

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

In the Matter of

Liability of
W-AIR, Inc.
Former Licensee, Station WAIR
Atlanta, Michigan

For a Forfeiture

MEMORANDUM OPINION AND ORDER

Adopted: November 20, 1995; Released: November 28, 1995

By the Chief, Mass Media Bureau:

1. The Commission by the Chief, Mass Media Bureau, acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, has under consideration (1) a Notice of Apparent Liability (NAL), DA 93-1525, December 17, 1993, assessing a forfeiture of \$10,000 against W-AIR, Inc., then-licensee of Station WAIR, Atlanta, Michigan, for violation of Section 73.1125 of the Commission's Rules (the main studio rule),¹ and (2) a response filed January 18, 1994, by W-AIR, Inc.

2. In assessing a forfeiture, the NAL rejected W-AIR Inc.'s claim that the Station WAIR main studio was located in Gaylord, Michigan, and found instead that the actual main studio was located in Petoskey, Michigan, outside of the station's principal community contour.² This finding reflected conclusions that the majority of Station WAIR employees worked exclusively at the Petoskey studio, that the Petoskey studio had more equipment than other station studios, and that the Petoskey studio was the only studio staffed with station employees Monday through Friday during regular business hours. The NAL cited in support *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615 (1991), clarified, 7 FCC Rcd 6800 (1992).

3. W-AIR, Inc., challenges this reasoning, urging that the location of a main studio cannot be determined by comparing its employees or equipment with those of another studio. Rather, the licensee argues, a studio must be evaluated on its own terms. The NAL's conclusion that the Gaylord studio lacked a "meaningful and significant" staff presence was incorrect in this regard, W-AIR, Inc. maintains, in that the staffing of its Gaylord studio complied with the *Jones Eastern* holding.

4. As outlined in *Jones Eastern*, a main studio must maintain, at a minimum, full-time managerial and full-time staff personnel. This staffing may consist of either full-time or part-time employees, so long as both management and staff presence are provided on a full-time basis. Management personnel, for their part, need not be "chained to their desks" during normal business hours, but they must report to work at the main studio on a daily basis and spend a "substantial amount" of time there, using the studio as a "home base." To the extent that staff members may fully perform their duties with time to spare, and coverage of the studio permits, they may take on the responsibilities of another business during normal business hours, while attending at the same time to the studio.

5. Assessed under these guidelines, the Gaylord studio cannot be considered a main studio within the context of our Rules. Three management-level employees worked out of this studio, only one exclusively, but W-AIR, Inc., did not and has not established that their presence, either individually or collectively, could fairly be characterized as "full-time." As for staff presence, the only person attending the studio on a full-time basis, according to W-AIR, Inc., was the station's landlord and owner of a business sharing a common entrance with the studio. We do not read *Jones Eastern* so broadly as to permit credit for a person who is not employed by the station and who cannot be held accountable to its management as a result.³

6. Accordingly, we reject W-AIR, Inc.'s argument that it did not violate the main studio rule, and we DENY its request that the NAL be rescinded. As the original forfeiture amount was assessed under the guidelines of our *Policy Statement on Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), recon. denied, 7 FCC Rcd 5339 (1992), revised, 8 FCC Rcd 6215 (1993), however, we must revise this figure to reflect the decision in *United States Telephone Ass'n v. FCC*, 28 F.3d 1232 (D.C. Cir. 1994), wherein the Court set these guidelines aside.

7. In the recent *KQQK, Inc.*, 10 FCC Rcd 132 (1995), we assessed a forfeiture of \$7,500 for violation of the main studio rule over a period exceeding four years in length. Here, the NAL cited a violation that began on or about May 25, 1990, and continued at least through March 6, 1992. With respect to the factors set forth in Section 503(b)(2) of the Act, taking into account the nature, circumstances, extent and gravity of the violations, we do not believe that the two cases differ significantly. We therefore conclude that a \$7,500 forfeiture is appropriate here.

8. Accordingly, IT IS ORDERED, that W-AIR, Inc., former licensee of Station WAIR, Atlanta, Michigan, FORFEIT to the United States seven thousand five hundred dollars (\$7,500) for the willful and repeated violation of Section 73.1125 of the Commission's Rules. Payment of the forfeiture may be made by following the instructions on the enclosed form. In regard to the forfeiture proceeding, the licensee may take any of the steps set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this Memorandum Opinion and Order.

¹ The Commission approved an application to assign Station WAIR from W-AIR, Inc. to Northern Michigan Radio, Inc., on December 23, 1993. W-AIR, Inc., reports that the assignment was consummated on January 12, 1994.

² Station WAIR maintained studios in four Michigan cities: Atlanta, Alpena, Gaylord and Petoskey. Only the Atlanta and Gaylord studios were located within the principal community

contour. The Atlanta studio was staffed with only a part-time person; staffing of the Gaylord studio is discussed in paragraph 5.

³ Our NAL ordered W-AIR, Inc., to take steps to comply with Section 73.1125 and to submit a report outlining these steps. W-AIR, Inc. has complied with this order.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau