

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

In the Matter of)
)
Citicasters Licenses, Inc.) File Number: EB-01-LA-075
) NAL/Acct. No. 200232900001
Station KACD AM) FRN 0004-9536-59
Thousand Oaks, CA.	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 12, 2002

By the District Director, Los Angeles Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Citicasters Licenses, Inc., ("Citicasters") licensee of Station KACD(AM), in Thousand Oaks, CA, has apparently violated Section 503(b) of the Communications Act of 1923, as amended ("Act")¹ and has apparently willfully violated sections 17.47(a)(1) and 17.49 of the Commission's Rules² by not making an observation of the antenna structures' lights at least once each 24 hours and not maintaining a record of observed or otherwise known extinguishment or improper functioning of a structure light. We also find that Citicasters has apparently willfully violated sections 73.1125 and 73.1400(a) of the Commission's Rules³ by not maintaining a meaningful staff presence at the main studio and operating station KACD unattended. Further, we find that Citicasters apparently willfully violated sections 73.1870(a) and 73.1870(c)(3) of the Commission's Rules⁴ by not designating a person to serve as the station's chief operator and the failure of a chief operator to review the station records at least once each week to determine if the required entries are being made correctly and to date and sign the log. We conclude that Citicasters is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

¹ 47 U.S.C. §503(b).

² 47 C.F.R §§17.47(a)(1), 17.49.

³ 47 C.F.R §§73.1125, 73.1400(a).

⁴ 47 C.F.R. §§73.1870(a) and (c)(3).

2. On March 13, 2001, the Los Angeles Office received an e-mail complaint concerning a tower light outage. The complaint stated that the light on the third tower at station KACD(AM) operating on 850 kHz in Thousand Oaks, California is out and has been out for a week. The tower, Antenna Structure Registration # 1059707, is registered to Citicasters, Inc.⁵ An investigation by the Los Angeles Field Office revealed that a top mounted red flashing beacon tower light outage existed on March 13, 2001, and that no automated alarm system was installed at the station for monitoring the tower lights and that the station operator did not make the required visual inspection of the tower lights once every 24 hours. The investigation also revealed that the station did not properly maintain required station logs or adequately staff the station.

3. On March 13, 2001, the station engineer responded to the inquiry made by the Los Angeles field office and confirmed that in fact the third tower light was out, and acknowledged that he did not know how long the tower light had been out. The station engineer stated that he immediately reported the tower light outage to the FAA and that the light should be repaired and returned to service by close-of-business the next day, March 14, 2001. On March 16, 2001, the station engineer advised the Los Angeles field office that the tower light had been repaired and returned to service on March 14, 2001. On May 16, 2001, an agent from the Los Angeles office attempted to inspect station KACD's station logs during regular business hours, but found the station closed. Subsequent investigation revealed the station was closed between May 14 and May 17, 2001, because the station's only on-site employee, the station operator, was ill.

4. On May 24, 2001, the LA agent returned to the station to review the station logs. A review of the station logs revealed no record of the March 13, 2001, light outage, no record of when the extinguishment was noted, and no record of repairs made. The station operator acknowledged that a light outage had occurred on March 13, 2001 on the third tower, Antenna Structure Registration # 1059707. The station operator stated that there was no automated alarm system for the tower lights, and that he conducted a visual inspection only once every two weeks.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁶ It is not pertinent whether or not the licensee's

⁵ Ownership information filed with the Federal Communications Commission indicates Citicasters Licenses, Inc. and Citicasters, Inc. are affiliated. In addition, section 17.6 of the Rules provides that licensees authorized on antenna structures must take steps to ensure that the antenna structure is in compliance with the antenna structure painting and lighting requirements. 47 C.F.R. § 17.6.

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the

act or omissions are intended to violate the law.

6. Section 17.47 (a) (1) of the Rules requires the owner of the antenna structure registered with the Commission to make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator to insure that all such lights are functioning properly. Section 17.49 of the Rules requires that the owner of an antenna structure record any observed or otherwise known extinguishment or improper functioning of a structure light. The recorded information is to include such things as the nature of the extinguishment or improper functioning, the date and time the observation was made or otherwise noted, and the date, time and nature of adjustments, repairs, or replacements made. Section 73.1125 of the Rules requires each licensee to maintain a main studio and to maintain a meaningful management and staff presence at its main studio location.⁷ The Commission has defined a minimally acceptable "meaningful management and staff presence" as full-time managerial and full-time staff personnel during normal business hours.⁸ Only one full-time employee is not sufficient to meet the minimum requirements.⁹ Section 73.1400 (a) of the Rules requires attended operation to assure that at all times the station operates within tolerances specified by applicable technical rules and in accordance with the terms of the station authorization. Unattended station operation under Sections 73.1300 and 73.1400(b) could not be employed because the remote control system was not fully automated.¹⁰ Sections 73.1870(a) and 73.1870(c)(3) require that the licensee designate a person to serve as the station's chief operator and that the operator review the station records at least once each week to determine if required entries are being made correctly and to date and sign the log. In such instances where the chief operator is unavailable or unable to act (e.g., vacations, sickness), the licensee shall designate another person as the acting chief operator on a temporary basis.

7. Based on the evidence before us, we find that Citicasters willfully violated Sections 17.47(a)(1)

commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ 47 C.F.R. § 73.1125; *Main Studio and Program Origination Rules (Clarification)*, 3 FCC Rcd 5024 (1988).

⁸ *Jones Eastern of Outer Banks, Inc.*, 6 FCC Rcd 3615 (1991), *clarified*, 7 FCC Rcd 6800 (1992); *see also*, *KLDT-TV 55, Inc.*, 10 FCC Rcd 3198 (1995).

⁹ *Queen of Peace Radio, Inc.*, 15 FCC Rcd 1934 (Enf. Bur. 2000), *recon. denied*, 15 FCC Rcd 7538 (Enf. Bur. 2000); *B&C Kentucky, LLC.*, 16 FCC Rcd 9305, ¶ 19 (M.M.B. 2001).

¹⁰ *Amendment of Parts 73 and 74 of the Commission's Rules to Permit Unattended Operation of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements*, 10 FCC Rcd 11479 (1995).

and 17.49 of the Rules when it failed to make an observation of the antenna structure's lights at least once each 24 hours and failed to record the observed or otherwise known extinguishment or improper functioning of a structure light. We also find that Citicasters willfully violated Sections 73.1125, 73.1400(a), 73.1870(a) and 73.1870(c)(3) of the Rules by failing to maintain a meaningful management and staff presence at the main studio and failing to maintain attended operation of the station, failing to designate another person as the acting chief operator on a temporary basis, and failing to review the station records at least once each week to determine if required entries are being made and verify that the station has been operated as required by the rules or the station authorization.

8. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"), for failure to comply with the main studio rule is \$7,000, for failure to conduct required monitoring is \$2,000 and for failure to maintain required records is \$1,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act¹¹, which includes the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended¹², and Sections 0.111, 0.311 and 1.80 of the Commission's Rules¹³, Citicasters Licenses, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violations of Sections 17.47 (a)(1), 17.49, 73.1125, 73.1400(a), 73.1870(a) and 73.1870(c)(3) of the Rules, 47 C.F.R. §17.47(a)(1), 47 C.F.R. §17.49, 47 C.F.R. §73.1125, 47 C.F.R. §73.1400(a), 47 C.F.R. §73.1870(a) and §73.1870(c)(3).

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules¹⁴, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Citicasters Licenses,

¹¹ 47 U.S.C. § 503(b)(2)(D).

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁴ 47 C.F.R. § 1.80.

Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232900001 and FRN # 0004-9536-59.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20402 and MUST INCLUDE THE NAL/Acct. No. 200232900001.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner’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.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 2510 0001 9914 6408, Return Receipt Requested, to Citicasters Licenses, Inc. at 200 East Basse Road, San Antonio, TX. 78209.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton
District Director, LA Office

¹⁵ See 47 C.F.R. § 1.1914.