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Max Radio of the Carolinas Licenses, LLC
PO Box 1897
Kill Devil Hills, NC 27948

In re: Max Radio of the Carolinas Licenses, LLC
WCMS-FM, Hatteras, North Carolina
Facility ID: 83211
File No. 20051213ADD

To Whom It May Concern:

We have before us a Request for Waiver of Section 73.1125 of the Commission's Rules¹ (the "Rules") for Station WCMS-FM, Hatteras, North Carolina, filed by Max Radio of the Carolinas Licenses, LLC ("Max Radio") on December 13, 2005. For the reasons discussed below, we waive Section 73.1125 of the Rules.

Background. Section 73.1125 of the Rules ("Main Studio Rule") requires a station's main studio to be located either: (1) within a station's principal community contour; (2) within the contour of any other broadcast station licensed to its community; or (3) within 25 miles of the center of its community. Max Radio seeks a waiver of the Main Studio Rule in order to co-locate the main studio of WCMS-FM with the main studios of commonly owned Stations WQDK(FM), WCXL(FM), and WGAI(AM) at 103 West Wood Hill Drive, Nags Head, North Carolina. WCMS-FM's community of license, Hatteras, is located on North Carolina's Outer Banks. The Station's main studio is presently located in Engelhard, North Carolina. Engelhard is located on the western (mainland) coast of Pamlico Sound. Engelhard and Hatteras are separated by approximately 28 miles of open water. The proposed Nags Head studio location is approximately 63 miles from Hatteras and approximately 8.3 miles outside the WCMS-FM principal community contour. Max Radio states that the waiver is in the public interest because it would reduce the distance a Hatteras listener would need to drive to reach WCMS-FM's main studio. The actual driving distance from Hatteras to the current main studio site is approximately 108 miles. Due to the unique geographic attributes of North Carolina's Outer Banks there is no direct route from Hatteras to Engelhard. Max Radio states that a WCMS-FM listener located in Hatteras would have to drive north through the Outer Banks, cross over to the mainland, then drive south for approximately 50 miles before reaching the current main studio site. The proposed main studio site in Nags Head falls outside of the Main Studio Rule, but is only 63 miles driving distance from Hatteras, via a more direct route through the Outer Banks, obviating the need to cross to the mainland.²

Max Radio also urges that the waiver is justified because it would "yield incidental economic benefits to the Stations,"³ such as reduction in operation costs. Max Radio would be able to operate

¹ 47 C.F.R. § 73.1125.

² See Request for Waiver – Exhibit A, which contains maps contrasting the driving distances from Hatteras to Engelhard and Nags Head.

WCMS-FM from the existing facilities of its co-owned stations in Nags Head, instead of staffing and operating a separate studio for WCMS-FM. Max Radio states that if the waiver is granted, it will maintain a public file in the community of Hatteras, will continue to maintain a toll-free telephone number to the WCMS-FM studio, and will continue its involvement in the Hatteras community.

Discussion. Max Radio seeks a Main Studio Rule waiver because the proposed main studio location is approximately 8.3 miles outside the principal community contour of WCMS-FM. When an applicant seeks a waiver, it must plead with particularity the facts and circumstances which warrant such action.⁴ “A waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”⁵

The Main Studio Rule is rooted in Section 307(b) of the Communications Act of 1934, as amended (the “Act”), which mandates the Commission to “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide for a fair, efficient, and equitable distribution of radio service to each of the same.”⁶ Section 307(b) of the Act creates a “bedrock obligation” of each broadcast licensee to serve the needs and interests of its community.⁷ A central component of this scheme requires a station’s main studio to be reasonably accessible to its community of license.⁸ The Main Studio Rule “maintains broadcasters’ obligations under Section 307(b) to provide service to their community of license by [ensuring] the main studio’s connection to the community of license.”⁹

As an initial matter, we are not persuaded by Max Radio’s economic arguments. Max Radio cites no precedent in the Request for Waiver justifying a waiver of the Main Studio Rule for a commercial radio station based on economic considerations, and we are aware of none. In fact, the Commission has rejected the argument that the reduction in operating costs resulting from the co-location of studios of commonly owned stations is not an adequate justification for waiver of the Main Studio Rule.¹⁰ In previous instances where a commercial licensee has attempted to justify a waiver of the Main Studio Rule based solely on the economic benefit to the licensee, the Commission has denied the waiver.¹¹

³ Request for Waiver at 3.

⁴ *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968). In addition, Section 73.3566(a) of the Commission’s radio broadcast rules provides that requests for waiver “shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof.” 47 C.F.R. § 73.3566(a).

⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969)).

⁶ 47 U.S.C. § 307(b).

⁷ Review of the Commission’s Rules regarding the main studio and local public inspection files of broadcast television and radio stations, *Report and Order*, 13 FCC Rcd 15691, 15692 (1998) *recon. granted in part*, 14 FCC Rcd 11113 (1999) (“*Main Studio Report and Order*”).

⁸ *Main Studio Report and Order* at 15695.

⁹ *Main Studio Report and Order* at 15696.

¹⁰ See *Maines Broadcasting, Inc.*, 8 FCC Rcd 5501, 5502 (1993) and *Radio Redentor, Inc.*, 14 FCC Rcd 17754, 17755 (1999) (rejecting Main Studio Rule waiver requests based on financial considerations).

¹¹ See *Id.*; see also *Eclectic Enterprises, Inc.*, 14 FCC Rcd 17751 (1999).

Nevertheless, we find that Max Radio has presented sufficient facts that when considered in their totality, demonstrate unique circumstances that meet the standard for waiver of the Main Studio Rule. This decision is grounded on the unique geographic characteristics of North Carolina's Outer Banks. The proposed Nags Head site is significantly more convenient and accessible to Hatteras listeners than the current Engelhard studios. Thus, grant of this waiver will promote the Section 307(b) policies which the Main Studio Rule is designed to advance. Taking into consideration all of these factors and Max Radio's promise to maintain a public file, a toll-free telephone number, and continued community involvement in Hatteras, we find it in the public interest to waive the Main Studio Rule for Station WCMS-FM.

Conclusion/Actions. For the above stated reasons Max Radio of the Carolinas Radio Licenses, LLC Request for Waiver of Section 73.1125 of the Commission's Rules is granted. This action is taken under authority delegation pursuant to Section 0.283 of the Rules.¹²

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Julian L. Shepard, Esq.

¹² 47 C.F.R. § 0.283.