

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

In the Matter of)	
)	
Citadel Broadcasting Company)	Facility ID Nos. 61275/58931
)	NAL/Acct. Nos. MB20041810074/75
Licensee of Stations WIBR(AM))	FRN: 0001595214
Baton Rouge; WEMX(FM))	File Nos. BR-20040202AXR;
Kentwood, Louisiana)	BRH-20040202AYD

FORFEITURE ORDER

Adopted: October 25, 2010

Released: October 26, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the total amount of eight thousand dollars (\$8,000)¹ to Citadel Broadcasting Company (“Citadel”), licensee of Stations WIBR(AM), Baton Rouge, and WEMX(FM), Kentwood, Louisiana (collectively, the “Stations”), for its willful and repeated violations of Section 73.3526 of the Commission’s Rules (the “Rules”).² The violations involve Citadel’s failure to properly maintain the Stations’ public inspection files.

II. BACKGROUND

2. On February 2, 2002, Citadel filed the captioned applications to renew the licenses of WIBR(AM) and WEMX(FM) (the “Applications”). Section III, Item 3, of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 of the Rules has been placed in the station’s public inspection file at the appropriate times. Citadel responded “no” with regard to WIBR(AM). It disclosed that the station failed to timely place the following issues/programs lists in the WIBR(AM) public file: the issues/programs lists for the four quarters of 1999; the first three quarters of 2000; first quarter of 2001; the first quarter of 2002; and the first three quarters of 2003. Citadel also responded “no” with regard to WEMX(FM). It disclosed that the station failed to timely place the following issues/programs lists in the WEMX(FM) public file: the issues/programs lists for the four quarters of 1999; the first three quarters of 200; the third and fourth quarters of 2001; the third and fourth quarters of 2002; and the first three quarters of 2003.³ Citadel added that the majority of the initially absent quarterly issues and programs lists had been re-created and placed in the respective public inspection files and that steps had been taken to assure that in the future all quarterly lists are timely prepared and placed in the public files.⁴

¹ Four thousand dollars (\$4,000) per station.

² 47 C.F.R. § 73.3526.

³ Citadel also indicated that “the lists do not meet all of the technical requirements of 47 C.F.R. § 73.3526(e)(12).”

⁴ See Applications at Exhibit 11.

3. On August 5, 2004, the Bureau issued two Notices of Apparent Liability for Forfeiture (“NAL”) to Citadel in the amount of nine thousand dollars (\$9,000) to each Station – for a total of eighteen thousand dollars (\$18,000) -- for willfully and repeatedly⁵ violating Section 73.3526 of the Rules. Citadel filed a joint response to each NAL on September 3, 2004, requesting cancellation of each of the proposed forfeitures (“Joint Request”).

III. DISCUSSION

4. The proposed forfeiture amounts in these cases were assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the Commission’s *Forfeiture Policy Statement*.⁸ In examining Citadel’s Joint Request, Section 503(b) of the Act⁹ and the other cited authority require that we take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Section 73.3526 of the Rules requires that AM and FM broadcast stations maintain for public inspection a public file containing certain items, including quarterly issues/programs lists. Here, Citadel by its own admission was not in compliance with the public inspection rule.

5. In its Joint Request, Citadel raises two arguments challenging the proposed forfeiture. First, Citadel asserts that the Commission has been inconsistent with respect to forfeitures assessed to similarly-situated renewal applicants. Specifically, Citadel compiled a list of stations receiving smaller forfeitures than did the Stations for similar public-inspection file violations.¹⁰ Hence, Citadel contends that the Stations, too, should have received smaller forfeiture amounts. However, a brief review of recent precedent provides extensive Commission precedent for issuing the forfeitures as assessed for violations similar to those which Citadel has admitted in its Applications here. Recent NALs have consistently assessed forfeitures of \$10,000 for missing issues/programs lists involving 10 or more quarters, for periods of from three to four years.¹¹ In the instant case, the Stations each have at least 12 missing quarterly issues/programs lists, involving a five-year period; the \$9,000 NAL issued for each Station here

⁵ For purposes of Section 503(b) of the Communications Act of 1934, as amended, (the “Act”) the term “willful” means that the violator knew it was taking the action or failing to take the required action, irrespective of any intent to violate the Rules. A continuing violation is “repeated” if it lasts for more than one day. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ Joint Request at 2-3.

