

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

In the matter of
CITICASTERS CO.
File No. 00-IH-0283
NAL/Acct. No. 200132080019/MG

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 2001

Released: July 20, 2001

By the Commission:

1. In this Order, we dismiss an application for review filed May 4, 2001 by Citicasters Co. ("Citicasters"). Citicasters seeks review of a forfeiture order issued by the Chief, Enforcement Bureau. In that forfeiture order, the Bureau concluded that Citicasters willfully and repeatedly 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), and ordered Citicasters to forfeit a total of twenty-five thousand dollars (\$25,000) to the United States.

2. On February 13, 2001, the Enforcement Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") to Citicasters, proposing a \$25,000 forfeiture because it appeared that Citicasters had assumed control of WBTJ(FM) while acting as the station's programmer under a time brokerage agreement ("TBA"), in violation of section 310(d) of the Act and section 73.3540 of the rules. Citicasters did not respond to the NAL. Accordingly, the Bureau concluded that the unauthorized transfer occurred and that imposition of the \$25,000 forfeiture was warranted. Thus, the Bureau issued its forfeiture order. Citicasters thereafter filed its application for review.

3. This case arose as a result of a complaint filed by Stop 26-Riverbend, Inc. (Stop 26), the licensee of WBTJ(FM), Hubbard, Ohio. The gravamen of that complaint was that Citicasters had improperly taken control of WBTJ(FM) from Stop 26. The Bureau issued a letter of inquiry, which Citicasters answered. The Bureau then began a forfeiture proceeding through issuance of the NAL.

1 Citicasters Co., DA 01-823 (EB Apr. 4, 2001)(Forfeiture Order).

2 Citicasters Co., DA 01-344 (EB Feb.13, 2001)(NAL).

3 The call sign of the station was changed to WRBP on April 10, 2001. For consistency, we will refer to the station by its former call sign, WBTJ. In addition, we note that Stop 26 filed an opposition to Citicasters' application for review. Stop 26's opposition will be dismissed as moot.

4 As set forth in the forfeiture order, the NAL was delivered by certified mail to Citicasters' counsel and received by counsel. See Forfeiture Order at ¶ 3. In addition, the forfeiture order was sent both to Citicasters and to its counsel of record by certified mail, and received by both. Citicasters also did not file a petition for reconsideration of the forfeiture order.

Because Citicasters did not participate in the forfeiture proceeding prior to the filing of its application for review, section 1.115(a) of the Commission's rules requires Citicasters to show good cause why it "was not possible" for it to do so.⁵ Citicasters has not made the requisite good cause showing. The mere fact that it answered the Bureau's letter of inquiry regarding investigation of the complaint does not constitute participation in the forfeiture proceeding. We note that the Application for Review includes a number of arguments not raised in response to the Bureau's letter of inquiry in that they address the reasoning of the NAL. This is a key reason why parties are not entitled to sit back and not participate before the Bureau and wait to participate in the first instance with the Commission.⁶ Under these circumstances, Citicasters is barred from filing an application for review.

ORDERING CLAUSES

4. ACCORDINGLY, IT IS ORDERED That, pursuant to section 1.115(a) of the Commission's rules, 47 C.F.R. § 1.115(a), the application for review of the Forfeiture Order for NAL No. 200132080019/MG IS HEREBY DISMISSED.

5. IT IS FURTHER ORDERED That the opposition to the application for review filed by Stop 26-Riverbend, Inc. IS HEREBY DISMISSED as moot.

6. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules⁷ within 30 days of the date 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.⁸ Payment may be made 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. 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. 20554.⁹

7. IT IS FURTHER ORDERED That a copy of this Memorandum Opinion and 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

Magalie Roman Salas
Secretary

⁵ 47 C.F.R. § 1.115(a).

⁶ See also 47 C.F.R. § 1.115(c) (requiring that matters of fact and law be raised in the first instance with the Bureau); *Mark H. Fulling*, 15 FCC Rcd 6020 (2000).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 504(a).

⁹ See 47 C.F.R. § 1.1914.