

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

LETTER

Released: November 9, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. C. J. Jones, President 8210-AJZ
Jones Eastern of the Outer Banks, Inc.
Licensee, Station WRSF(FM)
One Carriage Lane, #C-100
Charleston, South Carolina 29401

Dear Mr. Jones:

This letter constitutes a NOTICE OF APPARENT LIABILITY for FORFEITURE to Jones Eastern of the Outer Banks, Inc., licensee of Radio Station WRSF(FM), Columbia, North Carolina, pursuant to Section 503(b) of the Communications Act of 1934, as amended, for your apparent willful continuing violation of Section 73.1125 of the Commission's Rules, in the amount of \$20,000.

On September 25, 1987, Jones Eastern of the Outer Banks, Inc., ("Jones Eastern") requested a modification of its facilities to relocate its main studio outside the station's principal community contour to the site of its auxiliary studio in Nags Head, North Carolina. Jones Eastern said the new site was 35 air miles (51 miles by road) from the community of license. The staff found it was three miles outside the authorized 3.16 mV/m contour. In support of its modification request, Jones Eastern indicated that the new site would be easily accessible to Columbia residents; enable the station to attract a broader sample of guests for public affairs shows; allow WRSF to compete better in the market; and, not diminish the current level of service to Columbia. Jones Eastern also represented that it would establish a toll free phone number and continue to maintain the station's public file in Columbia. On January 13, 1989, the Mass Media Bureau denied Jones Eastern's modification request, because the licensee's purported justifications were insufficient to establish that the public interest would be served better than if the station adhered to the main studio rule.

On July 3, 1989, the Bureau received a confidential complaint, contending that Jones Eastern was operating WRSF in violation of Section 73.1125(a) of the Commission's Rules. The complaint stated that WRSF was operating its main studio in Nags Head, despite the Bureau's denial of the station's request to relocate its main studio to Nags Head seven months earlier. According to the complainant, WRSF had been operating its main studio from Nags Head prior to the Bureau's denial of its modification request, and only made the request when it realized it was in violation of the rule. On July 21, 1989, the Bureau sent a letter of inquiry to Jones Eastern, requesting information about the station's equipment and staffing at its main studio in Columbia. Specifically, the Bureau requested a list of the production and transmission equipment maintained in fully operable condition at the Columbia studio as well

as a list of all WRSF personnel who report for duty at the Columbia studio location, their job titles, a description of their duties, and a schedule of weekly duty hours for each.

In response to the Bureau's letter of inquiry, Jones Eastern provided the requisite list of fully operable equipment available for transmission and production at any time, adding that programming is produced at the Columbia studio on an "as needed" basis. Jones Eastern also described its "meaningful staff presence" as composed of "three full-time employees": One full-time office manager who works at the studio from 8 a.m. to 5 p.m. Monday through Friday, handling phone calls from Columbia residents; and a business manager and senior account executive who are Columbia residents and "spend time" at the studio. In attempting to demonstrate WRSF's commitment to serve the needs and interests of Columbia, Jones Eastern also submitted samples of forms used by the office manager in conducting a telephone survey of 125 Columbia residents. According to the licensee, the forms would be used in connection with the production of weekly public affairs programs.

In an October 27, 1989, ruling, the Bureau found WRSF's equipment in compliance with Section 73.1125, but its staffing inadequate under the "meaningful management and staff presence" requirement of the rule, as enunciated in *Main Studio and Program Origination Rules (Clarification)*, 3 FCC Rcd 5024 (1988). The Bureau rejected the licensee's characterization of the one full-time employee as an "office manager," finding her to be a receptionist who answers phones and fills out an occasional telephone questionnaire. With respect to the management personnel, the Bureau found that they did not constitute a "meaningful" presence. Accordingly, the Bureau directed the licensee to take the necessary steps to assure a meaningful management and staff presence at the station's Columbia studio, and to submit a progress report within thirty days.

In lieu of a progress report, Jones Eastern filed an application for review, requesting the Commission to reverse the Bureau's determination that its Columbia facility is not in compliance with the main studio rule. It requested that, in the event its application for review were denied, the Commission issue a declaratory ruling outlining the precise number of staff persons and work hours that constitute a "meaningful management and staff presence" at the main studio. Jones Eastern argued that its office manager was supervised regularly by the two management personnel, and that all three are fully accessible to Columbia residents and take an active role in ascertaining their needs and interests. Jones Eastern again referred to the recent telephone survey conducted by its office manager, and appended a representative sample of the station's 1989 quarterly issues/programs list to show that these ascertainment efforts achieved the Commission's community service objectives.

