

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

In the Matter of)	
)	
CITICASTERS CO.)	File No. EB-00-IH-0065
)	NAL/Acct. No. X32080015
Licensee of Station KITT(FM))	Facility ID# 46982
Shreveport, Louisiana)	JJS
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 5, 2000

Released: May 9, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find Citicasters Co. (“Citicasters”), licensee of Station KITT(FM), Shreveport, Louisiana, apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000) for a violation of Section 73.1216 of the Commission’s rules, which requires licensees, among other things, to fully and accurately disclose material terms of a contest. We find that Citicasters conducted a contest, “Millionaire Monday,” without disclosing a material term of the contest, *i.e.*, that the prize was one million Turkish lira, not \$1,000,000.

II. BACKGROUND

2. On February 16, 2000, the Investigations and Hearings Division of the Enforcement Bureau received a complaint filed on behalf of John Richard McRae. According to the complaint, on February 14, 2000, Mr. McRae was selected to participate in a contest “Do You Want to Be a Millionaire?” conducted by KITT(FM). Mr. McRae answered all of the required questions correctly on the air and was told by “Coyote,” the on-air personality, that he was a millionaire. After he won the contest, Mr. McRae was told that he had won “one million Turkish lira,” which Coyote represented to be worth approximately \$1.90.

3. On February 24, 2000, the Investigations and Hearings Division sent a letter of inquiry to Citicasters. In its response, which was filed on April 14, 2000, Citicasters admitted it ran a contest called “Millionaire Monday” during the “Coyote and Kathryn” show on February 14, 2000 and that Mr. McRae was the winner of that contest. According to Citicasters, the contest was a parody of the ABC television show “Who Wants to Be a Millionaire?” The station ran teases promoting the contest approximately four times a day from February 4-6 and 11-13. The following is a transcript of the teases:

Coyote: Hold it, stop, stop, stop. Hey, hey, check this out. It’s Coyote . . .

Kathryn: And Kathryn . . .

Coyote: And coming up Monday morning . . .

Kathryn: Ooh, you could be a millionaire.

Coyote: Yes. Do you have a dictionary there?

Kathryn: Yes, it, it says, millionaire . . .

Coyote: Oh, oh, don't tell them, don't tell them the definition. Look it up yourself, read it, ok? You can fall into that category Monday morning right here.

Kathryn: Millionaire Monday.

Coyote: Coyote and Kathryn, on Thunder Country.

Kathryn: T-93.

Coyote: Where you can win a million, Monday morning.

4. Citicasters states that it intentionally did not state what the grand prize was. Citicasters claims that the contest's status as a parody was underscored by the fact that the prizes for correct answers to qualifying questions were a CD, hamburgers, and movie passes for two.

III. DISCUSSION

5. Section 73.1216 of the Commission's rules provides:

A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.

Under Note 1 to that rule, the material terms of the contest include "the extent, nature, and value of prizes" and "the basis for valuation of prizes." Note 2 to the rule states:

In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter. The material terms should be disclosed periodically by announcements broadcast on the station conducting the contest, but need not be enumerated each time an announcement promoting the contest is broadcast. Disclosure of material terms in a reasonable number of announcements is sufficient. In addition to the required broadcast announcements, disclosure of the material terms may be made in a non-broadcast manner.

6. In this case, it appears that Citicasters violated Section 73.1216 of the Commission's rules by not disclosing a material term of the "Millionaire Monday" contest – the fact that the prize was 1,000,000 Turkish lira not \$1,000,000. Citicasters states that it intentionally did not disclose the nature of the prize. The failure to disclose the nature and true value of the prize is a clear violation of the rule. Moreover, despite Citicasters's protestations that it never claimed that the prize was \$1,000,000, a listener had no way of determining that the prize in question was 1,000,000 Turkish lira. The Commission has held that licensees are "responsible for broadcasting accurate statements as to the nature and value of contest prizes, and will be held accountable for any announcement which tends to mislead the public." *WMJX, Inc.*, 48 RR 2d 1339, 1357 (1981).

7. Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and Section 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80(a), both state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b), the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Furthermore, a continuing violation is "repeated" if it lasts more than one day. *Id.*, 6 FCC Rcd at 4388.

8. Based on the evidence before us, we find that Citicasters conducted the "Millionaire Monday" contest without disclosing a material term of the contest, in apparent willful and repeated violation of Section 73.1216 of the Commission's rules. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$4,000 for a violation of Section 73.1216 of the rules.¹ After considering the record and all of the factors contained in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), and the *Forfeiture Policy Statement*, we believe a \$4,000 forfeiture is appropriate in this case.

9. We note that a station controlled by Citicasters' corporate parent recently committed a similar violation.² Future violations by stations owned by these entities will likely result in significantly higher forfeitures.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED THAT pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's rules,³ Citicasters Co. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for willfully and repeatedly violating Section 73.1216 of the Commission's rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Citicasters SHALL PAY to the United States the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

13. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W, Room 3-B443, Washington DC 20554 and MUST INCLUDE the file number listed above.

¹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17114 (1997), *recon. denied* 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

² *Clear Channel Broadcasting Licensees, Inc.*, DA 00-238 (EB released February 10, 2000), *forfeiture paid*.

³ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

14. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Citicasters's counsel, Christopher L. Robbins, Esq., Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau