

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In reply refer to:
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Facility I.D. #48393 – WQOP

October 27, 1999

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

J. Christopher Williams, President
Queen of Peace Radio, Inc.
Licensee, WQOP(AM), Atlantic Beach, Florida
Post Office Box 51585
Jacksonville Beach, Florida 32240

Dear Mr. Williams:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE to Queen of Peace Radio, Inc. (“QOP”) pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”). As explained herein, we believe that QOP willfully and/or repeatedly violated Section 73.1125 of the Commission’s Rules. This action is taken pursuant to authority delegated to the Chief, Mass Media Bureau, by Section 0.283 of the Commission’s Rules.

Background

By letter dated June 29, 1999, the Commission, by the Chief, Audio Services Division, granted applications (and denied, in part, a related petition to deny) to assign authorizations for various facilities in the State of Texas from American Broadcasting Educational Foundation to QOP.¹ In so doing, however, the Commission determined that QOP may have violated the Commission’s rules in operating a station it owned at the time of the assignment application. Specifically, it appeared from documentation submitted in connection with the then-pending assignment application that QOP may have operated WQOP(AM)’s main studio at staffing levels contrary to the requirements of Section 73.1125 of the Commission’s Rules. The application was granted without prejudice to further Commission action.

By letter dated July 12, 1999, we sought further information to determine whether, and, if so, to what extent, violations of our rules occurred. You responded by letter dated August 26, 1999.² In your response, you relate that from August 21, 1997, the day QOP obtained control of

¹ Reconsideration of that decision was denied by letter dated September 9, 1999.

² Your counsel also submitted a letter dated July 20, 1999. His arguments will be considered in our analysis of QOP’s apparent rule violation.

the station, to January 1, 1999, it had only one full-time employee. That individual served (and still serves) as the station's general manager. You further relate that his normal hours at the station's main studio were from 6 a.m. to 12 noon and from 1 p.m. to 3 p.m. You state that five additional persons also worked at the main studio. However, you report that none had regular hours at the main studio and that none typically was present at the main studio for more than 4 hours per week. Indeed, you indicated that all but one worked at the main studio no more than once a week for 2 hours. However, beginning January 1, 1999, QOP hired a second full-time employee, who is regularly at the main studio between 1 p.m. and 5 p.m. each weekday.

Discussion

Prior to October 30, 1998, Section 73.1125 of the Commission's Rules required that a station maintain its main studio within the station's principal community contour. Effective October 30, 1998, this rule was amended to allow a station greater flexibility in the location of its main studio. See Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations, 13 FCC Rcd 15691 (1998). In either case, the main studio must serve the needs and interests of the residents of the station's community of license. To fulfill this function, a station must, among other things, maintain a meaningful management and staff presence at its main studio. See Main Studio Rules, Radio & TV Stations, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988). In Jones Eastern of the Outer Banks, Inc., 6 FCC Rcd 3615 (1991), *clarified*, 7 FCC Rcd 6800 (1992) ("Jones Eastern") the Commission defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel. It further stated that there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful." 6 FCC Rcd at 3616 n. 6; 7 FCC Rcd at 6800 n. 4. Moreover, while management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a 'home base.'" 7 FCC Rcd at 6802. Finally, the main studio requirements extend to both commercial and noncommercial educational stations. Main Studio and Program Origination Rules, 3 FCC Rcd at 5026-27.

The information before us indicates that from August 21, 1997 to January 1, 1999, QOP willfully and repeatedly violated Section 73.1125 of the Commission's Rules by failing to maintain a meaningful staff presence at the main studio for WQOP(AM). According to your response to the Commission letter of inquiry, the station's general manager reported to work at the main studio, spent a substantial amount of time there and used the studio as his "home base." We therefore find that QOP maintained a meaningful management presence at the station's main studio. Compare KQOK, Inc., Licensee, 10 FCC Rcd 132 (MMB 1994). It did not, however, provide full-time staff presence at the main studio during normal business hours. Your response reflects that none of the staff had regular hours at the station. Further, even assuming that the staff worked the maximum amount of time indicated, it appears that there were many times each week during regular business hours when there were no station personnel at the main studio. Thus, it appears that WQOP(AM) did not have a full-time staff presence at its main studio from August 21, 1997 to January 1, 1999.

