

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

In the Matter of Application of)
CITADEL BROADCASTING COMPANY.) File No. 0001486426
For Authorization of Broadcast Auxiliary)
Service Station, Las Vegas, Nevada)
Request for Waiver of Section 74.502(d) of the)
Commission's Rules)

MEMORANDUM OPINION & ORDER

Adopted: November 22, 2004

Released: November 23, 2004

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On October 17, 2003, Citadel Broadcasting Company (Citadel) filed the above-captioned application for a license in the Broadcast Auxiliary Service (BAS) in Las Vegas, Nevada. In conjunction with the referenced application, Citadel has also requested waiver of Section 74.502(d) of the Commission's Rules (Waiver Request) which requires frequency coordination prior to filing an application for a BAS license. For the reasons stated below, we deny Citadel's waiver request and dismiss its application.

II. BACKGROUND

2. On October 30, 2002, the Commission amended its rules to require that all applicants follow the frequency usage coordination procedures set forth in Section 101.103(d) of the Commission's Rules prior to filing an application for licensing in the BAS. On April 15, 2003, the Commission granted a Petition from the Society of Broadcast Engineers (SBE) to stay the new coordination rules, agreeing with SBE that legacy database inaccuracies in the ULS, which had not been anticipated when the R&O setting these procedures was adopted, could affect the efficacy of the coordination procedures. The Commission concluded that a six-month period was sufficient to provide BAS licensees and Commission staff sufficient time to address completion and correction of database inaccuracies without unnecessarily

1 File No. 001486426 (filed Oct. 17, 2003) (Application).

2 See Letter from Martin Stabbert, Regional Engineer, Citadel Broadcasting Company, filed Oct. 17, 2003 (Waiver Request).

3 In re Revisions to the Broadcast Auxiliary Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules, Report & Order, ET Docket No. 01-75, 17 F.C.C. Rcd. 22,979 ¶¶ 54, 60 (2002) (Coordination R&O).

4 See Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules, Order, ET Docket No. 01-75, 18 FCC Rcd 7032 ¶ 4 (2002).

delaying the efficiency and protection benefits offered by the new coordination procedures.⁵ The Commission's Stay Order delayed the effective date of the new coordination rules until October 16, 2003.⁶

3. Citadel asserts that it attempted to file an application for a BAS license prior to the October 17, 2003 effective date of the new coordination rules.⁷ Citadel claims that it was unable to complete its application, however, due to a failure in the Commission's Universal Licensing System (ULS).⁸ Citadel completed the filing of its application for a BAS license on October 17, 2003. Because it was unable to complete filing before the effective date of the new coordination procedures, Citadel seeks a waiver of the coordination requirement.

III. DISCUSSION

4. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate that a grant of the waiver would be in the public interest and the underlying purpose of the rule(s) would be frustrated or not served by application to the present case.⁹ Alternatively, a petitioner must show that, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or that the applicant has no reasonable alternative.¹⁰ "An applicant for waiver faces a high hurdle even at the starting gate."¹¹ We find that Citadel has failed to make the requisite showing that it merits a waiver of Section 74.502(d) under the circumstances presented.

5. Citadel asserts that a waiver of the coordination requirements set forth in Section 74.502(d) is warranted because it was unable to complete the filing of its application prior to the effective date of the new coordination rules due to a ULS malfunction.¹² Citadel further asserts that had it been able to use ULS at any time between the evening of October 11^h and the morning of October 14th, as it attempted, its application for licensing would not have been subject to prior coordination.¹³

6. We find these arguments to be unavailing. The Commission has previously held that a failure to be able to use the ULS is not sufficient to overcome a failure to file in a timely manner.¹⁴ Additionally, Citadel's Waiver Request fails to demonstrate that the purpose of the rule would be frustrated if the waiver was not granted. The Commission implemented the new coordination procedures in order to create a more efficient BAS that can readily adapt to technological changes in the industry, as well as to accommodate the new Mobile Satellite Service (MSS).¹⁵ Citadel fails to address how granting

⁵ *Id.* at ¶ 6.

⁶ *Id.* ¶¶ 1,8.

⁷ See Waiver Request.

⁸ *Id.*

⁹ 47 C.F.R. § 1.925.

¹⁰ *Id.*

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹² Waiver Request.

¹³ *Id.*

¹⁴ In the Matter of Applications of Jaffrey, Town of Request for Reinstatement of License for Conventional Public Safety Pool Station KCF416, Jaffrey, New Hampshire, *Order*, 17 F.C.C. Rcd. 3493 (rel. Feb. 25, 2002).

¹⁵ Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Part 74, 78 and 101 of the Commission's Rules, *Notice of Proposed Rulemaking*, ET Docket 01-75, 16 F.C.C. Rcd. 10,556 (2001).

of this waiver would serve the public interest in allowing for more efficient and advanced use of the spectrum. Indeed, we believe that to grant the waiver under these circumstances would frustrate the goal of the prior coordination requirement which serves to protect licensees' operations from interference. Furthermore, Citadel has not demonstrated that application of the new coordination procedures is burdensome, inequitable or contrary to the public interest. Moreover, inasmuch as Citadel can obtain the license it seeks by following the Commission's new coordination procedures, set forth in Section 74.502(d), Citadel has failed to establish that it has no reasonable alternative. We therefore deny Citadel's Waiver Request.

IV. CONCLUSION AND ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that pursuant to Sections 155 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 155 and 309, and Sections 0.131, 0.204(b), 0.331, and 1.925 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.204(b), 0.331, 1.925, the Request for Waiver filed by Citadel Broadcasting Company on October 17, 2003 IS DENIED.

8. IT IS FURTHER ORDERED that pursuant to Section 209 of the Communications Act of 1934, as amended, 47 U.S.C. § 309, and Sections 1.923 and 74.502(d) of the Commission's Rules, 47 C.F.R. §§ 1.923, 74.502(d), the Application filed by Citadel Broadcasting Company on October 17, 2003 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau