

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

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| In the Matter of |) | |
| |) | Facility ID No. 60038 |
| Citadel Broadcasting Company |) | NAL/Acct. No. MB20041810018 |
| |) | FRN: 0001595214 |
| Licensee of Station WXTC(AM) |) | File No. BR-20030801BNB |
| Charleston, South Carolina |) | |

FORFEITURE ORDER

Adopted: February 13, 2009

Released: February 17, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Citadel Broadcasting Company (“Citadel”),¹ licensee of Station WXTC(AM), Charleston, South Carolina (the “Station”), for its willful and repeated violation of Section 73.3526 of the Commission’s Rules (the “Rules”).² The violations involve Citadel’s failure to properly maintain the Station’s public inspection file.

II. BACKGROUND

2. On June 25, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Citadel in the amount of nine thousand dollars (\$9,000) for the violations.³ Citadel filed a response to the NAL on August 4, 2004, requesting cancellation and/or reduction of the proposed forfeiture (“Request”).⁴

3. Previously, on August 1, 2003, Citadel filed the referenced application (“Application”) to renew the license of the Station. Section III, Item 3, of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 or 73.3527 of the Rules has been placed in the station’s public inspection file at the appropriate times. Citadel indicated “No” to that certification, filing an exhibit explaining that the issues/programs lists were missing from the public file from the third quarter of 1999 through the first quarter of 2003. The exhibit further stated that corrective measures were taken and that the missing issues/programs lists were subsequently reconstructed and placed in the Station’s public inspection file.⁵

¹ Subsequently, Citadel assigned the license to Apex Broadcasting, Inc. (See File No. BAL-20070604ACT, granted on July 23, 2007, and consummated on August 24, 2007). As this forfeiture concerns violations that occurred while Citadel held the license, for convenience purposes, we will refer to it as the licensee of the Station.

² 47 C.F.R. § 73.3526.

³ Letter to Nancy A. Ory, Esq. from Peter H. Doyle, reference 1800B3-SS (MB Jun. 25, 2004).

⁴ Per Citadel’s request, Commission staff granted Citadel until August 4, 2004, to file its Response.

⁵ See Application, Exhibit 11.

4. In support of its Request, Citadel argues that a cancellation or reduction of the forfeiture is warranted because: (1) per Section 73.3526(d),⁶ it was not responsible for maintaining the Station's public file until June 26, 2001, when it assumed control of the Station; and (2) the forfeiture amount assessed against it is in excess of those imposed on other licensees for violations similar to Citadel's violations. Citadel asserts that these reasons warrant a cancellation or reduction of the assessed forfeiture.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and the Commission's *Forfeiture Policy Statement*.⁹ In examining Citadel's Request, Section 503(b) of the Act¹⁰ and the other cited authority require that we take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.

6. Citadel first argues that it was not responsible for maintaining the Station's public file until it consummated a "long-form" transfer of control of the Station in June 2001.¹¹ We agree.¹² Hence, Citadel was responsible for producing the Station's issues/programs lists only as of the third quarter of 2001. Based on the information provided in the Application we find that the Station was missing seven issues/programs lists during the license period.¹³ The NAL forfeiture was calculated under the belief that fifteen issues/programs lists were missing.¹⁴ In light of our determination that Citadel is responsible for only seven missing issues/programs lists, we believe that a base forfeiture of four thousand dollars (\$4,000) is appropriate.¹⁵ Accordingly, we will reduce the forfeiture amount to \$4,000.

⁶ 47 C.F.R. § 73.3526(d).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁰ 47 U.S.C. § 503(b)(2)(D).

¹¹ See File No. BTC-20010124AGG, granted on April 26, 2001, and consummated by the parties on June 26, 2001.

¹² See, e.g., *Media Bureau Announces Certain Revisions to Instructions to Form 303-S -- Application for Renewal of License for Broadcast Stations*, Public Notice, 18 FCC Rcd 8986 (MB 2003) ("if the station license was assigned or transferred during the subject license term pursuant to a 'long-form' application on FCC Form 314 or 315, the renewal applicant's certifications should cover only the period during which the renewal applicant held the station's license").

¹³ Specifically, the following issues/programs lists were missing after Citadel assumed control of the Station: the third and fourth quarters of 2001, all four quarters of 2002, and the first quarter of 2003.

¹⁴ See NAL at 2.

¹⁵ See e.g. *Baker University*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd. 850 (MB 2006) (\$4,000 forfeiture proposed for seven missing issues/programs lists); *Valley Air, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 10638 (MB 2006) (same) and *New Northwest Broadcasters, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd. 13718 (MB 2006) (same).

7. Citadel further argues that we should cancel the forfeiture because it is inconsistent with that issued to other licensees in similar situations and in contravention of *Melody Music, Inc. v FCC*.¹⁶ We disagree. It is undisputed that the Station's public file was incomplete for nearly two years and missing seven issues/programs lists. The four thousand dollar forfeiture we are issuing here is consistent with prior forfeitures for similar violations.¹⁷

8. In light of the foregoing, we have examined Citadel's Request pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Citadel willfully and repeatedly violated Section 73.3526 of the Rules,¹⁸ and we find no basis for canceling the forfeiture proposed in the NAL for the violation.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁹ that Citadel Broadcasting Company, SHALL FORFEIT to the United States the sum of four thousand dollars (\$4,000) for willfully and repeatedly violating Section 73.3526 of the Rules.

10. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission, within thirty (30) days of the date of this Order. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).²⁰

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Citadel Broadcasting Company, 7201 W. Lake Meade Boulevard, Suite 400, Las Vegas, NV 89128, and to its counsel, Nancy A. Ory, Esquire, Leventhal Senter & Lerman, PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁶ 345 F.2d 730 (D.C. Cir. 1965).

¹⁷ See *supra* note 14.

¹⁸ 47 C.F.R. § 73.3526 (e)(8).

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

²⁰ See 47 C.F.R. § 1.1914.