

discovered the station's public file was missing required documentation including programming and issues lists and the most recent ownership report.⁴

5. During the February 21, 2003 inspection, the agent had a conversation with Mr. Mike Fields, the station's Chief Engineer. Mr. Fields informed the agent that KSYY-FM's managerial office is located on NW 64th Street in Oklahoma City, over four miles away from the main studio. Mr. Fields also stated that no management personnel worked in the main studio location and that the hours of operation for the main studio were from 8:00 a.m. to 5:00 p.m. No sign was present at the main studio listing the normal business hours of operation.⁵ The agent issued an oral warning to Mr. Field regarding the violations.

6. On August 21, 2003, the same agent from the Dallas Office again attempted to inspect KSYY-FM's main studio on Britton Road, Oklahoma City during regular business hours. At 10:14 a.m., there was no individual present at the main studio. In response to the agent's telephone call, KSYY-FM's General Manager traveled from its managerial offices to provide access to the public file. During the inspection the agent noted that certain required information concerning programming presented to address local community issues was missing or deficient.⁶ During the inspection, the station's general manager stated that KSYY-FM's regular business hours were 12 noon to 9:00 p.m.,⁷ however, there was no display of the station's call sign or the hours of operation. The general manager also stated that the station was contemplating requesting a waiver to allow it to move its main studio to the location on NW 64th St.

7. On March 8, 2004, the Dallas Office issued the *NAL* in the amount of nine thousand dollars (\$9,000) to Citadel. Citadel filed its response on April 7, 2004. In its response, Citadel seeks cancellation of the proposed forfeiture because the agent inspected the station during the morning, prior to its normal hours of business, 12 noon to 9 p.m. Citadel argues that because its normal business hours are from 12 noon to 9 p.m., it satisfies the Commission's Rule as the phrase "normal business hours" is not defined. Moreover, Citadel asserts that a manager was present at the studio with a staffer during its normal business hours. Citadel states that it has now altered its normal business hours to 9 a.m. to 5 p.m. as a result of the *NAL*. Citadel's response also stated that it reviewed its public file after the August 21, 2003 inspection and found the public inspection file contained the most recent ownership report on that date. The agent was notified of that fact by telephone on the same day. Citadel also asserts that all quarterly issues and program lists have since been placed in the files and that Citadel has a good record of compliance.

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁸ Section 1.80 of the Rules,⁹ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Citadel's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with

⁴ An ownership transfer had occurred approximately five months prior to the inspection. An ownership transfer requires timely filing of a new ownership report.

⁵ The signage listed the call sign KLGH.

⁶ See Section 73.3526 of the Rules, 47 C.F.R. § 73.3526.

⁷ The agent's inspection was attempted at 10:41 AM.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹⁰

9. Section 73.1125(a) of the Rules requires that every broadcast station licensee maintain a main studio for the station. To serve the needs and interests of the residents of the station's community of license, the licensee must maintain a full-time staff and managerial presence at the main studio during normal business hours.¹¹ The agent's inspections establish that management and staff level personnel were repeatedly absent from the main studio. Moreover, members of Citadel's managerial staff admitted that its management office is located elsewhere and no manager works full time at their main studio. Based upon the agent's observations and the Citadel employee admissions, Citadel does not satisfy the minimum requirements of Section 73.1125(a) of the Rules.¹²

10. Moreover, Citadel cannot rely on its own, unannounced version of normal business hours as compliance with the Rule. The purpose of the Rule is to allow access by the general public to the station's records and ensure compliance with the community's needs.¹³ The meaning of normal business hours is that in which the business community normally conducts business, not the hours a station chooses to allow public access. The Commission has advised FM licensees of its meaning of the phrase "normal business hours" and issued a Public Notice to define normal business hours as generally an eight hour period between the hours of 8 a.m. to 6 p.m.¹⁴ Accordingly, we conclude that Citadel willfully¹⁵ and repeatedly¹⁶ violated Section 73.1125(a) of the Rules.

11. Section 73.3526 of the Rules requires commercial broadcast stations to maintain a public inspection file at the main studio of the station. The public file available at the station's main studio on February 21, 2003 and August 21, 2003 was missing some of the required material. The February 21, 2003 violations include both the ownership report and the Issues and Programs Lists, the August 21, 2003 violation concerns only the Issues and Programs Lists. Citadel does not dispute that certain quarterly Issues and Programs Lists were missing from the Station's public inspection file. After review of Citadel's response, we find no basis to overturn the agent's determination that required items were repeatedly missing from the local public file. Nor can Citadel's statement that it has remedied the deficiencies regarding Issues and Program Lists result in mitigation of its violations.¹⁷ We conclude that Citadel did not maintain a

¹⁰ 47 U.S.C. § 503(b)(2)(D).

¹¹ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 and n.2 (1992), *clarified*, 7 FCC Rcd 6800 (1992).

¹² *Id.* at 6802.

¹³ *See Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-3218 (1987), *clarified* 3 FCC Rcd 5024, 5026 (1988) and *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800, 6802 (1992).

¹⁴ *See Bulletin EB-18FM*, November 1, 2001; March 2003, June 18, 2003 and May 2004 Editions, page 6, Section 1, G.

¹⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁶ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

¹⁷ Remedial measures do not warrant mitigation when they occur after Commission notification. *See AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 ¶7 (1994); *TCI Cablevision of Maryland, Inc.*, 7 FCC Rcd 6013, 6014 ¶8 (1992).

complete public inspection file at KSYF-FM's main studio, in willful and repeated violation of Section 73.3526 of the Rules and impose the forfeiture proposed in the *NAL*.

12. We have examined Citadel's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement* as well. As a result of our review, we conclude that Citadel willfully and repeatedly violated Sections 73.1125(a) and 73.3526 of the Rules and that neither cancellation nor further reduction of the proposed \$9,000 monetary forfeiture is warranted.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁸ Citadel Radio, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of nine thousand dollars (\$9,000) for willfully and repeatedly violating Sections 73.1125(a) and 73.3526 of the Rules.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, and P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁰

15. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested, and by First Class Mail to Larry Bastida, General Manager, Station KSYF, Citadel Broadcasting Company, 4045 NW 64th, Suite 600, Oklahoma City, OK 73116 and its counsel Christopher J. Sova, Esquire, Leventhal Senter & Lerman PLLC, 2000 K Street, N.W., Suite 600, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁹ 47 U.S.C. § 504(a).

²⁰ See 47 C.F.R. § 1.1914.