

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

In the Matter of)	
)	
Citadel Broadcasting Company	)	NAL/Acct. No. MB200741410292
	)	FRN: 0001595214
)	
For Renewal of Licenses for Stations	)	FCC File Nos. BRH-20030801BMZ
WWWZ(FM), Summerville, South Carolina	)	Facility ID No. 61278
)	
WLXC(FM), Lexington, South Carolina	)	BRH-20030801AXL
	)	Facility ID No. 37200
)	
WQGN-FM, Groton, Connecticut	)	BRH-20051128AMI
	)	Facility ID No. 10455
)	
WXLN(FM), Stonington, Connecticut	)	BRH-20051128ALJ
	)	Facility ID No. 60251
)	
WSUB(AM), Groton, Connecticut	)	BRH-20051128ALT
	)	Facility ID No. 10454
)	
WPRO(AM), Providence, Rhode Island	)	BR-20051201BVR
	)	Facility ID No. 64843
)	
WPRO-FM, Providence, Rhode Island	)	BRH-20051201BVH
	)	Facility ID No. 64841
)	
WSKO(AM), Providence, Rhode Island	)	BR-20051201BSC
	)	Facility ID No. 64840
)	
WSKO-FM, Wakefield-Peacedale, Rhode Island	)	BRH-20051201BAD
	)	Facility ID No. 4376
)	
WWKX(FM), Woonsocket, Rhode Island	)	BRH-20051201AYK
	)	Facility ID No. 65198
)	
WWLI(FM), Providence, Rhode Island	)	BRH-20051201BBH
	)	Facility ID No. 64838
)	
WYOS(AM), Binghamton, New York	)	BR-20060131AJH
	)	Facility ID No. 7921
)	
WAAL(FM), Binghamton, New York	)	BRH-20060131AJP
	)	Facility ID No. 7920
)	
WHWK(FM), Binghamton, New York	)	BRH-20060131AJN
	)	Facility ID No. 72373

WNBF(AM), Binghamton, New York	)	BR-20060131AJJ
	)	Facility ID No. 72372
)	
WWYL(FM), Chenango Bridge, New York	)	BRH-20060131AJB
	)	Facility ID No. 7663
)	
Existing Shareholders of Citadel)	
Broadcasting Corporation and of The	)	BTC-20060228ACC, <i>et al.</i> ,
Walt Disney Co. (Transferors)	)	BTC-20060228ABG, <i>et al.</i> ,
and	)	BTCH-20060228ABM, <i>et al.</i> ,
Shareholders of Citadel Broadcasting	)	BTC-20060228ABR, <i>et al.</i> ,
Corporation and of The Walt Disney Co.	)	BTC-20060228ABU-ABV,
(Transferees)	)	BTC-20060228ABX, <i>et al.</i> ,
	)	BTC-20060228ACA, <i>et al.</i> ,
For Consent to Transfers of Control	)	BTC-20060228AKZ,
	)	BTC-20060228ALA,
	)	BTCH-20060228ALB-ALC,
	)	BTCH-20060228ABK, <i>et al.</i> ,
	)	BTCH-20060314ADW,
	)	BTCH-20060606AAF
)	
Citadel Broadcasting Company (Assignor)	)	BALH-20060228ALE-ALO
and)	
The Last Bastion Station Trust, LLC)	
(Assignee))	
)	
For Consent to Assignment of Licenses)	

**MEMORANDUM OPINION AND ORDER
AND NOTICE OF APPARENT LIABILITY**

Adopted: March 22, 2007

Released: April 4, 2007

By the Commission: Commissioners Copps, Adelstein and McDowell issuing separate statements.

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I. INTRODUCTION

1. The Commission has under consideration the above-captioned transfer applications (the “Merger Applications”) for consent to a proposed merger by which Citadel Broadcasting Corporation (“Citadel”) would acquire 24 radio stations currently licensed to subsidiaries of ABC Chicago Radio Holdings, Inc. (“ABC Radio”), which is, in turn, a subsidiary of The Walt Disney Co. (“Disney”).¹ In exchange, Citadel would issue stock to the current shareholders of Disney, resulting in a transfer of an approximately 57% interest in Citadel to those shareholders and a corresponding dilution of the aggregate interests of the existing Citadel shareholders from 100% to approximately 43% of the post-merger entity. Accordingly, the transaction contemplates a transfer of *de jure* control of the 225 full-power radio stations currently licensed to Citadel’s subsidiary, Citadel Broadcasting Company (“Citadel Broadcasting”) to the current Disney shareholders.² In addition, notwithstanding the transfer of *de jure* control of Citadel to the Disney shareholders, because the stock held by the Disney shareholders is widely held, Theodore J. Forstmann, through various partnerships (collectively, “Forstmann Little”), which currently owns a majority of Citadel’s outstanding stock, will exercise *de facto* control over the stations licensed to Citadel and its subsidiaries, including the 24 stations now licensed to subsidiaries of ABC Radio.³ The Merger Applications are the subject of a petition to deny, which, for the reasons discussed below, we deny.

2. Because the proposed transaction involves a greater-than-50% change in the stock ownership of Citadel and a transfer of control of the 24 ABC Radio stations, the parties have sought Commission approval of a substantial change in ownership, requiring “long-form” applications pursuant to Section 309(c)(2)(B) of the Communications Act of 1934, as amended (the “Act”), and Section 73.3540 of the Commission’s Rules (the “Rules”).⁴ Accordingly, the transfer of control of Citadel Broadcasting will terminate that licensee’s ability to maintain certain grandfathered ownership interests that do not comply with the Commission’s current radio ownership rule.⁵ To resolve this issue, Citadel Broadcasting also has filed the captioned

¹ By filings dated December 15, 2006, the Merger Applications were amended to reflect the execution by the parties to the proposed transaction of a November 19, 2006, amendment to the Agreement and Plan of Merger.

² A list of the stations that are the subject of the proposed assignments and transfers and, for each, its community of license, facility ID number and assignment or transfer application file number, and, with regard to the Disney-controlled stations, the licensee, is attached as an Appendix hereto. This list includes certain stations acquired by Citadel Broadcasting in transactions that closed after the initial filing of the Merger Applications. See FCC File Nos. BALH-20060119ADK and BALH-20060512ACD.

³ The parties have represented to the Commission that post-closing interests in partnerships controlled by Mr. Forstmann will provide him *de facto* control over the stations. See Exhibit 5 to the Merger Applications, as amended, at 2.

⁴ 47 U.S.C. § 309(c)(2)(B); 47 C.F.R. § 73.3540.

⁵ 47 C.F.R. § 73.3555(a)(1). See 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules, 18 FCC Rcd 13620, 13724-37 (2003) (“Ownership Order”), *aff’d in part and remanded in part, Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372 (3d Cir. 2004) (“Prometheus Remand Order”), *cert. denied*, 125 S. Ct. 2902, 2903, 2904 (2005). See also *Prometheus* (continued . . .)

application for consent to its proposed assignment of its licenses for 11 radio stations in seven markets to a trust that is insulated from its control in accordance with our insulation criteria (the “Trust Application”).

3. The long-form status of this transaction also requires us to address Citadel Broadcasting’s pending applications for license renewal as a prerequisite to approving the transfer of control or assignment of those stations.⁶ Of the stations to be involved in the proposed transaction, many do not have such applications pending. Those that have pending renewal applications are addressed herein. Each of these applications is the subject of a petition to deny and/or discloses a failure by Citadel Broadcasting to have maintained certain quarterly station issues/programs lists for public inspection. As discussed below, we propose forfeitures against Citadel Broadcasting for its willful and repeated violations of Section 73.3526 of the Rules⁷ in the total amount of \$21,000, and grant the renewal applications for these Citadel Broadcasting stations captioned above and otherwise deny the petitions to deny.

4. We also grant the Merger Applications and the Trust Application, subject to the condition that Citadel Broadcasting divest the 11 radio station licenses specified in the Trust Application to the insulated trust prior to or simultaneously with the consummation of the transfer of control of Citadel Broadcasting.

II. THE RENEWAL APPLICATIONS

5. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.⁸ That Section provides that we are to grant the application if, upon consideration of the application and pleadings, we find that, with respect to the station that is the subject of the renewal application, during the preceding term of the station’s license: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁹ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁰

A. CONNECTICUT AND RHODE ISLAND STATIONS

6. On March 1, 2006, Red Wolf Broadcasting Corporation (“Red Wolf”) filed a Petition to Deny the captioned renewal applications of Citadel Broadcasting for Stations WQGN-FM and WSUB(AM), Groton, Connecticut; WXML(FM), Stonington, Connecticut; WPRO(AM), WPRO-FM, WWLI(FM) and WSKO(AM), Providence, Rhode Island; WSKO-FM, Wakedale-

(Continued from previous page)

Radio Project, et al. v. FCC, No. 03-3388 (3d Cir. Sept. 3, 2003) (granting motion for stay of effective date of new rules), *stay modified on reh’g*, No. 03-3388 (3d Cir. Sept. 3, 2004).

⁶ See *Jefferson Radio Co. v. FCC*, 350 F.2d 781 (D.C. Cir. 1964).

⁷ 47 C.F.R. § 73.3526.

⁸ 47 U.S.C. § 309(k).

⁹ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹⁰ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

Peacedale, Rhode Island; and WWKX(FM), Woonsocket, Rhode Island.¹¹ For the reasons discussed below, we grant the March 1 Petition to the extent noted and otherwise deny it.

7. We also address disclosures made by Citadel Broadcasting in its license renewal applications for Stations WSKO(AM), WPRO(AM) and WPRO-FM, Providence, Rhode Island and WSKO-FM, Wakefield-Peacedale, Rhode Island, that, during each station's current license term, its public inspection file was missing certain quarterly issues and programs lists. Based on our review of the facts and circumstances surrounding these applications, we conclude that Citadel Broadcasting has willfully and repeatedly violated Section 73.3526 of the Rules at these stations and at Stations WQGN-FM and WSUB(AM), Groton, Connecticut, for which we propose a forfeiture in the amount of \$10,000. For the reasons discussed below, we conclude that, notwithstanding these violations, the grant of the renewal applications for the Connecticut and Rhode Island stations would be consistent with the public interest.

1. Red Wolf's Standing

8. Red Wolf claims to have standing to file its March 1 Petition because its stations, WBMW(FM), Ledyard, Connecticut, and WWRX(FM), Pawcatuck, Connecticut, compete in the New London, Connecticut, market with Citadel Broadcasting's three captioned Connecticut stations, WQGN-FM, WXML(FM), and WSUB(AM).¹² Red Wolf also represents that John J. Fuller, its sole shareholder, who lives in the New London area, is a regular listener of Citadel Broadcasting's other captioned stations that are the subject of the Petition, which are located in the Providence, Rhode Island, radio market, and thus has standing to file as a listener. Citadel Broadcasting challenges Red Wolf's standing as to the Providence stations, claiming that Mr. Fuller does not reside within the service areas of those stations, and he cannot be a regular listener of those stations, noting that at least one, WWKX(FM), cannot be heard at his Oakdale, Connecticut, residence.¹³ In Reply, Mr. Fuller provides his Declaration in which he states that he has had "long term and continuing contact with the Providence radio market and I am a regular listener to the Providence Stations."¹⁴ In addition, he indicates that he lived in the Providence area until January 2005, continues to travel to the area regularly for business, and maintains family and friends there. Finally, Mr. Fuller represents that, because he is in the radio business, he "constantly listen[s] to a wide variety of radio stations."¹⁵

9. The Commission accords party-in-interest status to a petitioner who either resides within the petitioned station's service area or listens to or views the station regularly, and demonstrates that such listening or viewing is not the result of transient contacts with the station.¹⁶ In this manner, the Commission recognizes "that broadcasters are responsible for

¹¹ See Petition to Deny filed by Red Wolf on March 1, 2006, against File Nos. BRH-20051128AMI, BRH-20051128ALJ, BR-20051128ALT, BR-20051128BVR, BRH-20051128BVH, BR-20051128BSC, BRH-20051128BAD, BRH-20051128AYK and BRH-20051128BBH (the "March 1 Petition"). Citadel filed an Opposition to the March 1 Petition on March 31, 2006 (the "Opposition"). Red Wolf filed a Reply to the Opposition on April 20, 2006 (the "Reply").

¹² March 1 Petition at 2. Red Wolf cites *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940), and *Waterman Broadcasting of Florida*, Letter, 17 FCC Rcd 15742 n.2 (MB 2002). WWRX(FM) is licensed to Fuller Broadcasting International, LLC, an entity wholly-owned by Red Wolf's sole shareholder, John J. Fuller.

¹³ Opposition at 4-5.

¹⁴ Reply, Exhibit 1, Declaration of John J. Fuller dated April 19, 2006, at 1.

¹⁵ *Id.* at 1-2.

¹⁶ *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042 ¶¶ 3-4 (1999).

serving the needs of residents within their service areas and that people who listen to a station on a regular basis, unlike transients, have legitimate interests in the station's performance."¹⁷ We conclude that Red Wolf has standing to file a petition to deny Citadel Broadcasting's captioned Connecticut and Rhode Island renewal applications. It has standing as to the Connecticut stations because the Red Wolf stations compete with the Citadel Broadcasting stations in the New London radio market. Based upon Mr. Fuller's Declaration, Red Wolf also has standing as to the Rhode Island stations because he satisfies Commission precedent that requires a petitioner to be a regular listener whose contacts with the stations are not transient.¹⁸

2. Misrepresentation Issue

10. Red Wolf argues that Citadel Broadcasting lacks the requisite character qualifications to remain a Commission licensee. Specifically, it claims that Citadel Broadcasting has made material misrepresentations to the Commission, has knowingly submitted false testimony, and has been "actively suborning perjury" in its submission of certain pleadings to the Commission.¹⁹ These allegations relate to documentation filed by Citadel Broadcasting in support of an Informal Objection (the "Objection") against Red Wolf's application for a new FM translator station in New London, Connecticut.²⁰ Red Wolf has previously made those allegations in the proceeding involving that application. As discussed below, we find that Red Wolf has not raised a substantial and material question of fact calling for further inquiry regarding these allegations. We also find that Red Wolf has not raised a substantial and material question of fact whether Citadel Broadcasting possesses the basis character qualifications to hold its licenses that requires designation of the renewal applications for hearing.