¹¹ *See e.g. Cumberland Communications Corporation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5553 (MB 2007) (“*Cumberland*”) (violations occurred over a period of three years and involved 10 missing issues/programs lists); *CC Licenses, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 12711 (MB 2007) (“*CC Licenses*”) (same); *CC Licenses, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 12695 (MB 2007) (violations occurred over a period of over four years and involved 12 missing issues/programs lists); *Continental Broadcasting Corp. of Arizona*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8444 (MB 2007) (violations occurred over a period of more than four years and involved 14 missing issues/programs lists); *Capstar TX Limited Partnership*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 12715 (MB 2007) (same).

is consistent with the current \$10,000 forfeitures.¹² Accordingly, we do not believe it appropriate to reduce the forfeiture amounts in light of these recent decisions.

7. Next, we turn to Citadel's argument that it did not become licensee of the Stations until June 26, 2001, and therefore, it is not responsible for issues/programs lists' violations that occurred prior to that date.¹³ Specifically, Citadel argues that it is only responsible for four missing lists from the WIBR(AM) public inspection file and seven missing lists from the WEMX(FM) public inspection file.¹⁴ We agree. Section 73.3526(d)(1) of the Rules, "Responsibility in Case of Assignment or Transfer," states, in pertinent part: "[I]f the assignment [or transfer] is consented to by the FCC and consummated, the assignee [or transferee] shall maintain the file commencing with the date on which notice of the consummation . . . is filed with the FCC."¹⁵

8. In light of the foregoing, we have examined Citadel's Joint Request pursuant to the statutory factors above and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Citadel willfully and repeatedly violated Section 73.3526(e)(8) of the Rules,¹⁶ and we find no basis for canceling the forfeitures proposed in the NALs for the violations. However, in light of the fact that the entity now controlling Citadel¹⁷ did not become the Stations' licensee until June 26, 2001, we will reduce the forfeitures to an amount commensurate with the violations of Section 73.3526 that occurred after June 26, 2001.¹⁸ Accordingly, we will reduce the forfeiture for each station from nine thousand dollars (\$9,000) to four thousand dollars (\$4,000).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁹ that Citadel Broadcasting

¹² Until early 2007, NALs for public inspection file violations disclosed in license renewal applications received a \$1000 reduction for voluntarily disclosing the violations. That reduction is no longer awarded because the Media Bureau believes that although the licensee may admit to violating the public file rule in its renewal application, it does so only in the context of a question in the renewal application that compels such disclosure. *See, e.g., Cumberland*, 22 FCC Rcd at 5555 ¶ 7 and *CC Licenses*, 22 FCC Rcd 12713 ¶ 7, as well as the other cases cited in Note 11, *supra*.

¹³ *See* File Nos. BTC-20010124AFX and BTCH-20010124AFY. The transfer of control of Citadel was consummated on June 26, 2001.

¹⁴ Joint Request at 2.

¹⁵ 47 C.F.R. § 73.3526(d)(1). *See also Media Bureau Announces Certain Revisions to Instructions to Form 303-S*, Public Notice, 18 FCC Rcd 8986 (MB 2003) ("[I]f the station license was assigned or transferred during the subject license term pursuant to a "long-form" application on FCC Form 314 or 315, the renewal applicant's certifications should cover only the period during which the renewal applicant held the station's license.").

¹⁶ 47 C.F.R. § 73.3526(e)(8).

¹⁷ On June 12, 2007, Citadel consummated another transfer of control involving no substantial change in control of ownership. *See* File No. BTC-20060228ACC at Exhibit 5 at Attachment 5.

¹⁸ *See e.g., Citicasters Licenses, LP*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 12699 (MB 2007) (forfeiture of \$4000 for violations occurring over a period of three years and involving 4 missing issues/programs lists); *New Northwest Broadcasters, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13718 (MB 2006) (forfeiture of \$4000 for violations occurring over a period of two years and involving 7 missing issues/programs lists).

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

Company, SHALL FORFEIT to the United States the sum of eight thousand dollars (\$8,000)²⁰ for willfully and repeatedly violating Section 73.3526 of the Rules.

10. Payment of the proposed 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. Nos. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).²¹

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Citadel Broadcasting Company, c/o Christopher A. Sova, Esquire, Citadel Broadcasting Corporation, 4th Floor, 4400 Jenifer Street, N.W., Washington, DC 20015.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁰ Four thousand dollars (\$4,000) per station.

²¹ See 47 C.F.R. § 1.1914.