruments.

In a recent order the Media Bureau reaffirmed the Commission’s standards for attribution of ownership interests in the trust context.⁶ The EMT Order states:

⁵ Vasallo’s signature appears on the Revocable Trust Agreement as Grantor; however, the “Acceptance by Trustee” form is neither signed nor dated by Felipe.

⁶ *In the Matter of Entertainment Media Trust*, Hearing Designation Order and Notice and Opportunity for Hearing, DA 34 FCC Rcd 4351 (“EMT Order”), at ¶ 62-64.

The Commission's policy on trusts provides that grantors and beneficiaries will be treated as attributable owners unless the Commission finds that the trust instrument sufficiently insulates them from exercising influence over the trust. Any such attributable owner must be disclosed in the assignment of license or transfer of control application as a party to the application and thereby be included in the certification of qualifications.

As discussed, Vasallo's interest in ATV Trust was not disclosed in the assignment application, nor was it disclosed in ATV's ownership reports as filed with the FCC. The EMT Order goes on to recite the Commission's insulation standards:

The grantor cannot have the power to vote (in the case of voting stock) or sell or dispose of the interest held in trust;

The grantor cannot have the power to revoke the trust at will or to replace the trustee at will;

The grantor cannot have a familial, personal, or extra-trust business relationship with the trustee; and

The entirety of the grantor's interest must be held by the trust.

The trust instrument must clearly state that there will be no communications with the trustee regarding the management or operation of the subject facilities.

Simply stated, control of the stations to be placed in trust rests with, and must be exercised solely by, the designated trustee.⁷ Applying these standards, an ownership interest in ATV Holdings clearly is attributable to Vasallo. Vasallo maintains an economic interest in the Application, as well as other broadcast interests in the same market. The Revocable Trust Agreement gives Vasallo the power to dissolve or revoke the trust. The ATV Opposition admits he retained this right, pointing out the sole condition that he must obtain prior FCC consent when a license is involved. The ATV Opposition fails to explain why this qualification is significant or

⁷ *In re Applications of Stockholders of Infinity Broadcasting Corporation*, 12 FCC Rcd 5012, 5041 (1996).

sufficiently insulates ATV Holdings from Vasallo's influence and control. Furthermore, as stated above, it appears that the agreement gives Vasallo the right to remove the trustee at will.

Vasallo indeed has a prohibited extra-trust business relationship with the Trustee, Felipe. Felipe currently serves as General Counsel to Vasallo's company, America CV, and he and his firm have represented Vasallo's business interests for years. The ATV Opposition, at 4, describes the "years of collaboration" between the two men in business matters.

The Revocable Trust Agreement fails to contain a clear statement that there will be no communication between Grantor and Trustee regarding the management or operation of the subject facilities, as the Commission requires for proper insulation. Grantor and Trustee obviously are in constant communication regarding the management and operation of ATV Holdings and its acquisition of WSUA. Trustee, who is also the sole officer and director of ATV Holdings, has delegated to Grantor all activities associated with the sale to ATV Holdings. Trustee stands side-by-side with Grantor, as Grantor's station broadcasts him boasting about his purchase of WSUA and his control over personnel and programming. Need Mr. Garcia say more.

Application's failure to list Vasallo's attributable interest is a material misrepresentation to the Commission. Lest there be any doubt that Felipe and Vasallo entered into a scheme to conceal the true ownership of ATV Holding and ATV Trust, the ATV Trust Ownership Report lists only Felipe.⁸ Neither the ATV Trust or ATV Holdings ownership report makes any mention of Vasallo. The ATV Trust ownership report claims that Felipe holds 100% of the voting right, 100% of the equity and 100% of the total assets. This, too, is a misrepresentation to the Commission. Clearly Vasallo intended to conceal his ownership of ATV from the Commission.

⁸ ATV Trust Ownership Report Submitted February 6, 2020, FRN 0028809614.

These two individuals are shameless in their disregard for the Communications Act and Commission rules. The ATV Opposition seeks to minimize their conduct, on the one hand, as hapless and therefore lacking requisite intent to deceive. It contradicts itself, on the other, by lauding their vast experience in media ownership and dealings with the Commission. Mr. Garcia's Petition to Deny raises substantial and material questions of fact that require an evidentiary hearing to resolve. These serious questions are insufficiently rebutted by the ATV and WSUA Oppositions. Mr. Garcia, therefore requests that 1) the Commission issue a hearing designation order on the Application and on the character qualifications of Vasallo and Felipe to hold Commission licenses, and 2) to hold the above captioned Application and other applications and petitions filed by Vasallo and America CV in abeyance pending the outcome of such hearing.

Respectfully Submitted,



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July 15, 2021

Declaration of Jose "Joe" Garcia

I, Jose "Joe" Garcia, declare under penalty of perjury, that the following information is true and correct:

I declare that I have personal knowledge of the factual allegations I make in the Reply to the Oppositions filed by WSUA Broadcasting Corporation and ATV Holdings, Inc. and that these allegations are true and correct.

A handwritten signature in black ink, appearing to read "Joe Garcia", is written over a horizontal line.

Jose "Joe" Garcia

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via email and first class mail to the following:

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