11. The following are the chronological events underlying Red Wolf's allegations. On May 26, 2004, Citadel Broadcasting filed the Objection against Red Wolf's FM translator application, which would operate on a channel adjacent to that of Citadel Broadcasting's Station WSKO-FM, Wakefield-Peacedale, Rhode Island. In the Objection, Citadel Broadcasting claimed that the proposed translator would create interference to listeners of its station.²¹ In support of the interference allegation, Citadel Broadcasting submitted three letters, signed, respectively, by Maureen Charles, Peter Smith, and Ed Green.²² The letters (the "Listener Letters") each stated that the author resides in the New London area, listens to WSKO-FM, and is aware that the letter will be submitted to the Commission.²³ Red Wolf claims to have later discovered that Charles, Smith, and Green are, in fact, family members, business associates, and/or friends of Citadel Broadcasting employees.²⁴ Red Wolf claims that Citadel Broadcasting acquired the letters after

¹⁷ *Sagittarius Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 22551, 22554 ¶ 5 (2003) (citing *Chet-5*).

¹⁸ *Id.*

¹⁹ March 1 Petition at 11.

²⁰ See File No. BNPFT-20030827AMA.

²¹ March 1 Petition at 3.

²² *Id.* at 3-6.

²³ Each of the letters contains the following language: "This will confirm that I [name] reside at [address] and that I regularly listen, at my residence, to FM station WSKO-FM, 99.7 MHz, licensed to Wakefield-Peacedale, Rhode Island. I understand that this letter will be submitted to the Federal Communications Commission as proof of my listenership to this station in [city of residence]." March 1 Petition, Exhibit 3. The purpose of such a letter is to demonstrate that a station has listeners who reside at a location that would be adversely affected by the alleged interference from a proposed FM translator station.

²⁴ March 1 Petition at 3-4.

its management had instructed its employees, including Ronald Adams, to obtain such letters and the employees solicited their friends, relatives, and business associates to sign them.²⁵ In July 2004, Red Wolf obtained Smith's written rescission of his Listener Letter, in which he stated that he was not a regular listener to WSKO-FM, and that he had signed his Listener Letter only as an accommodation to his friend, Citadel Broadcasting employee Adams.²⁶ However, in a July 9, 2004, Declaration and during an August 18, 2004, telephone conversation with Citadel Broadcasting's counsel, Adams assured Citadel Broadcasting that he had, in fact, properly obtained the letter from Smith, who was made aware of the purpose of the letter, and did listen to the station.²⁷ Based upon these assurances from Adams, in December 2004, Citadel Broadcasting prepared a statement for Smith stating that Smith had signed the Listener Letter on his own volition and providing an explanation of why he had later rescinded the letter.²⁸ Smith refused to sign that document.²⁹ In January and May 2005, Adams advised Red Wolf that, among other things, he had never asked Smith whether he listened to WSKO-FM, did not tell him that the letter would be submitted to the Commission, and Citadel Broadcasting had pressured Adams to sign the July 2004 Declaration confirming the *bona fides* of the Smith Listener Letter, a Declaration which Adams now said contained false statements.³⁰

12. In its March 1 Petition,³¹ Red Wolf maintains that Citadel Broadcasting concealed the fact that "the three so-called regular listeners were, in fact, friends, family, and business associates of Citadel Broadcasting employees and management personnel," and knowingly submitted to the Commission false information provided by Smith.³² Red Wolf claims that "[t]he evidence demonstrates that Citadel Broadcasting has, with planning and malice

²⁵ *Id.* at 6-10, January 5, 2005, Deposition of Ronald Adams.

²⁶ *Id.* at 10, Exhibit 4, Letter from Peter Smith dated June 1, 2004, Declaration of Peter Smith dated January 25, 2004. Although Red Wolf requested rescission letters from Maureen Charles and Ed Green, they refused to sign such letters. Opposition at 7.

²⁷ Opposition at 8.

²⁸ See March 1 Petition, Exhibit 7, Draft Declaration of Peter Smith.

²⁹ Opposition at 16.

³⁰ March 1 Petition at 7-9.

³¹ Red Wolf bases its claims in large part on the transcript of its January 5, 2005, "deposition" of Ronald Adams conducted at the Marriott Hotel in Mystic, Connecticut, by Red Wolf's communications counsel. See March 1 Petition, Exhibit 9. This "deposition," although taken under oath before a notary public and a licensed shorthand court reporter, was not conducted in connection with any ongoing litigation. Moreover, Mr. Adams was not represented by counsel during his examination by Red Wolf's counsel, nor was Citadel Broadcasting provided advance notice of or present at the "deposition" of its employee. We will not give any credit to statements made by Mr. Adams in his "deposition" because it was not conducted with the appropriate procedural safeguards accorded to parties by our hearing rules (*see* 47 C.F.R. § 1.315) and Red Wolf makes no showing that it was conducted pursuant to applicable rules of evidence and procedure in state or federal litigation. The evidentiary and procedural safeguards for depositions contained in our hearing rules or, alternatively, in pertinent state or federal rules, are essential to the reliability of the information adduced at such proceedings.

Red Wolf also submits a copy of a May 22, 2005, Memorandum purportedly containing Mr. Adams' responses to specific inquiries from Citadel Broadcasting's counsel, concerning the January 5, 2005, deposition. See March 1 Petition, Exhibit 10. Citadel Broadcasting's counsel make clear that they "are not submitting these questions as formal interrogatories with instructions and definitions." *Id.* at 2. The uncorroborated statements made by Mr. Adams in this document also will be denied any evidentiary weight. See para. 17, *infra*.

³² March 1 Petition at 3-4.

aforethought, entered into a campaign of fraud and deceit.”³³ Further, Red Wolf claims that, rather than being candid with the Commission, “Citadel compounded its initial fraudulent conduct, by suborning perjured testimony and by making numerous material misrepresentations to the FCC.”³⁴

13. In its Opposition, Citadel Broadcasting maintains that it did not knowingly solicit false information for submission to the Commission. It states that it reasonably relied on the actions of its employee Adams, who, at the time, gave it no reason to question his veracity. Further, Citadel Broadcasting notes that, once Smith had rescinded his Listener Letter, it did what it could to determine the facts surrounding Adams’ obtaining Smith’s original letter, and that, based on Adams’ August 2004 discussion with Citadel Broadcasting’s counsel, Citadel Broadcasting reasonably continued to believe that Adams had told the truth.³⁵ Citadel Broadcasting claims never to have asked Adams to misrepresent facts and maintains that it had good reason to believe that he had properly obtained Smith’s letter. It states that, although now it cannot be certain that any of Adams’ statements are true, it has proceeded in good faith, both at the time that it filed its Objection, and when it reasonably relied on Adams’ statements in preparing the draft declaration for Smith to sign in December 2004.³⁶ Due to subsequent inconsistent statements by Adams, however, Citadel Broadcasting acknowledges that Adams has lost all credibility in this proceeding and that his repeated contradictory and false statements are “worthless.”³⁷ Nevertheless, Citadel Broadcasting disputes the allegation that it attempted to “suborn the perjured declaration of Peter Smith,” and states that the December 2004 Declaration was prepared by Citadel Broadcasting’s counsel based upon the information provided to counsel by Adams during their August 2004 discussion.³⁸

14. Misrepresentation is a false statement of a material fact made with an intent to deceive the Commission.³⁹ Thus, intent to deceive is a necessary and essential element of misrepresentation.⁴⁰ Intent to deceive may be found from a false statement of fact coupled with proof that the party making it had knowledge of its falsity.⁴¹ Intent may also be inferred from motive. However, carelessness, exaggeration, or slipshoddiness, which lack that necessary element, do not constitute misrepresentation.⁴²

15. In determining whether allegations raise a substantial and material question of fact requiring an evidentiary hearing, we are guided by the statutorily prescribed two-step process of Section 309(d)(1) of the Act. This section mandates that we must first determine whether the

³³ *Id.* at 19.

³⁴ *Id.*

³⁵ Opposition at 15.

³⁶ *Id.* Mr. Adams no longer works for Citadel Broadcasting. Opposition at 10, Attachment 5.

³⁷ *Id.*

³⁸ Opposition at 15-16.

³⁹ *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 ¶ 6 (1983).

⁴⁰ *See Swan Creek Communications, Inc., v. FCC*, 39 F.3d 1217 (D.C. Cir. 1994); *Reading Broadcasting*, 17 FCC Rcd at 14,014 ¶¶ 33-34.

⁴¹ *See David Ortiz Radio Corp., v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991)

⁴² *See Fatima Response, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18543, 18546 (1999), *recon. dismissed*, 15 FCC Rcd 10520 (2000) (citing *California State University, Sacramento*, Memorandum Opinion and Order, 13 FCC Rcd 17960 (1998); *F.B.C. Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 4595, 4597 ¶ 16 (1988)).

allegations of fact, if true, constitute a *prima facie* case that grant of the application would be inconsistent with Section 309(k) of the Act.⁴³ If so, the second step is for the Commission to determine whether, “on the basis of the application, the pleadings filed, or other matters which it may officially notice,” a “substantial and material question of fact is presented.” We must weigh against the allegations all evidence before us and, on the basis of all of these materials, we must decide whether the ultimate question of fact is “substantial” (*i.e.*, “whether the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for.”)⁴⁴ The Commission may focus on either of the two steps, as it deems appropriate, in resolving the issues raised by a petition.⁴⁵

16. After consideration of the totality of the evidence before us, we find that Red Wolf has failed to raise a substantial and material question of fact calling into question Citadel Broadcasting’s character or its basic qualifications as a licensee as to require an evidentiary hearing.⁴⁶ With respect to the Maureen Charles and Ed Green Listener Letters filed in support of Citadel Broadcasting’s Objection to the New London translator application, we conclude that Citadel Broadcasting did not misrepresent facts or lack candor with the Commission in its filing of those materials. As noted *supra*, the purpose for the submission of such documentation in proceedings involving translator applications is to demonstrate that the full-power station with which the proposed translator would interfere has listeners who reside at locations that would be adversely impacted by such interference. The submission of letters from listeners who happen to be connected in some way with the full-service station with which a proposed FM translator facility might interfere does not violate any statute or rule. Red Wolf cites no precedent, nor are we aware of any, that establishes that the submission of a listener letter that fails to disclose a relationship between the signing party and the licensee of the potentially affected full-service station constitutes an actionable lack of candor. We note that, despite Red Wolf’s attempts to compel Ms. Charles and Mr. Green to withdraw their representations to the Commission of being listeners of WSKO-FM, they have refused to do so. We therefore reject Red Wolf’s contention regarding the Charles and Green Listener Letters.

17. On the other hand, we find that certain material submitted by Citadel Broadcasting with its Objection to Red Wolf’s New London translator application, *viz.*, the Listener Letter from Peter Smith, may be unreliable in establishing that Mr. Smith is a listener of the station. The staff therefore may properly exclude this letter when evaluating the Objection. The central issue for us in this proceeding is whether Citadel Broadcasting *knowingly* solicited a

⁴³ 47 U.S.C. §§ 309(d)(1), 309(k).

⁴⁴ *Citizen for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985) (citing *Columbus Broadcasting Coalition v. FCC*, 505 F.2d 320, 330 (D.C. Cir. 1974); *Broadcast Enterprises, Inc. v. FCC*, 390 F.2d 483, 485 (D.C. Cir. 1968)).

⁴⁵ *See Mobile Communications Corp. of America v. FCC*, 77 F.3d 1399, 1409-10 (D.C. Cir.), *cert. denied*, 519 U.S. 823 (1996).

⁴⁶ Red Wolf raises similar allegations against Citadel Broadcasting regarding the latter’s objection to Galaxy Communications, L.P.’s application for a new FM translator station in Fulton, New York. *See* File No. BNPFT-20030825AIF. This matter is unrelated to the renewal applications at issue here. *See* para. 5, *supra*, and 47 U.S.C. § 309(k); *see also* *RJM Communications, Inc.*, Letter, 21 FCC Rcd 2193, 2194-95 (MB 2006), *recon. denied*, 21 FCC Rcd 7980, 7982 (MB 2006); *Synergy Media, Inc.*, Letter, 21 FCC Rcd 7974, 7975 (MB 2006). Moreover, the staff recently issued a letter approving the Settlement Agreement submitted by Galaxy and Citadel Broadcasting in that case, and denying Red Wolf’s “Motion to Consolidate” that proceeding with its March 1 Petition, and ultimately granted Galaxy’s application. *See Letter to Mr. Ed Levine, et al. from Peter H. Doyle, Chief, Audio Division, Federal Communications Commission*, Reference 1800B3 (MB Oct. 24, 2006).

false Listener Letter from Smith. Clearly, much of the material presented in this case fails to meet the requirements of Section 309(d)(1) of the Act⁴⁷ because it is not supported by sworn declaration or the sworn declaration is not based on personal knowledge. For example, Mr. Adams' accounts of specific conversations with Mr. Smith and other Citadel Broadcasting employees may be considered as evidence that the discussions actually occurred – facts which are not in dispute in this case – but not to establish the truth of the statements made by other parties during those conversations.⁴⁸ Similarly, Citadel Broadcasting's account of its counsel's August 18, 2004, interview of Mr. Adams, submitted as part of Red Wolf's March 1 Petition and supported by and incorporated into Mr. Adams' November 14, 2005, Declaration,⁴⁹ may be admissible for the purpose of establishing that the interview occurred, which is not disputed, but not for the purpose of establishing the veracity of statements made by Mr. Adams during the course of that interview. To the extent the material submitted by Red Wolf satisfies the requirements of Section 309(d)(1), we must also consider that the declarations by Mr. Adams contain uncorroborated assertions from an individual who has disavowed sworn representations that he has made to this agency. Mr. Adams has admitted under penalty of perjury that prior statements that he made under penalty of perjury – for instance, those contained in his July 9, 2004, Declaration concerning Mr. Smith's listening habits *vis-à-vis* WSKO-FM – were untrue. Accordingly, we find that his uncorroborated assertions bear little or no weight.

18. Considering the evidence as a whole, we cannot find a substantial and material question of fact calling for further inquiry regarding whether Citadel Broadcasting directed Mr. Adams to obtain a false Listener Letter from Mr. Smith and then knowingly filed such a letter in conjunction with its Objection to Red Wolf's New London translator application. In this regard, we also find no ground for further inquiry regarding whether Citadel Broadcasting suborned perjury by ordering or otherwise coercing Mr. Adams to make false declarations or for attempting to suborn perjury by requesting that Mr. Adams ask Mr. Smith to sign a false declaration. Citadel Broadcasting has provided a credible and reasonable explanation for its submission of what was later revealed to be an apparently false Listener Letter and for its efforts to question the reliability of Mr. Smith's recantation. Given the evidentiary deficiencies with respect to Red Wolf's material cited above, we find that Red Wolf has failed to provide sufficient evidence that Citadel Broadcasting knowingly submitted false information or intentionally misled the Commission.⁵⁰ Thus, we find that there is no substantial and material question of fact regarding whether Citadel Broadcasting engaged in misrepresentation warranting designation of the renewal applications for hearing.

3. Sponsorship Identification Issues

19. Red Wolf next argues that Citadel Broadcasting received consideration from music companies and others in exchange for airing their artists' music over its stations, in violation of Sections 317 and 507 of the Act and Section 73.1212 of the Rules.⁵¹ In support of this contention, Red Wolf indicates that, on July 25 and November 22, 2005, respectively, the Attorney General of the State of New York (the "NYAG") entered into assurances of discontinuance with Sony BMG Music Entertainment ("Sony BMG") and with Warner Music

⁴⁷ 47 U.S.C. § 309(d)(1).

⁴⁸ See, e.g., *Gilbert Broadcasting Corporation*, Memorandum Opinion and Order, 79 FCC 2d 105, 108 n. 6 (1980).

⁴⁹ March 1 Petition, Ex. 10, at 3.

⁵⁰ *Citizens for Jazz on WRVR, Inc.*, 775 F.2d at 395.

⁵¹ 47 U.S.C. §§ 317, 508; 47 C.F.R. §73.1212 (collectively, the "Sponsorship Identification Rules").

Group Corp. (“Warner”) in connection with the NYAG’s ongoing investigation of such practices. Red Wolf indicates that, in entering into these settlements, “both Warner and Sony BMG admitted that ‘Despite federal and state laws prohibiting unacknowledged payment by record labels to radio stations for the airing of music, direct and indirect forms of what has been described generically as ‘payola’ for spins has continued to be an unfortunately prevalent aspect of radio promotions.’”⁵²

20. Red Wolf contends that these settlements demonstrate that Citadel Broadcasting “was a willing partner in Warner’s and Sony BMG’s criminal scheme to violate state and federal laws,” including the Sponsorship Identification Rules. Red Wolf points to language in the two NYAG assurances of discontinuance and certain e-mails between Sony BMG or Warner employees and various radio stations released to the public by the NYAG regarding the stations’ participation in music company promotions that mention the call signs of some Citadel Broadcasting stations.⁵³ Red Wolf concludes that, because of these references, the Commission must designate the renewal applications for a hearing at which Citadel Broadcasting is required to “fully disclose its illegal activities and account for every penny it has received from every record company or independent promoter.”⁵⁴

21. In its Opposition, Citadel Broadcasting contends that the fact of the ongoing investigation by the NYAG fails to support Red Wolf’s Petition against the license renewal applications of Citadel Broadcasting’s Connecticut and Rhode Island stations.⁵⁵ Citadel Broadcasting argues that Red Wolf’s claims are speculative and are unsupported by affidavits of persons with personal knowledge of the facts.⁵⁶ In its Reply, Red Wolf urges that the Commission take official notice of the NYAG materials.⁵⁷ We grant that request and hereby take official notice of the NYAG materials.

22. On November 21, 2006, Red Wolf filed a Complaint with the Commission against a number of Citadel Broadcasting stations which it also seeks to incorporate by reference into both its March 1 Petition and April 3, 2006, Petition to Deny the Merger Applications.⁵⁸ In

⁵² March 1 Petition at 31, quoting the NYAG-Sony BMG Assurance of Discontinuance and related documents. Red Wolf includes copies of these materials as Exhibit 1 to its September 8, 2005, “Complaint and Request for Evidentiary Hearing” against Citadel Broadcasting (the “September 2005 Complaint”), essentially restating the Complaint’s allegations in its March 1 Petition. The NYAG posted these materials on its website when it announced the Sony BMG settlement, at http://www.oag.state.ny.us/press/2005/jul/jul25a_05.html. It posted similar materials there when it announced its respective assurances of discontinuance with Warner and with two other music companies, UMG Recordings, Inc (posted on May 11, 2006) and EMI Music North America (posted on June 16, 2006).

⁵³ *Id.* at 33-34.

⁵⁴ *Id.* at 35, 45.

⁵⁵ Opposition at 23.

⁵⁶ *Id.* at 23 and n.13.

⁵⁷ Reply at 8. Red Wolf also maintains that, because Citadel Broadcasting did not “deny . . . or challenge any of the New York Attorney General’s evidence” in its Opposition, that “the FCC, as a matter of law, must presume that if Citadel had been forthcoming and produced evidence concerning its . . . activities, that evidence would be highly unfavorable to Citadel.” *Id.* at 9-10. Section 73.3584(b) of the Rules provides to the contrary (“The failure to file an opposition or a reply will not necessarily be construed as an admission of fact or argument contained in a pleading”). 47 C.F.R. §73.3584(b).

⁵⁸ *Id.* at 2. In the April 3 Petition, Red Wolf maintains that the Merger Applications should be put in hearing because of its allegations against Citadel Broadcasting in the March 1 Petition, which it appends to the April 3 filing.

its November 21 Complaint, Red Wolf repeats the substance of Sponsorship Identification Rule allegations contained in its September 2005 Complaint, its July 13, 2006, "First Supplement to Complaint," and its May 31, 2006, First Supplement to its Petition to Deny the Merger Applications.⁵⁹

23. We note that the Commission adopted an Order, FCC 07-28, on March 21, 2007 (the "Consent Decree Order"), that adopted a Consent Decree between the Commission and Citadel on behalf of itself and its subsidiaries. In that Consent Decree, Citadel agreed to make a voluntary contribution to the U.S. Treasury and adopt and implement a Company Compliance Plan and Company Business Reforms in order to ensure the company's compliance in the future with 47 U.S.C. §§ 317, 508 and 47 C.F.R. § 73.1212, and/or any Commission policy relating to sponsorship identification or "payola" or "plugola." After reviewing that Consent Decree and the matters under investigation, the Commission approved the Consent Decree and found that nothing in the record created a substantial and material question of fact in regard to those matters as to whether Citadel and its direct or indirect subsidiaries that hold FCC authorizations possess the basic qualifications, including character qualifications, to hold or obtain any FCC licenses or authorizations. Based on our review of the record and the Consent Decree, we conclude that the Consent Decree contains appropriate terms and conditions to ensure that Citadel complies with 47 U.S.C. §§ 317, 508 and 47 C.F.R. § 73.1212, and/or any Commission policy relating to sponsorship identification or "payola" or "plugola" in the future. Therefore, we conclude that there are no substantial and material questions of fact at issue and grant Citadel's pending license renewal applications and deny the payola allegations in the March 1 Petition and related pleadings by Red Wolf, subject to the specific representations and commitments contained in the Consent Decree.⁶⁰

4. Tower Fencing and Lighting Issues

24. Red Wolf also claims that Citadel Broadcasting "failed to maintain its stations' infrastructure [and] consequently, it has endangered the lives of the citizens of New London."⁶¹ Red Wolf states that Citadel Broadcasting has a tower site located at 99 Briar Hill Road in Groton, Connecticut, from which it operates Stations WQGN-FM and WSUB(AM). The Briar Hill tower site, Red Wolf notes, is situated across the street from an elementary school. Red Wolf

⁵⁹ In its June 14, 2006, Motion to Strike and Opposition to Red Wolf's May 31 Supplement, Disney argues that the Supplement is a late-filed, unauthorized pleading, which should accordingly not be considered by the Commission. In its June 26, 2006, Opposition to the Disney filing, Red Wolf contends that its Supplement should nevertheless be considered because it "brings before the FCC newly discovered evidence." Opposition at 2. For the reasons noted at para. 23 *infra*, we need not rule on the Motion to Strike and Opposition.

⁶⁰ Given our finding that the grant of the renewal applications is warranted under Section 309(k)(2) of the Act because the Consent Decree contains appropriate terms and conditions, we need not determine whether Citadel committed "serious violations" of our rules or violations that constituted "a pattern of abuse" for purposes of Section 309(k)(1).

We also note that, on May 19, 2006, Red Wolf filed a "Motion to Hold in Abeyance" (the "May 19 Motion") with respect to the renewal applications that are the subject of its March 1 Petition and the Merger Applications. Red Wolf argued in the May 19 Motion that, if the Commission tentatively decided that the evidence adduced in the Enforcement Bureau's investigation of Citadel Broadcasting does not warrant designating for hearing Red Wolf's Sponsorship Identification Rule allegations, then Red Wolf had a right to review and comment on the evidence. The Consent Decree Order moots the May 19 Motion, which we hereby dismiss.

⁶¹ March 1 Petition at 36.

alleges that, for a period of at least 30 days during May and June 2004, those towers were unsecured and unfenced while the stations were in operation, in violation of the Rules, and potentially endangering the lives of the elementary school students.⁶²

25. Additionally, Red Wolf states that, in March 2005, it notified the FCC's Boston Field Office that the obstruction lights of the tower for Citadel's Station WXLM(FM), Stonington, Connecticut,⁶³ were out and, although Citadel Broadcasting fixed or replaced the lights, they were out again two months later. Red Wolf attaches a Declaration of Mr. Fuller, who indicates that he viewed the tower after nightfall on May 21, 22, and 23, 2005, and did not see the tower lights come on at any time. Red Wolf argues that, because the tower is less than three miles from an airport, Citadel Broadcasting's repeated failure to maintain the tower lighting created a serious risk of injury.⁶⁴

26. In its Opposition, Citadel Broadcasting asserts that Red Wolf's accusations are "simply wrong."⁶⁵ With respect to the WQGN-FM/WSUB(AM) tower site, Citadel Broadcasting states that it was actually improving the safety of its facilities by replacing a 40-year-old tower. Citadel Broadcasting advises that, during construction, it remained in communication with the FCC's Boston Field Office and Citadel Broadcasting's consulting engineer, to ensure that the tower was being constructed safely and in compliance with the rules. Citadel Broadcasting states that from the beginning of construction, the tower site was marked with security tape, as Fuller's photographs confirm, that RF warning signs were posted, and that the front gate was locked at night.⁶⁶ Citadel Broadcasting acknowledges that there was a period of four days during which the permanent site fencing was taken down without temporary fencing put in place, to allow for the removal of the old tower and installation of the ground plane for WSUB(AM); however, Citadel Broadcasting points out that it marked the site with warning tape and signs and communicated with the Commission's Boston Office, indicating that it was roping off the area each evening with

⁶² *Id.* Red Wolf submits the June 7, 2004, Declaration of its employee, Brian Rheamue, who indicates that he first noticed that there was no fence around the towers when he was in the area on May 13, 2004. Mr. Rheamue states that he went back "on two different [but unspecified] occasions," but that Citadel Broadcasting had not constructed a fence or placed any barrier to prevent unfettered access to the tower site. (Mr. Rheamue indicates that Citadel Broadcasting had apparently constructed a new tower at the site.) *Id.* at 27 and Exhibit 15, June 7, 2004, Declaration of Brian Rheamue, at 1. Following up on the Rheamue report, Red Wolf's Mr. Fuller visited the Briar Hill site on June 1, 2004. Mr. Fuller indicates in a Declaration that the property is not secured by a fence and that there was no fence around Citadel Broadcasting's new tower. Additionally, Mr. Fuller includes, as Attachments A-G to his Declaration, photocopies of pictures of the tower site he took on June 1, 2004, from various angles. *Id.* at Exhibit 16, Declaration of John J. Fuller dated June 7, 2004. On June 8, 2004, Mr. Fuller again visited the Briar Hill tower site. He states, in another Declaration, that he observed that the old tower had been taken down and only the new tower was standing, but that the new tower was still unsecured by any fence and was completely open and accessible to the public. (Mr. Fuller tuned in WSUB(AM) on his car radio while at the site, so he believed that the tower was "hot" or operational at the time of his visit.) *Id.* at 37 and Exhibit 17, Declaration of John J. Fuller dated June 11, 2004.

⁶³ Citadel Broadcasting is the owner of the WXLM(FM) tower. *See* Antenna Structure Registration No. 1040034.

⁶⁴ March 1 Petition at 38 and Exhibit 18, undated Declaration of John J. Fuller. This Declaration was attached to an "Emergency Motion for Expedited Action and Complaint" filed by Red Wolf on May 24, 2005. This Complaint, with Mr. Fuller's Declaration, apparently was sent by facsimile to the Commission's Boston District Office on May 24, 2005.

⁶⁵ Opposition at 24.

⁶⁶ *Id.*

warning and danger tape out to a distance of 20 feet from the towers and ensuring that radiation warning signs were visible on approach to the tower. Citadel Broadcasting indicates that Commission personnel from the Boston Office expressed no concern with securing the area in that manner.⁶⁷

27. Moreover, Citadel Broadcasting states that, when it realized that there was a problem with the tower lights at the Stonington, Connecticut, tower, it immediately took steps to resolve the problem. It states that it contacted the Commission's Boston Office and discussed the situation with Commission personnel. Ultimately, Citadel Broadcasting discovered that, for unknown reasons, the circuit breaker controlling power to the lighting system was switched off. Citadel Broadcasting indicates that, in light of that incident, it took steps to correct the lighting problem and prevent future recurrences.⁶⁸ It claims that it tried to move promptly to alleviate the problem and that Red Wolf's contrary claims are baseless.

28. The Commission has indicated that, in certain circumstances, tower marking and lighting deficiencies could pose sufficient risks to public safety to support a finding of a "serious" violation.⁶⁹ In this case, however, Red Wolf has failed to raise a substantial and material question of fact regarding Citadel Broadcasting's compliance with the RF and tower lighting requirements sufficient to warrant further inquiry into Citadel Broadcasting's qualifications to be a Commission licensee. With respect to the claim that Citadel Broadcasting created a dangerous situation with its Groton, Connecticut, stations, it appears that Citadel Broadcasting took sufficient steps to minimize any danger, including taping-off the area and posting "CAUTION" signs,⁷⁰ and erecting a partial fence around the tower.⁷¹ Moreover, we have confirmed with the Enforcement Bureau's Boston Office that Citadel Broadcasting's engineer, Frank Doremus, contacted the Office and explained the tower work that was being done and the safety measures taken. We conclude that Citadel Broadcasting acted appropriately.

29. With respect to the tower lighting outage at WXLM(FM), Citadel Broadcasting acknowledges that its tower lighting failed briefly in March 2005 and again between May 21-23, 2005. In response to the complaint submitted to the Boston Office on May 24, 2005, the Office opened a case regarding the lighting outages and contacted Citadel's Bob Cox and Frank Doremus.⁷² Mr. Cox reported that the tower's lamps had been replaced three weeks previously and that Citadel Broadcasting was trying to determine the reason for the lighting failure. Ultimately, as reported in Citadel Broadcasting's Opposition, Mr. Doremus discovered that a breaker switch had accidentally been tripped and had been reset. This circuit also prevented the remote control monitoring system from detecting, *via* an alarm that would have sounded, that the

⁶⁷ *Id.* at 24-25.

⁶⁸ Citadel Broadcasting states that it implemented a more stringent logging schedule to ensure that there is consistent remote verification of beacon operations, ordered a beacon relay that monitors for the flashing level to cover if the flasher fails either in the "on" or "off" mode, took steps to ensure the beacon worked properly and set an alarm to sound if it does not, and set the remote monitoring system to enable it to verify that the lights actually come on. Opposition at 25.

⁶⁹ See, e.g., *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7440 n. 41 (2004).

⁷⁰ See photographs appended as Attachments B, D, E, and F to Mr. Fuller's June 7, 2004, Declaration, Exhibit 16 to the March 1 Petition.

⁷¹ *Id.* at Exhibits 16 and 17, Attachment A to Mr. Fuller's June 11, 2004 Declaration, Attachments C, E, F, and G of Mr. Fuller's June 7, 2004, Declaration. The photographs do not show the entire site, so the extent and effectiveness of the fencing cannot be evaluated.

⁷² Case No. EB-05-BS-059.

tower lights were out. The tower lights were restored to normal operation on Wednesday, May 25, 2005. Upon receipt of additional information from Citadel Broadcasting regarding steps taken to ensure that the lighting and monitoring failure would not recur, and upon the passage of six months with no further complaints or reports of tower lighting outages, the Boston Office closed the case without further action on February 6, 2006.

30. In light of these facts, we also believe no further action is warranted regarding Red Wolf's allegation concerning lighting outages on the WXML(FM) tower. Citadel Broadcasting had a monitoring and alarm system in place to alert its technical and managerial staff if there was a lighting failure at the station; the accidental tripping of the circuit breaker made both the lighting and the monitoring/alarm system inoperable.⁷³ Citadel Broadcasting has installed additional monitoring and warning equipment to ensure that the lighting outages will not recur. Its immediate and subsequent actions in response to the problem were, we believe, both diligent and appropriate.

5. Public Inspection File Issues

31. Red Wolf contends that Citadel Broadcasting violated Section 73.3526(e)(10) of the Rules, which requires a licensee to maintain copies of pending complaints in its station's public inspection files.⁷⁴ Red Wolf indicates that, on July 12, 2004, its employee Andrew LeCara visited the main studio of Stations WQGN(FM) and WSUB(AM) and its employee Brian Rheame visited that of WSKO-FM and each requested to see the public file. Each indicates that the files were missing several complaints that Red Wolf had filed against the respective stations.⁷⁵ While Citadel Broadcasting acknowledges that the complaints were missing, it points out that it quickly located the documents and placed them in the appropriate files.⁷⁶

32. In addition, in its response to Section III, Item 3 of its captioned license renewal applications⁷⁷ for Stations WSKO(AM), WSKO-FM, WPRO(AM), and WPRO-FM, Citadel Broadcasting disclosed that certain issues/programs lists that were missing from each station's public inspection file. Citadel Broadcasting's reported deficiencies were as follows:

- WSKO(AM): missing issues/programs list for the third quarter of 2001.⁷⁸
- WSKO-FM: missing issues/programs list for the third quarter of 2002.⁷⁹
- WPRO(AM): missing issues/programs lists for the second and third quarters of 2002.⁸⁰

⁷³ The Rules require antenna structure owners to monitor lights daily or install automatic alarm systems to ensure lights function properly. 47 C.F.R. § 17.47. Antenna structure owners are required to maintain lighting equipment and replace or repair inoperative lights, indicators, and control and alarm systems as soon as practicable. 47 C.F.R. § 17.56.

⁷⁴ 47 C.F.R. § 73.3526(e)(10).

⁷⁵ March 1 Petition at 40-41 and Exhibit 19, undated Declaration of Andrew LeCara, and Exhibit 20, undated Declaration of Brian Rheame.

⁷⁶ Opposition at 26-30.

⁷⁷ Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that a licensee of a commercial broadcast station, such as Citadel Broadcasting here, 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.

⁷⁸ WSKO(AM) Renewal Application at Exhibit 11.

⁷⁹ WSKO-FM Renewal Application at Exhibit 11.

⁸⁰ WPRO(AM) Renewal Application at Exhibit 11.

- WPRO-FM: missing issues/programs lists for the third and fourth quarters of 2001 and the first quarter of 2002.⁸¹

33. Section 73.3526 of the Rules⁸² requires that broadcast licensees maintain certain material in a file to be made available for public inspection during business hours. We have found that reasonable access to the public inspection file serves the important purpose of facilitating citizen monitoring of a station's operations and public interest performance, and fostering community involvement with local stations, thus helping to ensure that stations are responsive to the needs and interests of their local communities.⁸³ In this regard, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.⁸⁴

34. Section 503(b) of the Act⁸⁵ and Section 1.80(a) of the Rules⁸⁶ each state that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Rules.⁸⁷ A continuing violation is "repeated" if it lasts more than one day.⁸⁸

35. The Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules set a base forfeiture amount of \$10,000 for public file violations.⁸⁹ In determining the appropriate forfeiture amount, if any, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "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 such other matters as justice may require."⁹⁰ We conclude that Citadel Broadcasting has willfully and repeatedly violated the rule at six of its Connecticut and Rhode Island stations. However, considering the record as a whole, in particular the fact that Citadel Broadcasting took immediate steps to return the missing complaints cited in the March 1 Petition and that the other file

⁸¹ WPRO-FM Renewal Application at Exhibit 11.

⁸² 47 C.F.R. § 73.3526.

⁸³ *Review of the Commission's Rules regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15700 ¶ 18 (1998), *recon. granted in part*, 14 FCC Rcd 11113 (1999); *see also Union Broadcasting, Inc.*, Forfeiture Order, 19 FCC Rcd 18588, 185890 ¶ 10 and n. 8 (EB 2004).

⁸⁴ *See Padre Serra Communications, Inc.*, Notice of Apparent Liability, 14 FCC Rcd 9709, 9714 (MMB 1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 ¶ 4 (1970), and *Eleven Ten Broadcasting Corp.*, Memorandum Opinion and Order, 33 FCC 92 (1962)); *Surrey Front Range Limited Partnership*, Notice of Apparent Liability, 7 FCC Rcd 6361 (FOB 1992).

⁸⁵ 47 U.S.C. § 503(b).

⁸⁶ 47 C.F.R. § 1.80(a).

⁸⁷ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁸⁸ *Id.*, 6 FCC Rcd at 4388.

⁸⁹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, Report and Order, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80(b), note 1.

⁹⁰ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100 ¶ 27; 47 C.F.R. § 1.80(b)(4).

violations acknowledged in these renewal applications involved only one, two, or three missing issues/programs lists, after engaging in the required analysis, we believe that a \$10,000 forfeiture is appropriate for these violations. Accordingly, we find that Citadel Broadcasting is apparently liable for a forfeiture in the amount of \$10,000 for its apparent willful and repeated violations of Section 73.3526 at Stations WQGN-FM, WSUB(AM), WPRO(AM), WPRO-FM, WSKO(AM), and WSKO-FM.

6. Conclusion

36. We find that Citadel Broadcasting's apparent violations of Section 73.3526 of the Rules at Stations WQGN-FM, WSUB(AM), WPRO(AM), WPRO-FM, WSKO(AM), and WSKO-FM do not constitute "serious violations" warranting designation for evidentiary hearing.⁹¹ Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.⁹² Further, we find that Citadel Broadcasting's Connecticut and Rhode Island radio stations listed in the caption served the public interest, convenience, and necessity during the subject license terms. We will therefore grant the license renewal applications for these stations.

B. BINGHAMTON, NEW YORK, STATIONS

37. William Huston, Karen Glauber, and Kevin Bunger (collectively, the "Binghamton Petitioners") jointly filed a letter dated May 1, 2006, received by the Commission on May 3, in opposition to the captioned license renewal applications for Citadel Broadcasting Stations WYOS(AM), WAAL(FM), WHWK(FM) and WNBF(AM), Binghamton, New York,

⁹¹ Compare *Terry Keith Hammond*, Order to Show Cause, Notice of Apparent Liability and Hearing Designation Order, 21 FCC Rcd 10267 (2006) (hearing designated with respect to licensee's felony conviction and issues concerning possible rule violations, false certifications and failure to respond to Commission inquiries), and *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability, 19 FCC Rcd 13326 (2004) (hearing designated on issues relating to possible misrepresentations, lack of candor in licensee's statements in renewal application regarding station public file), with *Springfield Broadcasting Partners*, Notice of Apparent Liability, 14 FCC Rcd 3683 (1999), Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 19230 (1999) (forfeiture imposed for 304 violations of children's advertising limits, renewal application granted); *Morgan County Industries, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 06-2349 (rel. Nov. 27, 2006) (forfeiture proposed for station operation at an unauthorized location; renewal application granted), *High I-Q Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7225 (2004) (license assignment approved in case involving unauthorized transfer of control, commercial operation of a radio station authorized as a non-commercial station, and failure to timely file certain contracts; the Commission noted that it is hesitant to designate a license renewal or assignment application for an evidentiary hearing in the absence of misrepresentation or lack of candor).

⁹² For example, we do not find here that Citadel Broadcasting's station operations were "conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the stations] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d at 200. See also *Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

and WWYL(FM), Chenango Bridge, New York.⁹³ On May 31, 2006, Citadel Broadcasting filed a response to the Petition (the “Binghamton Opposition”). For the reasons set forth below, we dismiss the Binghamton Petition, consider and deny it as an informal objection, and grant the renewal applications.

38. In the Binghamton Petition, the Binghamton Petitioners represent that each is a party in interest in that each resides, works, and/or attends school within the stations’ service areas.⁹⁴ They request that the Commission deny the renewal applications until such time as Citadel Broadcasting certifies that certain claimed deficiencies regarding its operation of the stations that the Binghamton Petitioners outline “are remedied.”⁹⁵ In this regard, they object both to the fact that Citadel Broadcasting is a for-profit company and the licensee of a substantial number of broadcast stations,⁹⁶ resulting in Citadel Broadcasting being part of what they claim is a “near duopoly” in the Binghamton area.⁹⁷ The Binghamton Petitioners further express their dissatisfaction with the stations’ formats, use of automation, and what they perceive to be a lack of public affairs, news, political, and local entertainment programming.⁹⁸ In this regard, the Binghamton Petitioners maintain that the licensee’s programming decisions are improperly driven by commercial considerations, that Citadel Broadcasting’s operating deficiencies are attributable to the fact that it is a large company with “distant shareholders” motivated by profit.⁹⁹ They also allege that the stations fail to provide public access to their air time¹⁰⁰ and cite to news reports stating that Citadel Broadcasting is being investigated by the Commission for violation of the payola rules.¹⁰¹ Finally, they state that “certain deficiencies” exist in the stations’ public files.¹⁰²

39. In the Binghamton Opposition, Citadel Broadcasting states that the Binghamton Petition was untimely filed and should accordingly be considered as an informal objection. It argues that the pleading fails to identify a single violation of the Act or the Rules.¹⁰³ It asserts that the allegations are supported only by the “scant facts” set forth in the Binghamton Petition, and pertain either to non-existent regulations¹⁰⁴ or to Commission rules that were eliminated 25

⁹³ See Petition to Deny filed by Binghamton Petitioners on May 3, 2006, against File Nos. BR-20060131AJH, BRH-20060131AJP, BRH-20060131AJN, BR-20060131AJJ, BRH-20060131AJB (the “Binghamton Petition”).

⁹⁴ Binghamton Petition at 1.

⁹⁵ *Id.* at 6.

⁹⁶ *Id.* at 2.

⁹⁷ *Id.* at 3.

⁹⁸ *Id.* at 3-4.

⁹⁹ *Id.* at 3-5.

¹⁰⁰ *Id.* at 5.

¹⁰¹ *Id.* at 3.

¹⁰² *Id.* at 6.

¹⁰³ Binghamton Opposition at 2-4.

¹⁰⁴ In this regard, in the Binghamton Opposition, Citadel Broadcasting notes that the Commission has never required that public affairs programming be locally produced, play local music, or give autonomy to local on-air talent. Binghamton Opposition at 4-6. Nevertheless, it disputes the accuracy of such allegations by alleging that two of its Binghamton stations “endeavor to include local and small label/unsigned artists in their [music] rotations, and that each of its stations “employs a full time Program director who focuses on the stations’ programming and operations.” *Id.* at 6, n. 12.

years ago in the Commission's *Radio Deregulation* decision.¹⁰⁵ Citadel Broadcasting also denies that its station ownership in Binghamton constitutes an "illegal monopoly," maintaining that its broadcast holdings fully comply with the Commission's local radio ownership limits.¹⁰⁶ Finally, as to the claim concerning a pending Commission payola investigation of its stations, Citadel Broadcasting responds that the Binghamton Petitioners have offered no evidence of such violations and failed to even identify the stations at which this misconduct is alleged to have occurred.¹⁰⁷ Finally, Citadel Broadcasting notes that the Binghamton Petitioners did not identify any specific "deficiencies" in its stations' public inspection files, but simply alleged that they seemed "rather devoid of complaints." Thus, Citadel Broadcasting contends, the allegation is unsubstantiated and should not bar the renewal of its licenses.¹⁰⁸

40. As an initial matter, we find that the Binghamton Petition was filed after the deadline for the submission of petitions to deny the subject renewal applications. New York radio station licenses, including those of Citadel Broadcasting at issue here, expired on June 1, 2006.¹⁰⁹ Accordingly, petitions to deny such applications had to be filed with the Commission by May 1, 2006.¹¹⁰ Although the Binghamton Petitioners apparently mailed the Binghamton Petition on May 1, 2006, it was not received by the Commission until May 3, 2006. It is well established that petitions to deny are considered to be timely filed with the Commission only upon receipt, not when they are mailed or postmarked.¹¹¹ Accordingly, the Binghamton Petition was not filed by the appropriate deadline. Nevertheless, we will consider it an informal objection pursuant to Section 73.3587 of the Rules.¹¹²

41. The Commission has long held that licensees of radio stations have an obligation to provide coverage of significant issues facing their communities.¹¹³ However, given the First Amendment rights of broadcasters and the non-censorship provisions of the Act,¹¹⁴ each licensee retains the discretion to make operational and programming decisions. The Commission will not take adverse action on a license renewal application based only upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.¹¹⁵ Moreover, the Commission has recognized that a licensee has particularly wide discretion in the area of news programming and, in the absence of extrinsic evidence that a licensee has falsified, distorted or suppressed news, the agency will not substitute its judgment for that of a licensee in determining what news is of prime interest to its listening audience and the manner in which it

¹⁰⁵ *Deregulation of Radio*, Report and Order, 84 FCC 2d 968, 977 ¶ 24 (1981), *on recon.*, 87 FCC 2d 797 (1981), *remanded on other grounds sub nom. Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983).

¹⁰⁶ Binghamton Opposition at 7.

¹⁰⁷ *Id.* at 7.

¹⁰⁸ *Id.* at 8.

¹⁰⁹ See 47 C.F.R. § 73.1020.

¹¹⁰ See 47 C.F.R. § 73.3516(e).

¹¹¹ See 47 C.F.R. § 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission").

¹¹² 47 C.F.R. § 73.3587.

¹¹³ *Deregulation of Radio*, 84 FCC 2d at 977 ¶ 24.

¹¹⁴ See 47 U.S.C. § 326.

¹¹⁵ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 ¶ 4 (1978) (Commission will not deny renewal application based on the opinion of a viewer, or group of viewers, as to what constitutes "good" programming).

should be presented.¹¹⁶ Further, the Commission will not interfere with the exercise of a licensee's news judgment where there is no showing that the licensee consistently and unreasonably ignored matters of public concern.¹¹⁷ The Binghamton Petitioners have made no such showing. As to the allegations regarding alleged payola practices, the Binghamton Petitioners have cited no specific evidence that such practices occurred at any of the subject Citadel Broadcasting stations. As stated in Paragraph 23 above, the Commission has adopted the Consent Decree Order resolving the Enforcement Bureau's investigation of Citadel's compliance with the Sponsorship Identification Rules. The Consent Decree Order found that nothing in the record created a substantial and material question of fact in regard to those matters as to whether Citadel and its direct or indirect subsidiaries that hold FCC authorizations possess the basic qualifications, including character qualifications, to hold or obtain any FCC licenses or authorizations. For the reasons stated in Paragraph 23 above, we conclude that the Binghamton Petition fails to present any substantial and material questions of fact with respect to Citadel's alleged payola practices. Finally, with regard to the Binghamton Petitioners' stated concern about Citadel Broadcasting's size and the number of stations licensed to it, as Citadel Broadcasting notes in its Binghamton Opposition, its level of ownership complies with Section 73.3555 of the Rules,¹¹⁸ which contains the limits on the number of such stations one entity may own or control. For these reasons, we deny the Binghamton Petition.

42. Accordingly, we find neither evidence of serious violations of the Act or the Rules nor of other violations by Citadel Broadcasting that, when considered together, evidence a pattern of abuse. Further, we find that each Citadel Broadcasting station in question served the public interest, convenience, and necessity during its subject license term. Thus, there is no need for further inquiry regarding the subject renewal applications, which we grant herein.

C. WWWZ(FM), SUMMERVILLE, SOUTH CAROLINA

43. In response to the public file question in its renewal application for Station WWWZ(FM), Citadel Broadcasting indicated "No" and provided an exhibit to the application, in which it explained that:

In reviewing its public file, the licensee found that the quarterly issues and programs lists for the period beginning with the first quarter of 2000 through the second quarter of 2002, and the first quarter of 2003 were missing from its public inspection file. These quarterly reports were subsequently reconstructed from various sources including program director's notes, calendar entries and other station records. These reports have been placed in the licensee's public inspection file. The quarter [sic] issues and programs lists for the third and fourth quarters of 1999, and the third and fourth quarters of 2002 were also discovered missing from its public inspection file. Licensee lacks sufficient information to recreate these lists.¹¹⁹

¹¹⁶ See, e.g., *Columbia Broadcasting System, Inc.*, Memorandum Opinion and Order, 51 FCC 2d 273 (1975) (Commission will not place burden on licensee to rebut petitioner's conclusory allegations concerning news coverage).

¹¹⁷ See *id.*

¹¹⁸ 47 C.F.R. § 73.3555.

¹¹⁹ Application at Exhibit 11 (File No. BRH-20030801BMZ).

44. As Citadel Broadcasting has acknowledged, at the time of filing of the WWWZ(FM) license renewal application and during periods within the license term, the station's public inspection file did not contain many of the items required to be retained in the file during periods within the license term, by Section 73.3526 of the Rules. As we noted above, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.¹²⁰

45. Pursuant to Section 503(b)(1)(B) of the Act, we hereby find Citadel Broadcasting apparently liable for willful and repeated violations of Section 73.3526 of the Rules. In determining the appropriate proposed forfeiture amount, we note that the violations were extensive, occurring over a five-year period during the license term and involving 15 missing issues/programs lists. Considering the record as a whole, in particular, the length of time that the violations continued and the number of missing lists involved, after engaging in the required analysis,¹²¹ we believe that a \$10,000 forfeiture is appropriate for the violations in this instance. Accordingly, we find that Citadel Broadcasting is apparently liable for a forfeiture in the amount of \$10,000 for its apparent willful and repeated violations of Section 73.3526 at Station WWWZ(FM).

46. We find that Citadel's apparent violations of Section 73.3526 of the Rules at Station WWWZ(FM) do not constitute "serious violations" warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse sufficient to warrant designation of the license renewal application for hearing.¹²² Further, we find that Station WWWZ(FM) served the public interest, convenience, and necessity during the subject license term. We therefore grant the station's license renewal application herein.

D. WLXC(FM), LEXINGTON, SOUTH CAROLINA

47. In response to the public file question in its renewal application for Station WLXC(FM), Citadel Broadcasting indicated "No," attaching an exhibit explaining that, "in reviewing its public file, the licensee found that the files for the third and fourth quarter issues and programs lists for 2000 were missing from its public inspection file. The licensee lacks sufficient information to recreate these lists."¹²³

48. These public file violations acknowledged by Citadel Broadcasting in its renewal application for Station WLXC(FM) involve two missing issues/programs lists. Considering the record as a whole, in particular that the violations occurred during only two quarters and involved that number of missing lists, after engaging in the required analysis,¹²⁴ we believe that a \$1,000 forfeiture is appropriate for the violations in this instance. Accordingly, we find that Citadel Broadcasting is apparently liable for a forfeiture in the amount of \$1,000 for its apparent willful and repeated violations of Section 73.3526 at Station WLXC(FM).

49. We find that Citadel Broadcasting's apparent violations of Section 73.3526 of the Rules at Station WLXC(FM) do not constitute "serious violations" warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together,

¹²⁰ See para. 33 *supra*.

¹²¹ See para. 35 *supra*.

¹²² See note 92 *supra*.

¹²³ See File No. BRH-20030801AXL.

¹²⁴ See para. 35 *supra*.

evidence a pattern of abuse.¹²⁵ Further, we find that Station WLXC(FM) served the public interest, convenience, and necessity during the subject license term. We therefore grant the station's license renewal application herein.

III. THE MERGER TRANSACTION

50. Section 310(d) of the Act provides that no station license shall be transferred or assigned until the Commission, upon application, determines that the public interest, convenience, and necessity will be served thereby. In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act,¹²⁶ other applicable statutes, and the Rules.¹²⁷ If the transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹²⁸ The Commission then employs a balancing process, weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹²⁹ The applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹³⁰ If the Commission is unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, Section 309(e) of the Act requires that the applications be designated for hearing.¹³¹

51. Disney is a widely-held, publicly-traded company, in which no shareholder holds an interest that is attributable due to the size of its stock interest in the company. Disney holds diversified media and entertainment interests, including ABC Radio, which is the parent of

¹²⁵ See note 92 *supra*.

¹²⁶ Section 310(d) requires that the Commission consider the applications as if the proposed transferee were applying for the licenses directly. 47 U.S.C. § 310(d). See *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18300 ¶ 16 (2005) (“*SBC-AT&T Order*”); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18442-43 ¶ 16 (2005) (“*Verizon-MCI Order*”); *Applications of Nextel Communications, Inc. and Sprint Corporation*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) (“*Sprint-Nextel Order*”); *News Corp.-Hughes Order*, 19 FCC Rcd at 483 ¶ 15; *Comcast-AT&T Order*, 17 FCC Rcd at 23255 ¶ 26.

¹²⁷ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC*, 19 FCC Rcd 2570, 2580-81 ¶ 24 (2004); *EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002) (“*EchoStar-DIRECTV HDO*”).

¹²⁸ See *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20.

¹²⁹ See *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *News Corp.-Hughes Order*, 19 FCC Rcd at 483 ¶ 15; *Comcast-AT&T Order*, 17 FCC Rcd at 23255 ¶ 26.

¹³⁰ See *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Comcast-AT&T Order*, 17 FCC Rcd at 23255 ¶ 26; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574 ¶ 25.

¹³¹ 47 U.S.C. § 309(e); see also *News Corp.-Hughes Order*, 19 FCC Rcd at 483 n.49; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574 ¶ 25.

twelve entities (collectively, the “ABC Radio Licensees”)¹³² that, in the aggregate, are licensees of 24 radio stations (8 AM, 16 FM) operating in top-20 rated Arbitron markets.¹³³

52. Citadel is a publicly-traded company in which Theodore J. Forstmann, through Forstmann Little, currently holds approximately 67% of the outstanding stock. Citadel’s subsidiary, Citadel Broadcasting, is the licensee of 225 full-power radio station licenses (60 AM, 165 FM), seven FM translator stations and one FM booster station. Citadel Broadcasting’s radio stations are each located in markets below the top-30 rated Arbitron markets.¹³⁴

53. Disney and Citadel have entered into an agreement contemplating a merger transaction by which Citadel would acquire Disney’s radio stations in exchange for stock in Citadel to be distributed to Disney’s current shareholders. After the merger, Citadel will be a publicly-traded company whose stock will be held as follows: (a) approximately 57% by current shareholders of Disney; (b) approximately 28.7% by Forstmann Little; and (c) approximately 14.3% by the remaining current shareholders of Citadel.

54. The proposed transaction will be accomplished as follows. The first step involves spinning off the stock of ABC Radio from Disney to the current shareholders of Disney. The second step involves the merger of Alphabet Acquisition Corp., a wholly-owned subsidiary of Citadel, with and into ABC Radio, which will become a subsidiary of Citadel. In that second step, the ABC Radio shareholders (the former Disney shareholders) will exchange their stock in ABC Radio for stock in Citadel, thereby acquiring the 57% interest described above and diluting the current Citadel shareholders’ interests as described above. After the merger, Citadel (which will be renamed Citadel Communications) will hold the equity in the licensees of its radio stations through two subsidiaries: (a) ABC Radio, which, through the ABC Radio Licensees, will own the 24 radio stations formerly owned by Disney in top-20 markets; and (b) Citadel Broadcasting, which will continue to own and operate its current group of radio stations in markets below the top-30 rated Arbitron markets.

