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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 26 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Retention by Broadcasters)
of Program Recordings) MB Docket No. 04-232

COMMENTS OF CITADEL COMMUNICATIONS, L.L.C., CITADEL COMMUNICATIONS COMPANY, LTD., CAPITAL COMMUNICATIONS COMPANY, INC. AND CORONET COMMUNICATIONS COMPANY

Citadel Communications, L.L.C., licensee of commercial television station KLKN(TV), Lincoln, NE; Citadel Communications Company, Ltd., licensee of commercial television station KCAU-TV, Sioux City, IA; Capital Communications Company, Inc., licensee of commercial television station WOI-TV, Ames, IA; and Coronet Communications Company, licensee of commercial television station WHBF-TV, Rock Island, IL (such licensees being hereinafter referred to, collectively, as "Citadel"), submit these Comments in response to the Commission's Notice of Proposed Rulemaking regarding the Commission's proposal to require broadcasters to retain recordings of their programming.¹ Citadel owns and operates four commercial television stations in markets ranging in size from Des Moines-Ames, IA (Nielsen DMA rank 70) to Sioux City, IA, (Nielsen DMA rank 144), and offers its views from its perspective as a licensee of television stations in smaller to medium size markets.

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¹ *Retention by Broadcasters of Program Recordings*, MB 04-232, released July 7, 2004 (the "NPRM")

I. RETENTION OF PROGRAM RECORDINGS WOULD IMPOSE A SIGNIFICANT BURDEN ON BROADCASTERS

Citadel currently records only its news programming, which represents approximately 7 to 20 hours per week out of a broadcast week of approximately 135 to 140 total hours, depending on the specific station in question. Those recordings are retained by Citadel for a period of only one week and are then erased or taped over. The Commission's proposal would require broadcasters to record all programming broadcast between 6:00 a.m. and 10:00 p.m., seven days a week, a total of over one hundred hours per week. Moreover, the Commission's proposal would require that those recordings be retained for as long as 90 days.

Even with the availability of digital recording systems, the implementation and maintenance of such a recording process would be a significant burden for a station. To start, a prudent broadcaster would have to purchase and maintain two systems in order to provide for sufficient system redundancy. To maintain only a single system would leave a broadcaster at the mercy of an equipment failure which, if not immediately detected and repaired, would result in gaps in the recording process. As a result, the cost of acquiring and installing a system, not insignificant to begin with, particularly for a small market broadcaster, would in effect be doubled.

In addition, staff resources will need to be devoted to monitoring, maintaining and operating those recording systems. While equipment manufacturers may claim that their equipment requires little or no monitoring or maintenance, experience dictates that computer software and other equipment does not always operate so flawlessly. In fact, it is not possible to predict the extent to which broadcasters will be required to devote staff resources to acquiring, installing and maintaining these systems, but it is safe to say that the burden of doing so is likely to fall most heavily on broadcasters in smaller markets whose stations are more likely to be

thinly staffed. It is also safe to assume that the adoption of the Commission's proposed rules is likely to result in less expensive and less reliable recording equipment being introduced to the market to fill demand on the part of less profitable and more price-sensitive small market broadcasters for such equipment.² That equipment is more likely to require the broadcaster to devote staff resources to keeping it in operating condition, and even with redundancy could result in stations experiencing, despite their best efforts, gaps in recording.

It is also important to note that the purchase of recording equipment and maintenance of a system of recording over one hundred hours of programming per week will not add one dollar to the station's revenues. Such systems will represent capital and operating expenditures with absolutely no benefit to the station financially, and as such may be difficult for smaller broadcasters to finance. The required expenditures of time, effort and resources not only will add nothing to the station's financial performance, but as discussed in Section II below, will add little or nothing to the station's ability to serve the public interest, and will actually detract from such ability as resources that would otherwise be directed to providing better service are diverted to compliance purposes.

