

Main Studio Rule and Staffing *By Gregg P. Skall*

A consistent and recurring issue about which I receive a great many inquiries is the Main Studio Staffing Requirement.

Since the modification of the main studio rule in the 1980s to allow a station to use its auxiliary studio as the primary source of program origination, questions have been raised regularly regarding the requirements of compliance. In 1991, the question attracted substantial attention with the release of the case Jones Eastern of the Outer Banks, Inc. The main studio rule as clarified in 1988 requires a station to maintain a main studio within its principal community contour "which has the capability adequately to meet its function...of serving the needs and interests of the residents of the station's community of license." That rule has now been further revised to allow a main studio to be located either within 25 miles from its community of license reference coordinates, or within the principal community contours of any station, of any service, licensed to its community of license. (See memo, Revised Main Studio and Public File Rules). Jones Eastern requires the station to maintain a "meaningful management and staff presence" at the main studio on a full-time basis during regular business hours.

Now that LMAs and Time Brokerage Agreements have become so prevalent in the industry, the main studio staffing requirement has achieved even greater importance. The case of KQQK, Inc. provides valuable insight into the requirements.

In 1991 the issue came to the fore in *Jones Eastern of the Outer Banks, Inc.*, where the station located its primary studio outside the 3.16 mV/m contour. In *Jones* the FCC staff held that a main studio must be staffed by two full time employees, one of whom must be supervisory (or managerial). Since then the staff has provided some additional guidance to clarify what will satisfy this requirement.

For example, it stated that the following categories of positions will constitute a "meaningful managerial presence" at a main studio: president or other corporate officer, general manager, station manager, program director, sales manager, chief engineer with managerial duties, news director, personnel manager, facilities manager, operations manager, production manager, promotion director, research director, controller and chief accountant. The Commission emphasizes job duties rather than mere titles, so someone who primarily performs any of these duties should qualify as the supervisory employee even without the title. Of course, merely bestowing the title without the responsibility will not suffice.

Another frequent question is how much time the employees must remain at the main studio. Because some of these positions may require the persons occupying them to conduct significant business outside the office, the FCC has said it will not require them to "chained to their desks" during all business hours. However, the management person must report to work at the main studio on a daily basis and spend a substantial amount of time there, using the main studio as a "home base."

The Commission also will allow non-managerial main studio staff to take on responsibilities for another business outside the studio so long as the main studio is attended by some station employee during all normal business hours. It has been suggested that the other business interest may even be the LMA programmer, for example selling time for the LMA company while also working part time for the Licensee as a main studio employee. While

this is a possibility, such an arrangement should be reserved for situations where the parties agree to maintain EXTENSIVE, records regarding the actual time and duties devoted to each employer by the employee. One must also be cautious that the person selected for such dual duty does not result in a violation of other Commission policies, such as its Cross Interest Policy.

Although the managerial person may not be a shared employee, Mass Media Bureau Chief Roy Stewart has said that his office will look more to the maintaining of full time "positions" rather than full time "persons". A recent staff inquiry confirms that this could be a reasonable approach to staffing the management position. Thus, the same person need not necessarily fulfill the job 40 hours a week. For example, if the full time managerial staff is the Chief Engineer, the requirement might be met by having Engineer A serve as Chief Engineer on Monday Tuesday and Wednesday while Engineer B serves on Thursday and Friday. Caution is particularly necessary here. It is IMPERATIVE that, while so serving the Engineer (or any other managerial employee) perform all of the functions, including the management responsibilities, required of the position C and that a paper record be kept of that performance.

The recent case of KQQK, Inc., provides valuable insight into the requirements. There is substantial good news in this case, as well as some bad. First, the good. The decision implicitly approves of a station renting studio space from a second station to be used as the first station's main studio. It even implicitly approves of station 1 locating its public file at the rented studio space of station 2 and paying station 2 to have its personnel be deemed "employees" of station 1 for purposes of answering questions about the public file of station 1. These conclusions are not stated in the decision, but may be implied from the Commission's failure to fine, or even criticize the licensee for these factual matters. Accordingly, the KQQK case provides valuable insight into the often asked question whether a station being brokered can locate its main studio, and public file, at another station's main studio.

The "other" news is that the station suffered a \$7,500 fine for a failure to maintain a "meaningful management presence" at its designated main studio. Station 2's general manager was also employed as station 1's assistant general manager. The Commission found that station 1 had not provided sufficient evidence to establish that its assistant manager did in fact hold a managerial position at station 1. Rather than give a description of the assistant station manager's actual duties, the licensee indicated only that he was available to answer questions related to the station and had the "ability, through the licensee's toll-free number, to contact immediately various . . . [station] . . . personnel at the auxiliary studio." No indication was given whether the assistant general manager was authorized to make typical managerial decisions pertaining to facilities, equipment, programming, sales or emergency procedures. The Commission concluded that without such a showing it could not confirm that the assistant station manager constituted a significant management presence at the studio. Further, the Commission raised a concern that this arrangement constituted a serious cross-interest question.

There is a potential silver lining though even in this part of the ruling. The Commission seems to passively approve the use of station 2's employees for the purpose of establishing a meaningful management presence for the brokered station. It appears only to require that such person is given appropriate management responsibilities and is not placed in a position of constituting a cross-interest.

Clearly, this case may be of value to those who wish to establish substantial economies of scale for brokered stations and for duopoly situations.

This is a tricky area. If you have a *Jones Eastern* or LMA main studio situation or a variant of it, you must pay continuing close attention to it. Fines have been levied recently and the guideline for a violation is \$10,000, although in a recent case the staff did not hesitate to double the fine because it considers each day to be a new violation. Worse yet, failure to properly maintain a main studio could have an adverse bearing on a licensee's renewal expectancy.