55. Because the current shareholders of Disney will acquire an approximate 57% interest in Citadel, the proposed merger involves a “substantial change in ownership” of the Citadel Broadcasting stations.¹³⁵ At the same time, through its acquisition of an approximate 28.7% interest in the ABC Radio stations, Forstmann Little will acquire what the parties represent to be *de facto* control over those stations.¹³⁶ Accordingly, the proposed merger involves long-form transfers of control of both groups of radio stations.

56. The Merger Applications are the subject of a Petition to Deny filed on April 3, 2006, by Red Wolf, which requests that the Commission designate the applications for hearing for consideration of the claims of misrepresentation and statutory and/or rule violations raised in Red Wolf’s March 1 Petition to Deny certain Citadel Broadcasting renewal applications discussed

¹³² The ABC Radio Licensees are twelve sequentially numbered (by Roman numeral) entities, Radio License Holding I, LLC through Radio License Holding XII, LLC.

¹³³ The transaction does not include the Disney-owned stations under the Radio Disney and ESPN brands. The Disney-owned stations included in the merger operate in the following markets: New York, Los Angeles, Chicago, San Francisco, Washington, D.C., Dallas – Fort Worth, Atlanta, Detroit and Minneapolis – St. Paul.

¹³⁴ See Citadel’s 2005 Annual Report, SEC Form 10-K, filed Mar. 16, 2006, at 4-6.

¹³⁵ 47 U.S.C. § 309(c)(2)(B); see *Reading Broadcasting, Inc.*, Decision, 17 FCC Red 14001, 14017 ¶ 44.

¹³⁶ See 47 U.S.C. § 310(d); *WHDH, Inc.*, 17 FCC 2d 856 (1969), *aff’d sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971); *Stereo Broadcasters, Inc.*, Memorandum Opinion and Order, 55 FCC 2d 819, 821-22 ¶ 7 (1975).

supra (including the May 31, 2006, “First Supplement to Petition to Deny” and the various complaints discussed by Red Wolf in its November 21 Complaint,¹³⁷ the “April 3 Petition”).¹³⁸ Thus, the April 3 Petition appends and incorporates the allegations contained in the March 1 Petition and urges that the Transfer Applications be designated for hearing on those allegations, as well as the supplemental allegations concerning sponsorship identification/payola, including those raised by Red Wolf in its November 21 Complaint. As noted *supra*, because we have concluded Red Wolf has not presented any substantial and material question of fact concerning whether Citadel Broadcasting lacks the requisite qualifications to remain a Commission licensee, we have granted the renewal applications that are the subject of its March 1 Petition. For the same reason, we conclude that Red Wolf has presented no substantial and material questions of fact in its April 3 Petition whether Citadel Broadcasting lacks the requisite qualifications to remain a Commission license or whether the grant of the Merger Applications would be consistent with the public interest.¹³⁹ Accordingly, we deny the April 3 Petition.

57. Because there is virtually no overlap between the radio markets in which the ABC Radio stations operate and those in which the Citadel Broadcasting stations operate, the proposed transaction complies with our radio ownership rule, Section 73.3555(a)(1).¹⁴⁰ We further find no evidence that the proposed transaction will harm competition in any radio market. In fact, the merger will improve competition by causing Citadel to divest certain grandfathered interests that were allowed under our previous ownership rule but do not comply with our current radio ownership rule.

58. Specifically, the proposed transaction will terminate Citadel’s ability to maintain certain grandfathered ownership interests that exceed the ownership limits adopted in the 2002

¹³⁷ See para. 23 *supra*.

¹³⁸ On April 18, 2006, Citadel and Disney each filed an Opposition to the April 3 Petition, to which Red Wolf replied on May 4, 2006. In their respective pleadings, the parties incorporate and restate arguments contained in their pleadings filed in response to the March 1 Petition discussed *supra*. On June 14, Disney also filed a Motion to Strike and Opposition to Red Wolf’s May 31 Supplement. For the reasons noted at para. 23 *supra*, we need not rule on the Disney Motion.

¹³⁹ On February 28, 2007, Red Wolf filed a “Second Supplement to Petition to Deny” (the “Second Supplement”), further supplementing its April 3 Petition and alleging: (a) certain Citadel stations agreed to broadcast the Opie and Anthony Show in July 2006; (b) Opie and Anthony promote their website on those broadcasts; and (c) pornographic material and material promoting prostitution are available on websites that can be reached by clicking through the Opie and Anthony website onto linked websites. Citadel Broadcasting submitted a “Response to Second Supplement to Petition to Deny” (“Response”) on March 16, 2007. In the Response, Citadel Broadcasting argues that the Second Supplement is untimely and involves Internet content, rather than broadcast content, and therefore is outside the Commission’s jurisdiction. Citadel Broadcasting also states that it does not generate or have any input into the content of the Opie and Anthony website and it has no direct or indirect ownership or financial interest in that website. Response at 2. We agree with Citadel Broadcasting that the Second Supplement is untimely and does not allege any violation of the Act or the Rules. The Commission does not regulate the non-broadcast activities of station personnel or announcers. See *Eagle Radio, Inc.*, Memorandum Opinion and Order, 9 FCC Rcd 1294, 1294-95 (1994); *Dale A. Owens*, Memorandum Opinion and Order, 54 FCC 2d 375, 378-79 (1975).

¹⁴⁰ 47 C.F.R. § 73.3555(a)(1). The only instance of contour overlap involves Citadel Broadcasting’s Station WMOS(FM), Montauk, New York. That station is assigned by Arbitron to the New London, Connecticut, Metro, but Montauk is situated within the Arbitron New York City Metro. The combination of that ownership interest with the ABC Radio interests in the New York City Metro (ownership of New York City Stations WABC(AM) and WPLJ(FM) and a potential attributable interest as a non-exclusive sales representative for Station WQEW(FM)) complies with Section 73.3555(a)(1).

Biennial Review Order set forth in Section 73.3555(a)(1) of the Rules.¹⁴¹ In that Order, we held that such grandfathered interests generally cannot be the subject of a “long-form” assignment or transfer of control.¹⁴²

59. To resolve this issue, Citadel Broadcasting also has filed the Trust Application to divest its attributable interests in the following radio markets: (a) two FM stations in the Oklahoma City, Oklahoma, radio market;¹⁴³ (b) one FM station in the Albuquerque, New Mexico, radio market;¹⁴⁴ (c) three FM stations in the Little Rock, Arkansas, radio market;¹⁴⁵ (d) one FM station in the Charleston, South Carolina, radio market;¹⁴⁶ (e) two FM stations in the Portland, Maine, radio market;¹⁴⁷ (f) one FM station in the Saginaw – Bay City, Michigan, radio market;¹⁴⁸ and (g) one FM station in the Lafayette, Louisiana, radio market.¹⁴⁹ The proposed assignee is The Last Bastion Station Trust, LLC (“LBST”),¹⁵⁰ a trust in which Citadel does not hold a cognizable interest pursuant to our attribution standards.¹⁵¹ This aspect of the proposed transaction will be consistent with the intent of the *2002 Biennial Review Order* in not allowing “long-form” transfers of grandfathered interests that do not comply with the revised ownership rule.¹⁵²

60. We will impose a condition requiring that Citadel Broadcasting’s divestiture of the 11 stations to LBST pursuant to the Trust Application occur prior to or simultaneously with the consummation of Citadel Broadcasting’s transfer of control. LBST is strongly encouraged to take reasonable steps to market the stations to any “eligible entity,”¹⁵³ which often includes

¹⁴¹ 47 C.F.R. § 73.3555(a)(1). See *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13807-12 ¶¶ 482-91 (2003) (“*2002 Biennial Review Order*”), *aff’d in part and remanded in part, Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372 (2004) (“*Prometheus*”), *stay modified on rehearing*, No. 03-3388 (3d Cir. Sep. 3, 2004) (“*Prometheus Rehearing Order*”), *cert. denied*, 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168, and 04-1177).

¹⁴² 18 FCC Rcd at 13809-12 ¶¶ 487-90; see 47 C.F.R. § 73.3555 Note 4. There is an exception for transfers by or to an “eligible entity,” but that exception does not apply in this case.

¹⁴³ Stations WWLS-FM, Bethany, Oklahoma, and KINB(FM), Kingfisher, Oklahoma. Citadel Broadcasting is a party to an LMA involving Station KQOB(FM), Enid, Oklahoma, which is also in the Oklahoma City, Oklahoma radio market. On August 31, 2006, Citadel Broadcasting filed a Petition for a six-month waiver of the September 3, 2006, deadline by which it had to either terminate the LMA or otherwise come into compliance with the multiple ownership rules. Our approval of its proposed assignment of the licenses for Stations WWLS-FM and KINB(FM) to the trust moots the need for action on the waiver request, which we will dismiss.

¹⁴⁴ Station KBZU(FM), Albuquerque, New Mexico.

¹⁴⁵ Stations KVLO(FM), Humnoke, Arkansas, KPZK-FM, Cabot, Arkansas, and KARN-FM, Sheridan, Arkansas.

¹⁴⁶ Station WMGL(FM), Ravenel, South Carolina.

¹⁴⁷ Stations WCLZ(FM), Brunswick, Maine and WCYI(FM), Lewiston, Maine.

¹⁴⁸ Station WYLZ(FM), Pinconning, Michigan.

¹⁴⁹ Station KNEK-FM, Washington, Louisiana.

¹⁵⁰ File No. BALH-20060228ALK.

¹⁵¹ See 47 C.F.R. § 73.3555 Note 2(f).

¹⁵² See 18 FCC Rcd at 13809-10 ¶ 487.

¹⁵³ See *2002 Biennial Review Order*, 18 FCC Rcd at 13811 ¶ 489 (“We define an ‘eligible entity’ as any entity that would qualify as a small business consistent with SBA standards for its industry grouping,” (continued . . .))

businesses owned by women and minorities. LBST is further encouraged to consummate the sale of all of the stations within six months of the consummation date. If LBST is unable to do so, it must provide the Commission with a copy of the confidential report referenced in Section 4(g) of the Form of Trust Agreement submitted with the Trust Application. With that condition in place, we find that the proposed merger transaction complies with the Act and the Rules and serves the public interest, convenience, and necessity. Accordingly, we grant the Merger Applications and the Trust Application.

IV. CONCLUSION

61. We have reviewed the proposed merger, the applications for its approval, and related pleadings. We conclude that the applicants are fully qualified and that grant of the Merger Applications and the Trust Application, subject to the condition set forth herein, will serve the public interest, convenience, and necessity. We also grant the captioned renewal applications and further conclude that it is appropriate to issue a Notice of Apparent Liability against Citadel Broadcasting with respect to its violations of Section 73.3526 of the Rules at Stations WQGN-FM and WSUB(AM), Groton, Connecticut; WSKO(AM), WPRO(AM) and WPRO-FM, Providence, Rhode Island; WSKO-FM, Wakefield-Peacedale, Rhode Island; WWWZ(FM), Summerville, South Carolina; and WLXC(FM), Lexington, South Carolina.

V. ORDERING CLAUSES

62. Accordingly, IT IS ORDERED THAT the applications for consent to the transfers of control of Citadel Broadcasting Company and of Radio License Holding I, LLC, Radio License Holding II, LLC, Radio License Holding III, LLC, Radio License Holding IV, LLC, Radio License Holding V, LLC, Radio License Holding VI, LLC, Radio License Holding VII, LLC, Radio License Holding VIII, LLC, Radio License Holding IX, LLC, Radio License Holding X, LLC, Radio License Holding XI, LLC and Radio License Holding XII, LLC, and for consent to the assignment of licenses from Citadel Broadcasting Company to The Last Bastion Station Trust, LLC listed in the Appendix, or as otherwise listed previously in the Commission's public notices, ARE GRANTED, SUBJECT TO THE FOLLOWING CONDITION: the transfer of control of Citadel Broadcasting Company shall take place subsequent to and/or simultaneously with the complete consummation of the assignment of licenses from Citadel Broadcasting Company to The Last Bastion Station Trust, LLC.

63. IT IS FURTHER ORDERED THAT, in the event that The Last Bastion Station Trust, LLC has not consummated the sale of each radio station that it holds in trust within six months of the acquisition of such station from Citadel Broadcasting Company, it shall provide the Commission with a copy of each confidential report referenced in Section 4(g) of the Form of Trust Agreement filed with the assignment of license application described in the preceding paragraph.

64. IT IS FURTHER ORDERED THAT the above-captioned applications of Citadel Broadcasting Company for renewal of its licenses for various radio stations ARE GRANTED.

65. IT IS FURTHER ORDERED THAT all grants of applications referenced herein or occurring pursuant to this *Memorandum Opinion and Order and Notice of Apparent Liability* are without prejudice to any enforcement action the Commission may deem appropriate in light

(Continued from previous page)

citing 13 C.F.R. § 121.201, where the definition of small business for the radio industry is listed in NAICS code 515112).

of the ongoing investigations into certain pending indecency, profanity and/or obscenity complaints.¹⁵⁴

66. IT IS FURTHER ORDERED THAT the March 1, 2006, Petition to Deny filed by Red Wolf Broadcasting Corporation IS GRANTED to the extent noted above, and IS OTHERWISE DENIED.

67. IT IS FURTHER ORDERED THAT the April 3, 2006, Petition to Deny filed by Red Wolf Broadcasting Corporation IS DENIED.

68. IT IS FURTHER ORDERED THAT the May 1, 2006, Petition to Deny jointly filed by William Huston, Karen Glauber, and Kevin Bunger IS DISMISSED, and, when treated as an informal objection, IS DENIED.

69. IT IS FURTHER ORDERED THAT the Petition for Waiver filed by Citadel Broadcasting Company IS DISMISSED as moot.

70. IT IS FURTHER ORDERED THAT the May 19, 2006, Motion to Hold in Abeyance filed by Red Wolf Broadcasting Corporation IS DISMISSED.

71. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹⁵⁵ and Section 1.80 of the Commission's Rules,¹⁵⁶ THAT Citadel Broadcasting Company is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE for its apparent willful and repeated violation of Section 73.3526 of the Commission's Rules,¹⁵⁷ in the amount of \$10,000 for such violations at Stations WQGN-FM and WSUB(AM), Groton, Connecticut; WSKO(AM), WPRO(AM) and WPRO-FM, Providence, Rhode Island; and WSKO-FM, Wakefield-Peacedale, Rhode Island; in the amount of \$10,000 for such violations at Station WWWZ(FM), Summerville, South Carolina; and in the amount of \$1,000 for such violations at Station WLXC(FM), Lexington, South Carolina, for a total proposed forfeiture in the amount of \$21,000.

72. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules,¹⁵⁸ THAT, within thirty (30) days of the release date of this *Memorandum Opinion and Order and Notice of Apparent Liability*, Citadel Broadcasting Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

73. 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. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

74. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Peter H.

¹⁵⁴ See 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999.

¹⁵⁵ 47 U.S.C. § 503(b).

¹⁵⁶ 47 C.F.R. § 1.80.

¹⁵⁷ 47 C.F.R. § 73.3526.

¹⁵⁸ 47 C.F.R. § 1.80.

Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

75. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

76. Requests for full payment of the forfeiture proposed in this *Memorandum Opinion and Order and Notice of Apparent Liability* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁵⁹

77. IT IS FURTHER ORDERED THAT copies of this *Memorandum Opinion and Order and Notice of Apparent Liability* shall be sent, by First Class and Certified Mail, to Red Wolf Broadcasting Corporation, 758 Colonel Ledyard Highway, P.O. Box 357, Ledyard, Connecticut 06339, and its counsel, Arthur V. Belendiuk, Esq., Smithwick & Belendiuk, 5028 Wisconsin Avenue, N.W. #301, Washington, DC 20016, to William Huston, 9 Catherine Street, Binghamton, New York 13905, to Karen Glauber, 117 Rock Road, Vestal, New York 13850, to Kevin Bunger, P.O. Box 429, Port Crane, New York 13833, to Citadel Broadcasting Corporation, 7201 West Lake Mead Boulevard, Las Vegas, Nevada 89128, and its counsel, John D. Poutasse, Esq., Leventhal Senter & Lerman PLLC, Suite 600, 2000 K Street, N.W., Washington, DC 20006-1809, to The Walt Disney Company, 500 South Buena Vista Street, Burbank, California 91521, and its counsel, Tom W. Davidson, Esq., Akin Gump Strauss Hauer & Feld, LLP, 1333 New Hampshire Avenue, N.W., Washington, DC 20036, and to The Last Bastion Station Trust, LLC, c/o Media Venture Partners, LLC, 50 San Francisco Street, Suite 450, San Francisco, California 94133, and its counsel, Andrew S. Kersting, Esq., Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street, N.W., Washington, DC 20037-1526.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁵⁹ See 47 C.F.R. § 1.1914.

APPENDIX

Citadel and Disney Stations Subject to Transfers and Assignments

I. STATIONS SUBJECT TO TRANSFERS

A. CITADEL BROADCASTING COMPANY

<u>Call Sign</u>	<u>Location</u>	<u>Facility ID No.</u>	<u>FCC File No.</u>
WAPI(AM)	Birmingham, AL	16900	20060228ACC
WSPZ(AM)	Birmingham, AL	16897	20060228ACD
WTSK(AM)	Tuscaloosa, AL	54795	20060228ACM
WJRD(AM)	Tuscaloosa, AL	24384	20060228ACN
KAAY(AM)	Little Rock, AR	33253	20060228ACQ
KARN(AM)	Little Rock, AR	60703	20060228ACR
KPZK(AM)	Little Rock, AR	24150	20060228ACS
KCUB(AM)	Tucson, AZ	56051	20060228ACZ
KTUC(AM)	Tucson, AZ	35684	20060228ADC
KESP(AM)	Modesto, CA	11233	20060228ADG
KKML(AM)	Colorado Springs, CO	62039	20060228ADM
KVOR(AM)	Colorado Springs, CO	35869	20060228ADP
WSUB(AM)	Groton, CT	10454	20060228ADS
KBGG(AM)	Des Moines, IA	87105	20060228ADU
KBOI(AM)	Boise, ID	51211	20060228ADZ
KTIK(AM)	Nampa, ID	16854	20060228AED
WMDH(AM)	New Castle, IN	43435	20060228AEG
WIBR(AM)	Baton Rouge, LA	61275	20060228AEI
WXOK(AM)	Baton Rouge, LA	11606	20060228AEJ
KNEK(AM)	Washington, LA	15801	20060228AEQ
WBSM(AM)	New Bedford, MA	10452	20060228AEY
WMAS(AM)	Springfield, MA	36545	20060228AFA
WJZN(AM)	Augusta, ME	52604	20060228AFD
WTVL(AM)	Waterville, ME	52607	20060228AFP
WTRX (AM)	Flint, MI	15768	20060228AFV
WBBL(AM)	Grand Rapids, MI	41679	20060228AFW
WJIM(AM)	Lansing, MI	17382	20060228AGC
WVFN(AM)	East Lansing, MI	24638	20060228AGE
WODJ(AM)	Whitehall, MI	53962	20060228AGJ
KKOB(AM)	Albuquerque, NM	11251	20060228AGV
KNML(AM)	Albuquerque, NM	68608	20060228AGY
KTBL(AM)	Los Ranchos, NM	48604	20060228AHB
KKOH(AM)	Reno, NV	11236	20060228AHD
WNBF(AM)	Binghamton, NY	72372	20060228AHI
WYOS(AM)	Binghamton, NY	7921	20060228AHJ
WBBF(AM)	Buffalo, NY	53967	20060228AHN
WKRT(AM)	Cortland, NY	9428	20060228AHQ
WHLD(AM)	Niagara Falls, NY	7822	20060228AHU
WNSS(AM)	Syracuse, NY	50515	20060228AHW
WWLS(AM)	Moore, OK	22190	20060228AIB
WKY(AM)	Oklahoma City, OK	23418	20060228AIE
WRIE(AM)	Erie, PA	32982	20060228AIL

WIOV(AM)	Reading, PA	55307	20060228AIS
WARM(AM)	Scranton, PA	70504	20060228AIU
WPRO(AM)	Providence, RI	64843	20060228AIX
WSKO(AM)	Providence, RI	64840	20060228AIZ
WTMA(AM)	Charleston, SC	72376	20060228AJF
WXTC(AM)	Charleston, SC	60038	20060228AJG
WISW(AM)	Columbia, SC	54793	20060228AJH
WGOC(AM)	Blountville, TN	29513	20060228AJO
WGOW(AM)	Chattanooga, TN	54526	20060228AJP
WJCW(AM)	Johnson City, TN	67672	20060228AJU
WGOC(AM)	Kingsport, TN	67671	20060228AJW
WNML(AM)	Knoxville, TN	16894	20060228AJZ
KJQS(AM)	Murray, UT	58303	20060228AKJ
KKAT(AM)	Salt Lake City, UT	11232	20060228AKO
KFNZ(AM)	Salt Lake City, UT	53500	20060228AKQ
KEYF(AM)	Dishman, WA	53148	20060228AKT
KGA(AM)	Spokane, WA	11234	20060228AKW
KJRB(AM)	Spokane, WA	11235	20060228AKX
KKAT-FM1	Bountiful, UT	69554	20060228AKH
WUHT(FM)	Birmingham, AL	6401	20060228ACE
WYSF(FM)	Birmingham, AL	16901	20060228ACF
WZRR(FM)	Birmingham, AL	16899	20060228ACG
WFFN(FM)	Coaling, AL	54797	20060228ACH
WDGM(FM)	Greensboro, AL	86803	20060228ACI
WJOX(FM)	Northport, AL	70914	20060228ACJ
WBEI(FM)	Reform, AL	67577	20060228ACK
WTUG-FM	Tuscaloosa, AL	54796	20060228ACL
KPZK-FM	Cabot, AR	25860	20060228ACO
KVLO(FM)	Humnoke, AR	28114	20060228ACP
KURB(FM)	Little Rock, AR	19559	20060228ACT
KIPR(FM)	Pine Bluff, AR	13925	20060228ACU
KARN-FM	Sheridan, AR	24151	20060228ACV
KOKY(FM)	Sherwood, AR	15161	20060228ACW
KLAL(FM)	Wrightsville, AR	47880	20060228ACX
KSZR(FM)	Oro Valley, AZ	39734	20060228ACY
KHYT(FM)	Tucson, AZ	56053	20060228ADA
KIIM-FM	Tucson, AZ	56052	20060228ADB
KWIN(FM)	Lodi, CA	60425	20060228ADD
KDJK(FM)	Mariposa, CA	11241	20060228ADE
KATM(FM)	Modesto, CA	11239	20060228ADF
KHKK(FM)	Modesto, CA	11240	20060228ADH
KHOP(FM)	Oakdale, CA	52528	20060228ADI
KWYL(FM)	South Lake Tahoe, CA	67816	20060228ADJ
KJOY(FM)	Stockton, CA	32215	20060228ADK
KWNN(FM)	Turlock, CA	60427	20060228ADL
KKFM(FM)	Colorado Springs, CO	11237	20060228ADN
KKPK(FM)	Colorado Springs, CO	62038	20060228ADO
KKMG(FM)	Pueblo, CO	11229	20060228ADQ
WQGN-FM	Groton, CT	10455	20060228ADR
WXLM(FM)	Stonington, CT	60251	20060228ADT
KGGO(FM)	Des Moines, IA	12965	20060228ADV

KHKI(FM)	Des Moines, IA	12966	20060228ADW
KJZY(FM)	West Des Moines, IA	22882	20060228ADX
KWQW(FM)	Boone, IA	30116	20060228ADY
KIZN(FM)	Boise, ID	70626	20060228AEA
KQFC(FM)	Boise, ID	51217	20060228AEB
KKGL(FM)	Nampa, ID	51212	20060228AEC
KZMG(FM)	New Plymouth, ID	39609	20060228AEE
WWKI(FM)	Kokomo, IN	60133	20060228AEF
WMDH-FM	New Castle, IN	74092	20060228AEH
WCDV(FM)	Hammond, LA	61271	20060228AEK
WEMX(FM)	Kentwood, LA	58931	20060228AEL
KRRQ(FM)	Lafayette, LA	36227	20060228AEM
KSMB(FM)	Lafayette, LA	41057	20060228AEN
KRDJ(FM)	New Iberia, LA	8167	20060228AEO
KQXL-FM	New Roads, LA	11607	20060228AEP
KNEK-FM	Washington, LA	16370	20060228AER
KKND(FM)	Port Sulphur, LA	58395	20060228AES
KMEZ(FM)	Belle Chasse, LA	12157	20060228AET
KXKC(FM)	New Iberia, LA	6350	20060228AEU
WDVW(FM)	Laplace, LA	117	20060228AEV
WFHN(FM)	Fairhaven, MA	10453	20060228AEW
WXLO(FM)	Fitchburg, MA	43557	20060228AEX
WWFX(FM)	Southbridge, MA	18310	20060228AEZ
WMAS-FM	Springfield, MA	36543	20060228AFB
WORC-FM	Webster, MA	50231	20060228AFC
WMME-FM	Augusta, ME	52605	20060228AFE
WCYY(FM)	Biddeford, ME	22880	20060228AFF
WCLZ(FM)	Brunswick, ME	56569	20060228AFG
WSHK(FM)	Kittery, ME	4380	20060228AFH
WCYI(FM)	Lewiston, ME	26389	20060228AFI
WBLM(FM)	Portland, ME	22878	20060228AFJ
WJBQ(FM)	Portland, ME	3134	20060228AFK
WBPW(FM)	Presque Isle, ME	22184	20060228AFL
WOZI(FM)	Presque Isle, ME	41007	20060228AFM
WQHR(FM)	Presque Isle, ME	9422	20060228AFN
WEBB(FM)	Waterville, ME	52608	20060228AFO
WHNN(FM)	Bay City, MI	37458	20060228AFQ
WIOG(FM)	Bay City, MI	22675	20060228AFR
WFMK(FM)	East Lansing, MI	37460	20060228AFS
WMMQ(FM)	East Lansing, MI	24641	20060228AFT
WFBE(FM)	Flint, MI	21730	20060228AFU
WLAV-FM	Grand Rapids, MI	41680	20060228AFX
WKLQ(FM)	Greenville, MI	24639	20060228AFY
WHTS(FM)	Coopersville, MI	71090	20060228AFZ
WTNR(FM)	Holland, MI	41678	20060228AGA
WITL-FM	Lansing, MI	46706	20060228AGB
WJIM-FM	Lansing, MI	17386	20060228AGD
WKQZ(FM)	Midland, MI	72924	20060228AGF
WLAW(FM)	Newaygo, MI	89477	20060228AGG
WVIB(FM)	Holton, MI	73994	20060228AGH
WLCS(FM)	North Muskegon, MI	5396	20060228AGI

