DICKSTEINSHAPIRO LLP

1825 Eye Street NW | Washington, DC 20006-5403
TEL (202) 420-2200 | FAX (202) 420-2201 | dicksteinshapiro.com

Writer's Direct Dial: (202) 420-2265
E-Mail Address: PaperL@dicksteinshapiro.com

May 23, 2011

By Hand

Marlene H. Dortch, Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, SW
Washington, DC 20554

Re: Merger of Cumulus Media Inc. and Citadel Broadcasting Corporation
Transfer of Control Application, File No. BTC-20110330ALU et seq.
Transfer of Control Applications, File Nos. BTC-20110330ADE et seq.
Assignment Applications, File Nos. BAL-20110331AJP et seq.
MB Docket No. 11-66

Dear Ms. Dortch:

Cumulus Media Inc. ("Cumulus") hereby responds to the letter (sometimes referred to hereinafter as the "FP Letter") of May 13, 2011 in which Free Press provided comments on the above-referenced applications (the "Applications") concerning the merger of Cumulus and Citadel Broadcasting Corporation ("Citadel") as well as the proposed assignment of fourteen (14) stations to Volt Radio, LLC, the proposed trustee of radio stations that Cumulus will divest upon consummation of the merger.

Free Press' letter does not propose that the Commission deny the Applications and does not otherwise purport to comply with the petition to deny requirements of Section 309(d)(1) of the Communications Act of 1934, as amended. 47 U.S.C. § 309(d)(1) (the "Act"). Free Press' letter also acknowledges that Cumulus is not requesting any waiver of any Commission rule or policy and that the proposed transaction is otherwise in compliance with the Commission's local radio ownership rule. Free Press nonetheless claims that the Act "requires a far greater showing than mere compliance with the FCC's media ownership limits," that "the public interest standard encompasses the goals of competition, diversity and localism," and that Cumulus "bear[s] the burden of demonstrating that the merger would promote (rather than merely preserve) these goals." FP letter at 2 (footnote omitted).

For its part, Free Press does not cite information supported by an affidavit, as required by Section 309(d)(1) of the Act, or other information of which the Commission may take official notice, to show that a grant of the Applications would be inconsistent with those goals. Rather, Free Press merely opines that it "is skeptical that a proposed merger between Cumulus and Citadel will buck the trend of radio mergers and acquisitions that have hampered – not helped – the advancement of the FCC's public interest goals." FP letter at 2. On that basis, the Free Press letter "urges the Commission not to measure this merger based on mere compliance with the FCC's media ownership limits. Instead, it must closely scrutinize the proposed transaction and demand evidence of specific public interest benefits as required by the Communications Act." FP letter at 3.

The Free Press letter is premised on misstatements of applicable law and on factual assumptions which are irrelevant to the Commission's disposition of the Applications. The Applications can and should be granted on the basis of the information presently before the Commission. None of the questions or requests advanced by Free Press is sufficient to justify any contrary action. *Cf. ACME Television Licenses of Florida, LLC*, 22 FCC Rcd 1656, 1658 (MB 2007) (private party cannot ask Commission to conduct investigation to determine whether assignment application should be granted).

As a starting point, neither the Act nor Commission decisions require that Cumulus provide a litany of public interest benefits in order to justify the Commission's grant of the Applications. The Commission has processed literally thousands of assignment and transfer applications over the past few decades – including transactions of a far greater dollar value than the Cumulus-Citadel merger – without requiring the parties to provide specific evidence of public interest benefits. For example, in the $26.7 billion transfer of control of Clear Channel Communications, Inc. in 2008 – the largest radio merger ever handled by the Commission – the Commission stated as follows with respect to the standard of review:

> Section 310(d) of the Communications Act of 1934, as amended (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, other applicable statutes, and the Commission's rules (the "Rules"). If the transaction would not violate a statute or a Rule, the Commission considers whether it could harm the public interest by substantially frustrating or impairing the objectives or implementation of the Act or related statutes. The Commission employs a balancing process, weighing any potential public interest harms of the proposed transaction against any potential public interest benefits. The applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest. . . .

Existing Shareholders of *Clear Channel Communications, Inc.*, 23 FCC Rcd 1421, 1423 (2008) (footnotes omitted). This standard is no different than the one which the Commission articulated in the two non-broadcast merger applications cited in Free Press' letter. *See* FP letter at 2 n.6.