Jones Eastern also clarified the number of hours the management personnel spent at the Columbia facility, to wit: Four (unspecified) hours per week for the business manager, who met twice weekly with the office manager to discuss issues of concern to local residents, made himself available to local residents and community leaders, participated in local civic activities and reported to the general manager about those activities; and two (unspecified) hours per week for the general manager, who also made himself available to and conversed with Columbia residents and community leaders about local civic activities and issues of concern. Although not providing specific hours or

amounts of time for the senior account executive, the licensee asserted that he reported to station management on activities in Columbia. Jones Eastern deemed this a "regular, ongoing management presence" sufficient under the main studio rule.

In denying the application for review, we found that occasional oversight by managers with no regular hours did not constitute a "meaningful management presence" at the main studio, and ordered Jones Eastern to bring its staffing up to a full-time level and submit a report outlining its progress. *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615 (1991). Specifically, we ruled that, in order to be considered "meaningful," there must be management and staff presence on a full-time basis during normal business hours. *Id.* at 3616 n.2. Once again, in lieu of a progress report, Jones Eastern filed a "Petition for Reconsideration and/or Clarification" requesting approval of a new staffing proposal (yet to be implemented) and clarification on specific staffing questions. Although we have approved Jones Eastern's new proposal, and granted the petition for clarification, we have denied the petition for reconsideration, as it does not reflect newly discovered facts or changed circumstances under Section 1.106(b)(2)(i) of the Commission's Rules.

Notwithstanding a Commission determination that Jones Eastern's present staffing is inadequate, Jones Eastern has failed to make any changes in its staffing arrangement, including implementation of its new staffing proposal. Jones Eastern also has not requested a stay of the enforcement of the main studio rule against WRSF in any of the pleadings it has filed in the past two years. Rather, Jones Eastern has remained in violation of the rule since at least October 27, 1989, the date the Mass Media Bureau determined that Jones Eastern was in violation of the rule.

In conclusion, it appears that from at least October 27, 1989,¹ to the present, station WRSF violated Section 73.1125(a) of the Commission's Rules. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, Jones Eastern of the Outer Banks, Inc., licensee of station WRSF, is hereby advised of its apparent liability for a forfeiture in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violation of Section 73.1125(a) on the dates set forth above. The amount was determined by using the criteria set forth in the *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *on recon.*, 7 FCC Rcd 5339 (1992), *pet. for review pending sub nom. USTA v. FCC*, No. 92-1321 (D.C. Cir. filed July 30, 1992), and Section 503(b) of the Communications Act. Under that *Policy Statement*, the base amount for a Section 73.1125 violation is \$10,000. In this case, the licensee did not seek to have enforcement of that section stayed. Rather, it remained in continuous violation for two years after it was ordered by the Commission to comply with the rule, and it did not implement any changes in its staffing arrangement, including implementing its new staffing proposal. We consider this to be both repeated and intentional. We also believe that the licensee's staffing at the main studio represented an egregious violation of the main studio rule. Furthermore, this violation

appears to have resulted in substantial economic gain for the licensee through the evasion of costs required to comply with the rule. Therefore, we believe it appropriate to increase the forfeiture amount to \$20,000. In reaching this amount, careful consideration was also given to the factors set forth in Section 503(b)(2) of the Communications Act.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter 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 of the Commission's Rules are summarized in the attachment to this letter.

The Commission adopted this letter on October 13, 1992.

BY DIRECTION OF THE COMMISSION*

Donna R. Searcy
Secretary

*Commissioner Quello dissenting and issuing a statement.

¹ Although this reflects the actual date on which the Mass Media Bureau determined that Jones Eastern was in noncompliance with the rule, the complainant alleged that WRSF had been treating its Nags Head studio as its "main studio" even before its 1987 modification request. In any event, the two-year

period WRSF has been in known violation of the main studio rule is well within the statute of limitations set out in Section 503(b)(6)(A)(ii) of the Communications Act, as WRSF's 1988 renewal application (BRH-880729YE) is still pending.

**Dissenting Statement of
Commissioner James H. Quello**

**Notice of Apparent Liability to Jones
Eastern of the Outer Banks, Inc., Licensee,
WRSF(FM).
(Letter Adopted by the Commission)**

I agree with the Commission's decision to issue a Notice of Apparent Liability because of the apparent violation of the main studio rule by WRSF(FM). But I cannot agree that the fine should be multiplied pursuant to the Commission's *Policy Statement on Standards for Assessing Forfeitures*, 6 FCC Rcd. 4695 (1991).

In the first place, I continue to believe that the forfeiture guidelines contribute to the type of "regulatory overkill" that was practiced in this case. See *Standards for Assessing Forfeitures*, 7 FCC Rcd. 5339, 5347 (1992) (Commissioner Quello, dissenting). More specifically, however, it seems bad form for the Commission to double the fine while simultaneously granting the licensee's petition for clarification of the rule, apparently agreeing that the requirement of a "meaningful management and staff presence" was not adequately defined. See *Jones Eastern of the Outer Banks, Inc.*, FCC 92-426 (released October 14, 1992).

I respectfully dissent.