WYLZ(FM)	Pinconning, MI	52616	20060228AGK
WILZ(FM)	Saginaw, MI	58578	20060228AGL
WRBO(FM)	Como, MS	7075	20060228AGM
WMTI(FM)	Picayune, MS	27951	20060228AGN
WPKQ(FM)	North Conway, NH	48401	20060228AGP
WOKQ(FM)	Dover, NH	22887	20060228AGQ
WSAK(FM)	Hampton, NH	12155	20060228AGR
WHOM(FM)	Mount Washington, NH	49687	20060228AGT
KBZU(FM)	Albuquerque, NM	48596	20060228AGU
KKOB-FM	Albuquerque, NM	11250	20060228AGW
KMGA(FM)	Albuquerque, NM	11231	20060228AGX
KRST(FM)	Albuquerque, NM	12584	20060228AGZ
KDRF(FM)	Albuquerque, NM	55052	20060228AHA
KBUL-FM	Carson City, NV	11245	20060228AHC
KNEV(FM)	Reno, NV	11244	20060228AHE
WAAL(FM)	Binghamton, NY	7920	20060228AHG
WHWK(FM)	Binghamton, NY	72373	20060228AHH
WEDG(FM)	Buffalo, NY	56103	20060228AHK
WGRF(FM)	Buffalo, NY	56102	20060228AHL
WHTT-FM	Buffalo, NY	53968	20060228AHM
WWYL(FM)	Chenango Bridge, NY	7663	20060228AHO
WIII(FM)	Cortland, NY	9427	20060228AHP
WAQX-FM	Manlius, NY	52606	20060228AHS
WMOS(FM)	Montauk, NY	7996	20060228AHT
WLTi(FM)	Syracuse, NY	58719	20060228AHV
WNTQ(FM)	Syracuse, NY	50514	20060228AHX
KKWD(FM)	Bethany, OK	6509	20060228AHY
WWLS-FM	Edmond, OK	37435	20060228AHZ
KINB(FM)	Kingfisher, OK	88376	20060228AIA
KATT-FM	Oklahoma City, OK	8797	20060228AIC
KYIS(FM)	Oklahoma City, OK	8798	20060228AID
WLEV(FM)	Allentown, PA	39875	20060228AIF
WCAT-FM	Carlisle, PA	74557	20060228AIG
WSJR(FM)	Dallas, PA	43969	20060228AIH
WCTO(FM)	Easton, PA	36997	20060228AII
WXTA(FM)	Edinboro, PA	72892	20060228AIJ
WIOV-FM	Ephrata, PA	55308	20060228AIK
WQHZ(FM)	Erie, PA	65748	20060228AIM
WXKC(FM)	Erie, PA	32984	20060228AIN
WBSX (FM)	Hazleton, PA	133	20060228AIO
WMHX(FM)	Hershey, PA	64842	20060228AIP
WBHT(FM)	Mountain Top, PA	20465	20060228AIQ
WBHD(FM)	Olyphant, PA	43521	20060228AIR
WMGS(FM)	Wilkes-Barre, PA	70880	20060228AIV
WQXA-FM	York, PA	52169	20060228AIW
WPRO-FM	Providence, RI	64841	20060228AIY
WWLI(FM)	Providence, RI	64838	20060228AJA
WSKO-FM	Wakefield-Peacedale, RI	4376	20060228AJB
WWKX(FM)	Woonsocket, RI	65198	20060228AJC
WSSX-FM	Charleston, SC	72378	20060228AJD
WSUY(FM)	Charleston, SC	60039	20060228AJE

WOMG(FM)	Columbia, SC	54794	20060228AJI
WLXC(FM)	Lexington, SC	37200	20060228AJJ
WTCB(FM)	Orangeburg, SC	54791	20060228AJK
WMGL(FM)	Ravenel, SC	61592	20060228AJL
WNKT(FM)	St. George, SC	38900	20060228AJM
WWWZ(FM)	Summerville, SC	61278	20060228AJN
WSKZ(FM)	Chattanooga, TN	54525	20060228AJQ
WOGT(FM)	East Ridge, TN	54527	20060228AJR
WGFX(FM)	Gallatin, TN	16893	20060228AJS
WNRX(FM)	Jefferson City, TN	18403	20060228AJT
WQUT(FM)	Johnson City, TN	67673	20060228AJV
WKOS(FM)	Kingsport, TN	67674	20060228AJX
WIVK-FM	Knoxville, TN	16890	20060228AJY
WNML-FM	Loudon, TN	7998	20060228AKA
WGKX(FM)	Memphis, TN	35009	20060228AKB
WXXM(FM)	Millington, TN	35399	20060228AKC
WKIM(FM)	Munford, TN	33671	20060228AKD
WKDF(FM)	Nashville, TN	16896	20060228AKE
WOKI(FM)	Oliver Springs, TN	10457	20060228AKF
WGOW-FM	Soddy-Daisy, TN	53956	20060228AKG
KBER(FM)	Ogden, UT	10779	20060228AKK
KENZ(FM)	Ogden, UT	2444	20060228AKL
KKAT-FM	Orem, UT	69553	20060228AKM
KBEE(FM)	Salt Lake City, UT	53497	20060228AKP
KUBL-FM	Salt Lake City, UT	11238	20060228AKR
KEYF-FM	Cheney, WA	53147	20060228AKS
KZBD(FM)	Spokane, WA	11243	20060228AKU
KDRK-FM	Spokane, WA	11242	20060228AKV
KBBD(FM)	Spokane, WA	36488	20060228AKY
W285DG	Boone, NC	67675	20060228AGO
W250AB	Manchester, NH	22889	20060228AGS
K272DA	Stateline, ETC., NV	67817	20060228AHF
W262AD	Ithaca, NY	9429	20060228AHR
W253AC	Reading, PA	39873	20060228AIT
K284AJ	Heber City, UT	53498	20060228AKI
K237AL	Park City, ETC., UT	53499	20060228AKN
WEFG-FM	Whitehall, MI	53960	2006031ADW
KATC-FM	Colorado Springs, CO	66249	20060606AAF

B. ABC-OWNED STATIONS

<u>Licensee</u>	<u>Call Sign</u>	<u>Location</u>	<u>Facility ID No.</u>	<u>FCC File No.</u>
Radio License Holding I, LLC	WJR(AM)	Detroit, MI	8626	20060228ABG
Radio License Holding I, LLC	WDVD(FM)	Detroit, MI	8631	20060228ABH
Radio License Holding I, LLC	WDRQ(FM)	Detroit, MI	70040	20060228ABI
Radio License Holding II, LLC	WYAY(FM)	Gainesville, GA	48727	20060228ABK
Radio License Holding II, LLC	WKHX-FM	Marietta, GA	73161	20060228ABL
Radio License Holding III, LLC	KQRS-FM	Golden Valley, MN	35505	20060228ABM
Radio License Holding III, LLC	KXXR(FM)	Minneapolis, MN	35506	20060228ABN
Radio License Holding III, LLC	WGVB(FM)	Lakeville, MN	61379	20060228ABO
Radio License Holding III, LLC	WGVY(FM)	Cambridge, MN	54838	20060228ABP
Radio License Holding III, LLC	WGVZ(FM)	Eden Prairie, MN	61541	20060228ABQ
Radio License Holding IV, LLC	WBAP(AM)	Fort Worth, TX	71200	20060228ABR
Radio License Holding IV, LLC	KSCS(FM)	Fort Worth, TX	71201	20060228ABS
Radio License Holding IV, LLC	KTYS(FM)	Flower Mound, TX	26468	20060228ABT
Radio License Holding V, LLC	WZZN(FM)	Chicago, IL	73228	20060228ABU
Radio License Holding VI, LLC	KABC(AM)	Los Angeles, CA	33254	20060228ABV
Radio License Holding VII, LLC	WMAL(AM)	Washington, DC	73250	20060228ABX
Radio License Holding VII, LLC	WRQX(FM)	Washington, DC	73252	20060228ABY
Radio License Holding VII, LLC	WJZW(FM)	Woodbridge, VA	70037	20060228ABZ
Radio License Holding VIII, LLC	KGO(AM)	San Francisco, CA	34471	20060228ACA
Radio License Holding VIII, LLC	KSFO(AM)	San Francisco, CA	34472	20060228ACB
Radio License Holding IX, LLC	WPLJ(FM)	New York, NY	73887	20060228ALC
Radio License Holding X, LLC	WABC(AM)	New York, NY	70658	20060228AKZ
Radio License Holding XI, LLC	WLS(AM)	Chicago, IL	73227	20060228ALA
Radio License Holding XII, LLC	KLOS(FM)	Los Angeles, CA	35078	20060228ALB

**II. CITADEL BROADCASTING COMPANY STATIONS TO BE ASSIGNED TO THE
LAST BASTION STATION TRUST, LLC:**

<u>Call Sign</u>	<u>Location</u>	<u>Facility ID No.</u>	<u>FCC File No.</u>
KBZU(FM)	Albuquerque, NM	48596	20060228ALE
WCLZ(FM)	Brunswick, ME	56569	20060228ALF
WCYI(FM)	Lewiston, ME	26389	20060228ALG
WYLZ(FM)	Pinconning, MI	52616	20060228ALH
KNEK-FM	Washington, LA	16370	20060228ALI
WMGL(FM)	Ravenel, SC	61592	20060228ALJ
KVLO(FM)	Humnoke, AR	28114	20060228ALK
KPZK-FM	Cabot, AR	25860	20060228ALL
KARN-FM	Sheridan, AR	24151	20060228ALM
KKWD(FM)	Bethany, OK	6509	20060228ALN
KINB(FM)	Kingfisher, OK	88376	20060228ALO

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Applications of Citadel Broadcasting Company for Consent to Renewal and for Assignment of Licenses; and of Shareholders of Citadel Broadcasting Corporation and of the Walt Disney Co. for Consent to Transfers of Control, Memorandum Opinion and Order and Notice of Apparent Liability.*

Today's item permits the transfer of 24 stations in large markets from ABC Radio to Citadel, while also requiring divestiture of 11 "grandfathered" stations owned by Citadel in excess of the Commission's limits on radio station ownership in a local market. While I am always troubled by the effects on our media environment of allowing a large media conglomerate to acquire even more stations, I believe this transaction is narrowly—quite narrowly—in the public interest because ABC's and Citadel's holdings do not overlap in any local market and, most important, because Citadel must divest the 11 stations that it owns in excess of our local ownership limits.

An important element in my approval of this item is that Citadel does not retain ownership of the 11 stations while it searches for a buyer, but rather must transfer ownership immediately to a trust with a legal duty to sell them. Additionally, we strongly encourage the trust to seek bids from "eligible entities," as that term is defined by the Small Business Administration, including businesses often owned by women and minorities. If the trust does not complete the sales within six months, today's item also imposes substantial monthly reporting requirements—the Commission will review these documents carefully to make sure that the trustee is living up to its obligation to sell the stations in a timely fashion. I will be watching the trust's efforts closely to ensure the results envisioned in this item.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Applications of Citadel Broadcasting Company for Consent to Renewal and for Assignment of Licenses; and of Shareholders of Citadel Broadcasting Corporation and of the Walt Disney Co. for Consent to Transfers of Control, Memorandum Opinion and Order and Notice of Apparent Liability.*

I support this Order to approve the transaction between Citadel Broadcasting Corporation (“Citadel”) and ABC Radio because, in certain important respects, it addresses broadcast media issues about which I have been very concerned.

Citadel has reached an agreement in principle with the Commission to settle our ongoing investigation into alleged pay-for-play practices. The allegations against Citadel stemmed from documents and materials that the New York Attorney General’s Office and Red Wolf Broadcasting Corporation supplied to the Commission. I endorse the approach taken in the draft Consent Decree because, while Citadel does not admit to any violation of FCC rules, Citadel has shown leadership in reaching an amicable resolution of these serious allegations. In the course of our discussions, Citadel has agreed to a significant fine, and to implement meaningful business reforms that will track all transactions with major and independent radio labels, make those exchanges more transparent to the public, and train programming employees to conduct business in a manner more consistent with federal sponsorship identification laws, thereby helping set new ethical standards for the entire radio industry. In addition, Citadel has made commitments above and beyond the draft Consent Decree to add significant airtime for local and independent artists, and to adhere to rules of engagement designed to improve the ability of emerging artist to get heard on the airwaves.

Another reason I support this Order is because of Citadel’s commitment to comply with our media ownership rules and to make special efforts to increase diversity of ownership. One of the positive results of this merger is that Citadel is losing its grandfathering rights with respect to eleven stations in seven markets in which its attributable radio interests exceed our local radio ownership limits. I am pleased that Citadel decided to resolve this issue by creating a non-attributable trust for the purpose of divesting the merged entity of these non-compliant stations.

Equally important, Citadel is committed to taking positive steps to seek qualified women and minority purchasers. While the Commission has yet to recognize “socially and economically disadvantaged businesses” as regulatory classification, I am encouraged that members of the broadcasting community, such as Citadel, are aware of the lack of women and minority ownership of broadcast properties and are taking active steps to address the problem.

I would like to thank my colleagues, particularly Commissioner McDowell, for working to develop language that addresses some of our mutual concerns about diversity of ownership. I firmly believe that the Commission needs to do much more than just “encourage” greater women and minority ownership of broadcast properties. We need to develop regulatory measures to facilitate ownership and access to capital. The time is long overdue for this Commission to address the plight of the majority of the U.S. population in a non-partisan, straightforward and honest manner. I look forward to working with my colleagues to continue making progress on diversity, as we have attempted to do in this transaction.

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

Re: Applications of Citadel Broadcasting Company for Consent to Renewal and for Assignment of Licenses; and of Shareholders of Citadel Broadcasting Corporation and of the Walt Disney Co. for Consent to Transfers of Control, Memorandum Opinion and Order and Notice of Apparent Liability

In this Order, we approve the sale of 24 ABC radio stations, all of which are located in top-20 radio markets, to Citadel, which until now has owned stations in markets below the top-30 Arbitron markets. As we have seen with other recent transactions, this transaction results in a “big media” company selling off broadcast properties. Because there is virtually no overlap between the radio markets in which the ABC and Citadel stations operate, this transfer complies with our local radio ownership rule. Competition will be improved further because as a result of the transfer, Citadel must divest its grandfathered interests in 11 stations in seven markets, where such ownership was permitted under our previous ownership rule but not under our current rule. The relevant markets are Albuquerque, New Mexico; Little Rock, Arkansas; Charleston, South Carolina; Portland, Maine; Saginaw-Bay City, Michigan; and Lafayette, Louisiana. This is a terrific buying opportunity that I hope new entrants and small businesses, including those owned by women and minorities, will be able to take advantage of to increase the diversity of broadcast owners in our country.

I thank the Media Bureau for its hard work and I support the Order.