Nothing in the foregoing standard required that the transferees in that transaction to provide any specific evidence of public interest benefits beyond compliance with the Act as well as Commission rules and policies. Accordingly, the Commission made no mention of any such public interest showing in stating that it would grant the applications:

> We conclude that the applicants are fully qualified and that grant of the transfer of control of CCC broadcast stations to the Transferees, subject to the conditions set forth in this Order, will serve the public interest, convenience, and necessity. We have reviewed the Merger Applications, the Divestiture Applications, and related pleadings and conclude that grant of the Applications as conditioned herein will comply with the Act and the Rules. We also conclude that the proposed transaction as conditioned herein will not be anticompetitive or result in a lack of diversity. We find no evidence that the transaction as conditioned herein would harm competition in any broadcast market. In fact, the transaction would improve competition by requiring CCC to divest grandfathered interests in 42 separate broadcast markets. . . .

23 FCC Rcd at 1426-27. *Accord e.g. Citadel Broadcasting Company*, 22 FCC Rcd 7083, 7104, 7108 (2007); *Shareholders of Univision Communications, Inc.*, 22 FCC Rcd 5842, 5845-46, 5860.

The Commission's reliance on compliance with the Act and its rules as a measure of the public interest is not happenstance. As the Commission explained when it revised its local radio ownership rule in 2003, the current local radio ownership rule was adopted in 1996 to provide relief to an industry that was in dire financial straits. *2002 Biennial Regulatory Review*, 18 FCC Rcd 13620, 13711 (subsequent history omitted). Those new ownership limits enabled a single party to have an attributable interest in many more stations in a particular market than was previously allowed, and, as the Commission observed in 2003, "As a result of this consolidation, the radio industry today is on a stronger financial footing than it was a decade ago." *Id.*

The Commission has repeatedly affirmed the reasonableness of the ownership limits in its local radio ownership rule in advancing the public interest. In 2003, for example, the Commission stated that "the concentration levels permitted by the current rule represent a reasonable and necessary balance for radio broadcasting that comports with general competition theory. . ." 18 FCC Rcd at 13731. Indeed, in affirming those limits in 2003, the Commission expressly stated that "[w]e do not seek to undermine the benefits that consolidation has brought to the financial stability of the radio industry. . ." *Id.* at 13733. And in later rejecting any effort to make the local radio ownership rule more restrictive, the Commission concluded "that making the numerical limits more restrictive is not justified based on examination of the current record. Prior to 1992, the local radio ownership rules did not effectively recognize that a certain level of consolidation can be efficient. Given the generally difficult economic conditions at the time, the inability of stations to seek efficiencies through consolidation may have contributed to the industry's financial difficulties. We do not seek to undermine the benefits that consolidation has brought to the financial stability of the radio industry." *2006 Quadrennial Regulatory Review*, 23 FCC Rcd 2010, 2074 (footnotes omitted).

In the face of these statements and the Commission's long record in processing assignment and transfer applications without any requirement for an affirmative public interest showing, Cumulus does not need to do anything more than demonstrate compliance with the Act and the Commission's rules.

To be sure, as Free Press points out in its letter, there may be individual private parties who believe that "consolidation has ill served the interests and needs of local radio audiences" and that "radio consolidation has resulted in increasingly homogenized programming, a reduction in the amount of locally produced radio content, and the loss of local news production." FP letter at 2 (footnotes omitted). However, none of those comments provides specific facts about the Cumulus-Citadel merger, and the Commission has made no finding incorporating those views that should be applied to the Cumulus-Citadel merger. Nor has the Commission adopted any rule or policy which contradicts its earlier findings that the current local radio ownership limits continue to strike an appropriate and reasonable balance between the radio industry's need for competition and the financial benefits that accrue from consolidation. Stated another way, Cumulus does not have any obligation to satisfy the general concerns of private parties whose views are not incorporated in any Commission rule or policy.

The Applications should therefore be granted without any further submission from Cumulus. That said, there can be no question but that consummation of the Cumulus-Citadel merger will be of considerable benefit to the public interest. Attached hereto as Exhibit 1 is a Declaration from Lewis W. Dickey, Jr., Cumulus' CEO and President, attesting to some of those public interest benefits. Although not exhaustive, the recitation of public benefits in that Declaration is more than sufficient to alleviate any concerns that Free Press might have.

As Mr. Dickey explains, Cumulus expects that the merger will create more than $50 million in savings from more efficient operations and thus provide Cumulus with additional resources to expand its local programming.

One particular focus of Cumulus' post-merger programming will be an expansion of HD Radio. That expansion is no small matter. An expansion of HD Radio is critical to radio's ability to survive in a digital world. Beyond that, the expansion of HD Radio will increase the number of channels of programming available in local markets and, through such increase, foster program diversity by introducing new and under-utilized formats.

As Mr. Mr. Dickey explains in his Declaration, the merger will also benefit the public interest by breathing new life into an industry that has been beleaguered for years by doubts of its viability. One only needs to have reviewed the stock reports of public companies and attended broadcast conventions in the last few years to know that the radio industry has been mired in debt, that virtually no debt or equity financing has been available for radio transactions for almost three years, and that, contrary to Free Press' claim, the unavailability of financing – not consolidation – is far and away the most serious impediment to acquisition opportunities for "new entrants" and other entities controlled by women and minorities. *See* FP Letter at 2. The Cumulus-Citadel merger represents a watershed event that reflects an infusion of more than $1.1 billion into the radio industry, and, as Mr. Dickey explains, that infusion of new dollars will hopefully provide confirmation to other lenders and investors that radio remains a viable business. Mr. Dickey's perspective on that score has been confirmed by others in the industry. *See, e.g.*, selected trade press reports and commentary in Exhibit 2.

Yet another benefit identified by Mr. Dickey is the proposal to divest fourteen (14) stations that Cumulus can no longer retain because of a loss of its grandfathered status in certain markets and because the merger will result in Cumulus having attributable interests in some markets that exceed the limit in the local radio ownership rule. Cumulus has taken the extraordinary step – which, to undersigned's counsel knowledge, has never previously been done – to *require* the trustee to use commercially reasonable efforts to sell those divestiture stations to "Eligible Entities" and other entities controlled by women and minorities.

Free Press states that it is "encouraged" by this overture but still complains that "the Applicants have not offered a detailed plan as to how they will accomplish this goal." FP letter at 3. There is no Commission rule or policy which requires Cumulus to go beyond what it has already proposed with respect to the divestiture stations, and Free Press does not cite any other case where more was required. Certainly nothing more was required when the Commission approved the Clear Channel and Citadel-ABC transactions. Indeed, it bears mentioning that the Commission did nothing more in those latter two cases than state that the trustee "is strongly encouraged to take reasonable steps to market the stations to any 'eligible entity' . . ." *Existing Shareholders of Clear Channel Communications, Inc.*, 23 FCC Rcd at 1427; *Citadel Broadcasting Company*, 22 FCC Rcd at 7108. It would indeed be inequitable to impose a requirement on Cumulus that has never been previously imposed on any other party to a transfer application to provide additional evidence of how the trustee proposes to market the stations that it will be acquiring – especially when Cumulus has taken a more aggressive posture in trying to sell stations to Eligible Entities and other entities owned by minorities and women.

In view of the foregoing, the Commission should grant the Applications forthwith.

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Respectfully submitted,

DICKSTEIN SHAPIRO LLP

Attorneys for Cumulus Media Inc.

By: ________________________
Lewis J. Paper
Andrew S. Kersting

cc: Taft Snowdon (by email)
Joel Rabinovitz (by email)
Best Copy and Printing, Inc. (by email)

EXHIBIT 1

Declaration

Lewis W. Dickey, Jr. hereby states as follows:

1. I am the Chief Executive Officer and President of Cumulus Media Inc. ("Cumulus"), whose principal offices are located at Suite 2300, 3280 Peachtree Road NW, Atlanta, Georgia 30305.

2. Cumulus' indirect subsidiary, Cumulus Licensing LLC, holds licenses and other authorizations from the Federal Communications Commission (the "FCC"). This Declaration is designed to support the response of Cumulus Licensing LLC to a letter from Free Press, dated May 13, 2011, that provided comments on the four (4) sets of applications filed with the FCC in conjunction with the merger of Cumulus and Citadel Broadcasting Corporation ("Citadel"), which will result in Citadel becoming an indirect and wholly-owned subsidiary of Cumulus. In its letter, Free Press raised questions about whether and how the merger will benefit the public interest.

3. The Citadel merger will have enormous benefits for the public. Some of the more important public benefits warrant comment.

4. As a starting point, Cumulus anticipates that the savings from the merger will exceed $50 million after consummation of the transaction. Cumulus intends to use those savings to develop programming that will better serve the combined company's local audiences.

5. HD Radio will be a particular focus of those new programming initiatives. HD Radio has not lived up to its potential. Very few receivers have been distributed to the public, and programming initiatives for HD Radio have been miniscule. Cumulus is committed to investing more monies in HD Radio for the merged company's platform and in taking a more active role in facilitating the placement of HD Radio in cars and on mobile devices – the two areas where distribution is sorely needed. That further development of HD Radio will expand the programming alternatives for the public and provide new avenues for the expression of diverse viewpoints.

6. The merger will also benefit the radio industry at large. Radio was hit especially hard by the nationwide meltdown in the economy after 2007. Radio revenue decreased from $21.0 billion in 2007 to $15.7 billion in 2010 – thus wiping out virtually all of the profit in the industry. Analysts and investors alike began to wonder whether radio remained a viable business. The stocks of the public radio companies plummeted to record lows. Almost every radio company – whether publicly or privately owned – became over-leveraged with debt.

7. The impact of this financial downturn in radio was unprecedented. Debt and equity financing became extremely scarce. The large publicly-traded companies could no longer use their stock to make acquisitions; financial institutions which had serviced the middle and

lower end of the market (such as CIT, GE Capital, and Wells Fargo Foothill, Inc.) discontinued making loans for new transactions; and equity funds and other parties who had previously invested considerable monies in radio were generally unwilling to provide further investment. Without that needed financing, companies of all sizes – but especially new entrepreneurs (who would certainly include minorities, women, and small businesses) – were precluded from pursuing the acquisition of radio stations.

8. The Citadel merger will hopefully help inaugurate a dramatic change in the financial markets for radio. The merger reflects the investment of more than $600 million in debt and $500 in new equity investments. That level of financing has not been seen in the radio industry since the consummation of the Clear Channel deal in January 2008 and should be a sign to the financial community that radio remains a viable investment.

9. A further benefit to the public is the proposed divestiture of fourteen (14) radio stations because (1) Cumulus Licensing LLC will lose its grandfathered status in certain markets as a result of the transfer of control of Cumulus and (2) the merger of Citadel with Cumulus will result in Cumulus having an attributable interest in a number of radio stations in a few markets that exceeds the limits in FCC rules. Cumulus has proposed to place those stations in a trust and has expressly directed the trustee to use commercially reasonable efforts to sell the stations to "eligible entities," as defined in FCC rules, as well as entities otherwise controlled by minorities and women. I have every confidence that the trustee will honor that directive – which may be more easily achieved when debt and equity financing becomes more readily available to new entrepreneurs.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Lewis W. Dickey, Jr.

MAY 23, 2011
Date

DSMDB-2934004v3

EXHIBIT 2

« Sliwa To Undergo Cancer Surgery
Miller Time In Houston »

