

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

In the Matter of)
)
Citicasters Co.) File No. 00-IH-0283
) NAL/Acct. No. 200132080019
)
)
)

FORFEITURE ORDER

Adopted: March 30, 2001

Released: April 4, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we find that Citicasters Co. (“Citicasters”), violated section 310(d) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 310(d), and section 73.3540(a) of the Commission's rules, 47 C.F.R. § 73.3540(a), by assuming control of WBTJ(FM), Hubbard, Ohio, without obtaining prior Commission approval. We conclude that Citicasters is liable for a twenty-five thousand dollar (\$25,000) forfeiture.

II. BACKGROUND

2. On February 13, 2001, the Commission, by the Chief, Enforcement Bureau, acting pursuant to delegated authority, issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Citicasters, proposing a \$25,000 forfeiture.¹ We issued the NAL because it appeared that Citicasters had assumed control of WBTJ(FM) while acting as the station’s programmer under a time brokerage agreement (“TBA”). Citicasters obtained a temporary restraining order that required Stop 26-Riverbend, Inc., licensee of WBTJ(FM), to seek prior approval of a state court in Mahoning County, Ohio in order to preempt programming provided by Citicasters under the TBA. Thus, it appeared that Citicasters had effectively precluded the licensee from exercising its right to substitute programming of greater local or national importance or that better addressed the needs and interests of WBTJ(FM)’s community of license. Citicasters’ apparent exercise of control over programming, one of the three areas essential to station operation, was sufficient to find an unauthorized assumption of control. We therefore determined that Citicasters’ actions appeared to have resulted in a violation of section 310(d) of the Act and section 73.3540 of the rules.

3. Pursuant to paragraph 17 of the NAL, we sent the NAL by certified mail to Citicasters’ counsel of record. The return receipt reflects delivery of the NAL on February 15, 2001. Citicasters has not responded to the NAL.

¹ See *Citicasters Co.*, DA 01-344 (Enforcement Bureau Feb. 13, 2001).

III. DISCUSSION

4. Section 310(d) of the Act provides in pertinent part:

No . . . station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

Similarly, section 73.3540(a) of the Commission's rules, 47 C.F.R. § 73.3540(a), provides, "Prior consent of the FCC must be obtained for a voluntary assignment or transfer of control." As detailed in the NAL, Citicasters assumed control of WBTJ(FM) without having received Commission authorization to do so. Having received nothing to suggest otherwise, we conclude that the unauthorized transfer occurred and that imposition of the forfeiture is warranted.

IV. ORDERING CLAUSES

5. ACCORDINGLY, IT IS ORDERED pursuant to 47 U.S.C. § 503(b) and 47 C.F.R. §§ 0.111, 0.311 and 1.80, that Citicasters Co. FORFEIT to the United States the sum of twenty-five thousand dollars (\$25,000) for willfully and repeatedly violating 47 U.S.C. § 310(d) and 47 C.F.R. § 73.3540(a).

6. Payment of the forfeiture shall be made by mailing a check or money order, 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, within thirty (30) days of the release of this Forfeiture Order. *See* 47 C.F.R. § 1.80(h). The payment should note the NAL/Acct. No. referenced above. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to 47 U.S.C. § 504. A request for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²

7. IT IS FURTHER ORDERED THAT a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Citicasters Co., 50 E. RiverCenter Blvd., 12th Floor, Covington, KY 41011 and to Citicaster's counsel, Marissa G. Repp, Esq., Hogan & Hartson, L.L.P., 555 13th Street, N.W., Washington, DC 20004-1109.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

² *See* 47 C.F.R. § 1.1914.