Moreover, these burdens on television broadcasters will only increase as the digital transition moves into high gear. The Commission recently eliminated, at least for the time being, the requirement that stations simulcast analog and digital programming in order to promote the

² As of June 30, 2004, there were 4,474 television stations (including Class A and low power television stations) and 13,486 radio stations operating in the United States. See Commission News Release, *Broadcast Station Totals as of June 30, 2004*, August 20, 2004. Based on those totals, the Commission's proposed rules will create a demand for nearly 18,000 recording and storage systems, *before* taking into account the need for redundant systems and for systems to record additional channels of digital broadcasts.

introduction of additional innovative programming on broadcast digital channels.³ As television stations discontinue simulcasting and move to broadcasting of multiple channels of digital programming, they presumably will be required to retain recordings of programming on each channel.⁴

Finally, a requirement to record and retain programming may place stations in breach of affiliation agreements and other program supply contracts to which they are party. Many of those agreements contain provisions that prohibit or restrict the recording of programming. If the Commission's proposal is adopted, stations will be required to devote additional resources, and incur legal and other fees and expenses, to review, analyze and address the extent to which existing programming agreements are inconsistent with Commission rules.

II. THE COMMISSION'S PROPOSAL CONSTITUTES A SWEEPING AND OVERBROAD REGULATION THAT IS IN NO WAY TAILORED TO ADDRESS THE PROBLEM OF OBSCENE, INDECENT OR PROFANE BROADCASTS

The Commission's proposal that broadcasters be required to retain program recordings is driven principally by a desire to increase the effectiveness of its enforcement of restrictions on obscene, indecent and profane programming.⁵ The Commission, however, proposes to impose

³ See Commission News Release, *FCC Takes Next Steps to Promote Digital TV Transition*, August 4, 2004.

⁴ Citadel realizes that the Commission has not yet determined what public interest obligations will apply to digital television, but recognizes that at least to the extent television broadcasters provide free over-the-air digital channels, the current rules regarding obscene, indecent and profane programming, and presumably any program recording and retention requirements that may be adopted, could apply to multiple channels.

⁵ NPRM at para. 1.

that requirement upon all broadcasters,⁶ regardless of their prior records with respect to compliance with the Commission's rules and policies regarding obscene, indecent and profane programming. This would result in literally thousands of broadcasters against whom the Commission has never found a violation of those rules or policies being required to purchase, install and maintain program recording systems, and keep libraries of recorded program material.⁷

Citadel is a good example of a broadcaster that should not be burdened with having to maintain program recordings. In more than 20 years of operation, Citadel has never been found to have violated the provisions of the Communications Act or the Commission's rules or policies with respect to obscene, indecent or profane programming, and in fact has never even been investigated by the Commission with respect to such matters. All of its stations are affiliates of major networks, and as a result a large percentage of its programming is network programming which has been reviewed and approved by the network standards and practices departments. And finally, cases of television broadcasters having been found to have violated the restrictions on obscene, indecent or profane programming historically have been few and far between.

In addition to being overbroad in the sense that it imposes burdens on many broadcasters with spotless records, the Commission's proposal addresses a problem which, based on the Commission's own data, does not appear to be much of a problem at all. The Commission's proposal will do nothing more than create a record to be used in the event a complaint alleging

⁶ Although the NPRM does not expressly address whether the Commission's proposed rules will extend to Class A and low power television stations, and low power FM stations, those stations originate programming and presumably would be subject to any rules which may be adopted.

⁷ The National Association of Broadcasters has calculated that since 2002 less than 0.58% of all broadcasters have been found by the FCC to have violated the indecency provisions of the Communications Act of 1934, as amended, 18 U.S.C. 1464. National Association of Broadcasters website at <http://www.nab.org/legal/Taping.pdf>.

the broadcast of obscene, indecent or profane material is filed. However, according to the Commission, between 2000 and 2002 the Commission received 14,379 such complaints and denied or dismissed only 169 for lack of a tape, transcript or significant excerpt of the broadcast.⁸ This means that in fewer than 1.2% of all cases, the lack of an adequate record has resulted in the denial or dismissal of a complaint. To impose the sweeping obligations contemplated by the Commission on all broadcasters to address this tiny corner of the Commission's enforcement process is disproportionate and unfair.

III. CONCLUSION

The Commission's proposal to require broadcasters to record programming and retain that programming would impose substantial burdens on broadcasters, which burdens would fall disproportionately upon broadcasters in smaller markets. Because only a tiny percentage of broadcasters have been found to have violated the Commission's rules regarding obscene, indecent and profane programming, the Commission's proposal imposes these burdens on thousands of broadcasters who have faithfully served the public interest with spotless records on indecency compliance, and goes far beyond what is required to implement an effective enforcement process. Citadel urges the Commission not to adopt its proposed rules on retention of program recordings.

⁸ NPRM at f.n. 8.

Respectfully submitted,

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August 26, 2004

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