Cumulus/Citadel Deal Signals "Life" In Radio Biz

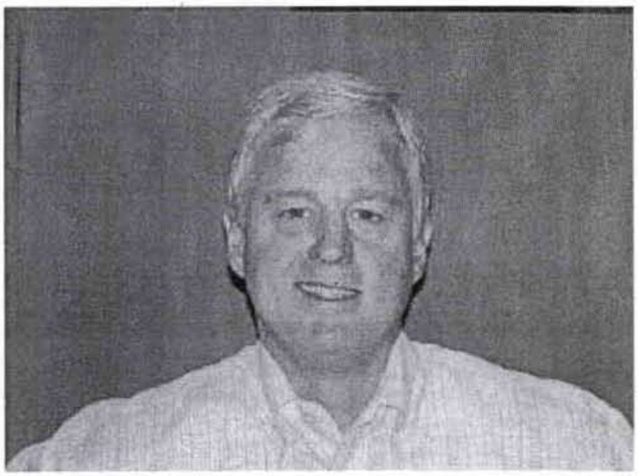
That's what *Atlanta Journal-Constitution* reporter **Margaret Newkirk** said about the pending deal that would see **Cumulus Media** acquire **Citadel Broadcasting**. Characterizing Atlanta-based Cumulus CEO **Lew Dickey, Jr**. as "a scion of a family radio dynasty from Ohio," Newkirk says the proposed deal is generally being welcomed by *Wall Street* analysts "as a sign of life in the battered radio industry." Offering a brief history behind the founding and growth of Cumulus Media, the feature also reports that Dickey (pictured) says it was the pain of the recent recession that precipitated his aggressive pursuit of Citadel, a move that will nearly double the number of stations that the company owns. In what could be a preview of how he views the future of a merged Cumulus/Citadel Dickey told the newspaper, "I really view the business model evolving to an integrated solutions provider that uses on-air to inspire and online to inform." Upon regulatory approval of the sale, Cumulus will add some of America's biggest News/Talker's to the company's holdings, among them major market icons **WABC/New York, KABC/Los Angeles, KGO** and **KSFO/San Francisco, WLS/Chicago, WBAP/Dallas, WJR/Detroit** and **WMAL/Washington**. Read the full AJC feature article HERE.

This entry was posted on Wednesday, April 20th, 2011 at 10:58 am and is filed under Daily. You can follow any responses to this entry through the RSS 2.0 feed. Both comments and pings are currently closed.

Comments are closed.

Clear Channel exec encouraged by Cumulus-Citadel deal

29 March, 2011 02:15:00



As CFO of Clear Channel Communications CFO Tom Casey (pictured) is dealing with managing the debt load from the biggest radio deal in history. By comparison, the pending $2.5 billion acquisition of Citadel Broadcasting by Cumulus Media is not really huge, but Casey says the biggest radio deal to be seen in several years is encouraging for the industry.

The Clear Channel/CC Media Holdings CFO was speaking Tuesday (3/29) at the Goldman Sachs TMT Leveraged Finance Conference in New York City. It was certainly no surprise that he was asked to comment on the Cumulus-Citadel deal.

"We're excited about it, that there's interest in radio. We think that it's a great deal. We think that they're going to benefit from the acquisition. And it's good to see money come back into the industry," said Casey. "We think it's undervalued right now and there's opportunities that present themselves."

"We're quite excited about the recent transaction. We think that despite how others believe that radio is still very vibrant. We're continuing to see audiences grow. We see our digital opportunities in the industry to be significant upside for us and so we're excited that others are starting to see the opportunity. And I think that's good for the industry," he added.

Have an opinion on this article? Post your comment below.

Radio giant Cumulus seals deal for Citadel

By Margaret Newkirk
The Atlanta Journal-Constitution

5:38 p.m. Thursday, March 10, 2011

Atlanta-based radio giant Cumulus Media sealed its $2.4 billion acquisition of Citadel Broadcasting early Thursday, after wooing the Las Vegas company for four months and a frenzied final 19 days of negotiations.

Cumulus -- parent of local FM rock station 99X among others -- becomes the nation's biggest pure play radio company. Executives said few changes are expected at stations owned by either company, and that neither listeners nor most employees will notice much difference.

The merger is a welcome sign of life in the battered radio industry, according to analysts and to Cumulus CEO Lew Dickey, who said he ended "weeks of no sleep" with a "very thorough, very buttoned-up transaction."

"It's like `Yes, Virginia, there is (merger and acqusition activity) in media," said Bishop Cheen, an analyst with Wells Fargo Securities. "It's literally been three years since we've seen any meaningful activity."

Cumulus will pay $37 a share for Citadel, in a combination of cash and Cumulus stock. The company is funding the acquisition with up to $500 million equity financing.

The acquisition still needs approval from shareholders and regulators.

The combined company nearly doubles Cumulus' size. The company will have 572 stations across 120 markets, including 8 of the top 10, and will reach 60 million people a week.

The merged company will have several local stations. Cumulus, headquartered in Buckhead, operates 99X (WWWQ-HD2), Rock 100.5 (WNNX-FM) and top 40 station Q100 (WWWQ-FM). Citadel operates country station Kicks 101.5 (WKHX-FM) and oldies station Atlanta's Greatest Hits 106.7 (WYAY-FM)

Citadel also has stations in Detroit, Washington, New York, San Francisco, Los Angeles, Dallas and Chicago, among other cities. Cumulus's large markets include San Francisco, Dallas, Houston, Indianapolis, Kansas City and Cincinnati.

