

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

Application for Review of

Jones Eastern of the Outer Banks, Inc.
Licensee, Radio Station WRSF(FM)
Columbia, North Carolina

MEMORANDUM OPINION AND ORDER

Adopted: June 5, 1991;

Released: June 19, 1991

By the Commission:

1. The Commission has under consideration an Application for Review of the Mass Media Bureau's decision finding Jones Eastern of the Outer Banks, Inc. ("Jones Eastern"), licensee of radio station WRSF(FM), Columbia, North Carolina, in violation of the Commission's main studio rule, and directing the licensee to undertake steps to ensure that the station's Columbia facility complies with Section 73.1125 of the Commission's Rules.

2. In 1987, Jones Eastern requested a modification of its facilities to relocate its main studio 51 miles from its community of license and outside the station's principal community contour to the site of its auxiliary studio in Nags Head, North Carolina. The Mass Media Bureau denied Jones Eastern's modification request for failure to show that granting a modification under Section 73.1125(b)(2) would serve the public interest better than adherence to the main studio rule. Subsequently, the Commission received a complaint alleging that despite the Bureau's denial of its modification request, WRSF was operating its main studio in Nags Head, in violation of Section 73.1125(a).

3. Pursuant to the complaint, the Bureau requested Jones Eastern to submit information as to whether WRSF's Columbia studio had the capability to operate as a main studio. The Bureau requested specific information regarding the production and transmission equipment maintained in fully operative condition at the studio, and the job titles, job descriptions and weekly hours of all Columbia personnel. Jones Eastern responded with a list of all equipment that is available for transmission and production at any time. Jones Eastern also responded that the station has one full-time office manager who works at the studio weekdays from 8 a.m. to 5 p.m. According to Jones Eastern, the office manager's duties include handling phone calls from Columbia residents, and conducting a one-time telephone survey of 125 residents to ascertain community needs and issues. According to Jones Eastern, two other full-time station employees, a business manager and an account executive who are Columbia residents, "spend time" at the studio.

4. On October 27, 1989, by letter, the Bureau ruled that WRSF's Columbia facility did not constitute a main studio under Section 73.1125(a), as the licensee did not maintain a "meaningful management and staff presence" at that location, as required by the Commission in *Main Studio and Program Origination Rules (Clarification)*, 3

FCC Rcd 5024 (1988). In its letter, the Bureau required WRSF to take steps to assure a meaningful management and staff presence at the Columbia facility, and to submit a report outlining its progress in that area within 30 days.

5. In lieu of a progress report, Jones Eastern now requests that the Commission review the Bureau's determination that its facility is not in compliance with Section 73.1125(a). Jones Eastern reiterates its argument that its staff person is supervised regularly by the two management personnel, and that all three personnel are accessible to Columbia residents at all times and take an active role in communicating with local residents and community leaders to ascertain Columbia's needs and interests. Jones Eastern argues again that its staffing constitutes a "meaningful staff and management presence" because its ascertainment efforts and accessibility to residents of the community achieve the Commission's objectives in ensuring that stations meet their community service requirements.

6. In support of its position, Jones Eastern again points out that it has a full-time office manager at its Columbia studio who recently participated in conducting a survey of 125 Columbia residents (by speaking personally to 90-100 of those residents) to obtain information for the production of a WRSF public affairs program. (Petitioner has appended a representative sample of the station's questionnaires and its 1989 quarterly/issues programs lists). Jones Eastern clarifies that its business manager spends four unspecified hours per week at the Columbia studio, meeting twice weekly with the office manager to discuss issues of concern to local residents, makes himself available to local residents and community leaders, participates in local civic activities and reports to the general manager about those activities. Jones Eastern also clarifies that its general manager spends two unspecified hours per week at the Columbia facility. During those two hours, the licensee asserts that the general manager makes himself available to Columbia residents and community leaders and converses with those people about local civic activities and issues of concern. According to the licensee, the station's senior account executive also reports to station management on activities in Columbia. Jones Eastern contends that the time that the business manager, general manager, and senior account executive spend at the station, although undefined, constitute a "regular, ongoing management presence." Jones Eastern requests that, in the event the Commission affirms the Bureau's determination, the Commission issue a declaratory ruling delineating the precise number of staff persons and work hours that make up a "meaningful management and staff presence" at the main studio.

7. When the Commission decided to relax the location requirement of the main studio rule to allow a licensee to locate its main studio outside the community of license but within the station's principal community contour, we emphasized the importance of maintaining a local responsive presence in the community. In *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3218 (1987), we stated that "exposure to daily community activities and other local media of communications helps stations identify community needs and interests, which is necessary to operate in today's competitive marketplace and to meet our community service requirements." In our 1988 clarification of the main studio requirements, we required a

"meaningful management and staff presence" to fulfill this function. *Main Studio and Program Origination Rules (Clarification)*, 3 FCC Rcd 5024, 5026 (1988).

8. Despite the recent relaxation of the rule, the history of the main studio rule reveals that the Commission has been consistently concerned with the adequacy of a licensee's staffing at the main studio.¹ For example, in a number of cases, the Commission has designated for hearing issues as to the adequacy of a licensee's staffing at the main studio. See, e.g., *Mace Broadcasting Co.*, 13 RR 2d 753, 755-56 (1968); *Clarkston Broadcasters*, 12 RR 2d 1203, 1207-08 (1968); *Sunset Broadcasting Corporation*, 5 FCC 2d 321, 323 (1966); *Pepper Schultz*, 58 RR 2d 434 (Rev. Bd. 1985), *aff'd*, 5 FCC Rcd 3273 (1990), *aff'd by judgment sub nom. Pepper Schultz v. FCC*, No. 90-1318 (D.C. Cir. March 21, 1991); *United Broadcasting Co. (KBAY - FM)*, 58 FCC 2d 1346, 1357-58 (Rev. Bd. 1976). In *John H. Phipps Broadcasting Stations, Inc. (WCTV)*, 43 FCC 2d 1188 (1973), the Commission found a station in violation of the main studio rule because, in part, its auxiliary studio was staffed by 64 employees, while its "main studio" was staffed by only 12. In *Pappas Telecasting of the Carolinas (WHNS(TV))*, 104 FCC 2d 865, 874 (1986), the Commission required that a licensee provide a "meaningful and significant presence" in terms of staffing at its main studio.

9. In our 1988 clarification, we did not formulate a "bright line" test to define a "meaningful presence." We find, however, that a staffing situation like the one Jones Eastern proposes renders the Commission's concept of a main studio virtually meaningless. One full-time "office manager" who takes calls and once conducted a telephone survey does not suffice as the station's community liaison without the consistent supervision of regular management personnel. We believe that a meaningful presence means more than one full-time clerical person, together with occasional oversight from two management personnel who apparently have no specific work schedule in Columbia but instead, work at the studio at irregular intervals, aggregating six hours per week. To the extent that Jones Eastern suggests that WRSF management's participation in civic affairs serves as the functional equivalent of meaningful management presence at the studio, that argument is irrelevant to the determination of a main studio violation. For this reason, we find that a main studio must, at a minimum, maintain full-time managerial and full-time staff personnel.²

10. Accordingly, IT IS ORDERED that, pursuant to Section 1.115(g) of the Commission's Rules, the Application for Review IS DENIED.³ Jones Eastern is hereby ordered to take steps to assure compliance with Section 73.1125(a) by bringing its Columbia studio management and staff personnel up to a full-time level consistent with this opinion. It is further ordered that Jones Eastern shall submit a report outlining the steps taken in meeting those requirements within thirty (30) days of the release of this opinion.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

¹ As to the studio equipment requirement, the licensee's previous submission to the Bureau indicated that its Columbia facility meets the necessary standards and capabilities.

² This is not to say that the same staff person and manager must be assigned full-time to the main studio. Rather, there must be management and staff presence on a full-time basis during normal business hours to be considered "meaningful."

³ In light of the above disposition, we decline to issue a declaratory ruling under Section 1.2 of the Commission's Rules.