Apparently conceding the above, you nevertheless argue that the Commission may never have legally promulgated rules relative to what constitutes adequate staffing levels at a broadcast station's main studio. In this regard, you note that Section 73.1125 of the Commission's Rules does not define the term "main studio," nor does it prescribe minimum staffing requirements, regular business hours, or the minimum amount of equipment needed at the site. You also note that Section 73.1300 of the Commission's Rules allows "unattended" station operation. You contend that the

foregoing, in combination with precedent³ such as Bisbee Broadcasters, Inc., 48 FCC 2d 291, 292 (Rev. Bd. 1974), *rev. denied*, 51 FCC 2d 8 (1975) (where the Board stated that the Commission had no rigid rules or standards prescribing personnel or staffing requirements), has led to confusion as to the precise requirements that broadcasters must follow.

We disagree. Essentially, the main studio is the principal local point of contact between the licensee and the community or communities served by the station. Long ago, the Commission deemed it in the public interest for a broadcast licensee to maintain “a reasonably accessible studio for the origination of local programs.” Origination Point of Programs, 43 FCC 570 (1950). *See also*, FM-TV Main Studio Moves, 27 FCC 2d 851, 8852 (1971) (“The main studio rules ... are intended to make broadcast stations readily accessible to the people in the communities which they are primarily licensed to serve, and they constitute one of the essential ways we have for insuring that stations realistically meet their obligation to serve their communities of license as outlets for local self-expression.”) More recently, in Main Studio and Program Origination Rules, 3 FCC Rcd 5024, 5026 (1988),⁴ the Commission addressed the question whether the main studio still had a function in light of the elimination of the program origination rule, and, if so, what is the role of the main studio and how is it defined. In answering those questions, the Commission posited that the main studio facilitated “the key function of serving the needs and interests of the residents of the station’s community of license.” Further, the Commission stated:

In response to petitioners’ request that the Commission clarify the definition of and requirements for a main studio, we offer the following clarification. A station must maintain a main studio which has the capability adequately to meet its function, as discussed above, of serving the needs and interests of the residents of the station’s community of license. To fulfill this function, a station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, *and maintain a meaningful management and staff presence.[fn]*⁵ (emphasis added)

Thus, to the extent there was any doubt, the Commission made plain in the course of a rulemaking proceeding that a component of main studio rule compliance was adequate staffing. Subsequent decisions have provided guidance in particular factual contexts. *E.g.*, Maines Broadcasting, Inc., 8 FCC Rcd 5501, 5503 (1993); Jones Eastern, *supra*. We thus conclude that there is no legal insufficiency with respect to the main studio rule, and we reject any suggestion that the Commission has run afoul of the notice and comment provisions of the Administrative Procedure Act⁶ in the course of promulgating or interpreting the rule.⁷ Therefore, pursuant to Section 503(b) of the

³ *See also*, KIST Corp., 99 FCC 2d 201 (ALJ 1983); United Broadcasting Co., 93 FCC 2d 482 (1983); Pepper Schultz, 4 FCC Rcd 2386 (Rev. Bd. 1989).

⁴ That order addressed petitions for reconsideration filed in response to the Report and Order that modified the Commission’s main studio rule. *See* Main Studio Rules, Radio & TV Stations, 2 FCC Rcd 3215 (1987).

⁵ The Commission also made it plain that, absent a waiver, the requirement for maintaining a main studio would apply equally to commercial and noncommercial stations. 3 FCC Rcd at 5027.

⁶ 5 U.S.C. Sections 551 *et seq.*

⁷ We note in this regard that Section 73.1300 of the Commission’s Rules concerns operation of the transmitter, not the main studio.

Communications Act, and in accordance with the forfeiture guidelines set forth in the Commission's *Forfeiture Policy Statement*,⁸ which provides for a forfeiture of \$7,000 as the base amount for willful or repeated violations of the main studio rule, QOP is hereby advised of its apparent liability for a forfeiture of \$7,000 for failing to maintain a meaningful staff presence at the WQOP(AM) main studio from August 21, 1997, to January 1, 1999.

Conclusion

In view of the above, pursuant to Section 503(b) of the Communications Act of 1934, as amended, QOP is hereby advised of its apparent liability for a forfeiture of Seven Thousand Dollars (\$7,000) for its willful and repeated violations of Section 73.1125 of the Commission's Rules. In regard to this forfeiture, QOP is afforded a period of thirty (30) days from the date of this Notice "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 are summarized in the attachment to this Notice.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Attachment

cc: Dennis J. Kelly, Esquire

⁸ Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997).