Listeners, advertisers and most employees won't notice a difference, Dickey said: "If you are an employee in a Citadel station, the name on your paycheck is going to change and very little else."

He said some of the behind-the-scenes operations, such as information processing and accounting, will be consolidated.

"But what the listeners hear won't change," he said. "And whom the advertisers see on the sales staff won't change."

Dickey told a broadcasters' convention nearly a year ago it was time to begin consolidating radio companies, and that he could put the capital together to do it, said Cheen, of Wells Fargo.

At the time, radio companies were struggling with the meltdown in advertising from both automobile and mortgage companies.

"Lew was early out of the gate," Cheen said. "This was a very bold statement to be making in April, 2010. More than a few people looked at him like he was crazy."

Cumulus first signaled its interest in Citadel at the end of last year, when it made public an earlier offer that the Nevada station had rebuffed.

"He's been stalking Citadel for four months," Cheen said. "He's had to inch up the offer, but he got his target."

Dickey had support from big Citadel shareholders, the largest of which publicly chastised the company's management and board for refusing to deal with Cumulus.

Citadel emerged from bankruptcy in June, owned by former creditors more interested in liquidity than in holding on to stock.

Dickey said the new Cumulus will have the scale to support an evolving business model, where "we become an integrated marketing solutions provider that uses on air to inspire and online to inform. "

"That's a tremendously powerful one-two punch."

USA TODAY

Radio deal: Cumulus to buy Citadel Broadcasting

Posted 3/10/2011 9:22:08 AM |

ATLANTA (AP) — Cumulus Media (CMLS) is buying Citadel Broadcasting in a $1.7 billion deal that would unite two of the nation's largest radio station owners.

Atlanta-based Cumulus would own 572 radio stations across about 120 U.S. markets once the deal announced Thursday closes. It will remain the No. 2 radio station owner in the U.S. behind Clear Channel, which owns more than 800 stations.

READ: Release on merger

The deal represents a bet that the radio advertising market will continue rebounding. Like other media, radio broadcasters were hard hit in 2008 and 2009 as the Great Recession curtailed the ad spending that generates most of their revenue. An advertising shift to the Internet also siphoned money away from radio stations.

But the outlook has been improving modestly as the recovering economy has encouraged advertisers to increase their marketing budgets.

Cumulus said Thursday it is paying $37 a share in cash and stock for Citadel, which owns 225 radio stations in more than 50 markets. Las Vegas-based Citadel (CDELB) had previously rejected a $31 a share offer from Cumulus.

Cumulus said the enterprise value of the deal, including assumed debt, is about $2.4 billion.

The company said it has obtained equity financing commitments for up to $500 million from Crestview Partners and Macquarie Capital. Cumulus also received debt financing commitments of about $3 billion from a group of banks.

The $1.7 billion value is based on Citadel's 46.8 million outstanding shares. Citadel said there is $1.4 billion of cash available for the deal, along with about 151 million Cumulus Class A shares. If all Citadel shareholders choose to receive cash, then each Citadel share would be prorated to $30.00 in cash and 1.613 shares of Cumulus. Citadel said this implies a total value of $38.23 per share, based on Cumulus' closing stock price on Wednesday. If all shareholders decide to get shares instead, then the implied value would be $39.45 on the same basis.

The deal must still be approved by Citadel shareholders and regulators. It is expected to close by the end of this year.

THE COMMERCIAL APPEAL
Memphis, Tennessee
Printer-friendly story
Read more at commercialappeal.com

Cumulus Media to acquire Citadel, which owns four radio stations in Memphis

From wire and staff reports

Originally published 11:15 a.m., March 10, 2011
Updated 09:33 p.m., March 10, 2011

ATLANTA -- Cumulus Media Inc. is buying Citadel Broadcasting Corp. in a $1.7 billion deal that would unite two of the nation's largest radio station owners.

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The deal must still be approved by Citadel shareholders and regulators. It is expected to close by the end of this year.

Citadel owns 19 stations in Tennessee, including four in Memphis: WGKX (105.9 FM), WKIM (98.9 FM), WRBO (103.5 FM) and WXMX (98.1 FM).

Cumulus owns five stations in Tennessee, all in Nashville.