



Federal Communications Commission  
Washington, D.C. 20554

October 7, 2011

**DA 11-1685**

*In Reply Refer to:*

1800B3-MFW

Released: October 7, 2011

Marissa G. Repp, Esq.  
Repp Law Firm  
1629 K Street, N.W., Suite 300  
Washington, DC 20006

In re: **Request for Waiver of the Commission's  
Main Studio Staffing Requirements**

Dear Ms. Repp:

We have before us a July 15, 2011, "Request for Main Studio Waiver" ("Waiver Request") filed on behalf of Lakota Local School District (the "District"), licensee of noncommercial educational ("NCE") FM Station WLHS(FM), West Chester, Ohio (the "Station"). The District seeks a waiver of the Commission's requirements regarding the staffing required at a broadcast station's designated main studio. For the reasons set forth below, we deny the Waiver Request.

The District is the seventh-largest school district in Ohio, with a student population of over 18,000. Its total budget for the 2009-10 school year was \$235,227,414.<sup>1</sup> The District has operated the Station since 1982. The Station is not co-owned with any other NCE station and is not part of a regional or statewide NCE network.

In the Waiver Request, the District states that "[t]he recent economic climate has taken a toll on the District and WLHS(FM)" and that "[f]or financial reasons," it can no longer retain a faculty advisor on staff to supervise the Lakota High School Radio Club, members of which program the Station and maintain its day-to-day operations. It indicates that it has executed an Operating Agreement with Maple Knoll Communities, Inc. ("MKC"), licensee of NCE Station WMKV(FM), Reading, Ohio, which would help alleviate many of the Station's recent difficulties.<sup>2</sup> The Operating Agreement provides for the collocation of the Station's studio with that of WMKV(FM) in Reading, Ohio, which will enable the

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<sup>1</sup> See the District's website (<http://www.lakotaonline.com/district.cfm>).

<sup>2</sup> Pursuant to the Operating Agreement, MKC will, "subject to the District's ultimate control": (1) provide programming for the Station; (2) staff the Station with a Chief Operator and monitor the Station's EAS equipment; (3) provide technical support for the District's establishment of an internet-based programming service originating at Lakota High School; (4) create internship opportunities for Lakota High School students and provide guest speakers for the Lakota High School Radio Club; and (5) produce public service announcements for the District's events and activities; and (6) produce quarterly 30-minute programs featuring those events and activities for broadcast over the Station. Waiver Request at 1-2, Operating Agreement § 1. Additionally, MKC will pay to the District \$3,000 at the beginning of the second year of term the Operating Agreement and \$12,000 at the beginning of the third year of the term of the Operating Agreement. Operating Agreement, § 1G.

District to “realize valuable economies of scale which would allow it to restore and enhance the noncommercial educational programming provided” by the Station. The District observes that the WMKV(FM) studio is approximately 3.8 miles from the center of West Chester, Ohio, and within the Station’s principal community contour; it therefore complies with the geographic limitation specified in Section 73.1125 of the Commission’s Rules (the “Rules”).<sup>3</sup> However, the District seeks to “outsource” the staffing requirements for the Station’s main studio to MKC, and therefore requests waiver of the main studio rules to permit the Station’s designated main studio to be staffed by MKC employees.

In support of the waiver, the District argues that the Commission traditionally considers requests for waivers of its main studio requirements by noncommercial educational stations on a case-by-case basis. It argues that, in the context of noncommercial waiver requests, the Commission has expressly and implicitly found “good cause” to exist in numerous instances based upon a showing that centralized operations will provide an economic benefit to noncommercial stations which have limited funding, provided that local service obligations are met. The District submits that the instant request presents substantially the same showing of good cause and public interest benefits as did the applicant in a number of other cases in which waiver of the main studio rules was granted,<sup>4</sup> and it argues that allowing the District to outsource its main studio staffing to MKC would enable WLHS to serve its listeners in a more effective and efficient manner.

**Discussion.** An applicant seeking waiver of a Rule has the burden to plead with particularity the facts and circumstances that warrant such action.<sup>5</sup> Thus, an applicant for waiver “faces a high hurdle even at the starting gate.”<sup>6</sup> Although the Commission must consider carefully all waiver requests, such requests must be supported by a compelling showing in order to be granted.<sup>7</sup> A waiver from the Commission is appropriate if special circumstances<sup>8</sup> warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>9</sup> Generally, the

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<sup>3</sup> 47 C.F.R. § 73.1125.

<sup>4</sup> The District cites *The President and Board of Trustees of the Miami University*, Hearing Designation Order, 7 FCC Rcd 2902 (MMB 1992) (“*Miami University*”); *The Cedarville College*, Hearing Designation Order, 6 FCC Rcd 538 (MMB 1991) (“*Cedarville College*”); *Sound of Life, Inc.*, Hearing Designation Order, 4 FCC Rcd 8273 (MMB 1989) (“*Sound of Life*”); *Lift Him Up Outreach Ministries, Inc.*, Hearing Designation Order, 3 FCC Rcd 5571 (MMB 1988) (“*Outreach Ministries*”); *Georgia State Board of Education*, Memorandum Opinion and Order, 70 FCC 2d 948 (1979), *recon denied*, 71 FCC 2d 227 (1979) (“*Georgia State*”); *Nebraska Educational Tele Commission*, Memorandum Opinion and Order, FCC 65-220, 4 RR2d 771 (1965) (“*NETC*”).

<sup>5</sup> See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

<sup>6</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) (“*WAIT Radio*”) (finding that the Commission may decide in some instances that rule waiver serves the public interest if an applicant’s proposal will not undermine the policy served by the rule). See also *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

<sup>7</sup> *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

<sup>8</sup> See, e.g., *Gulf Coast Community College*, 20 FCC Rcd 17157 (MB 2005) (finding special circumstances present for waiver of a Form 301 filing deadline, but issuing a Notice of Apparent Liability for failure to timely file the application).

<sup>9</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio*, 418 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

Commission may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.<sup>10</sup>

Section 73.1125(a) of the Rules requires broadcast stations to maintain a main studio.<sup>11</sup> The main studio rules are intended to make broadcast stations readily accessible to the people and 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 obligations to serve their communities of license as outlets for local self-expression.<sup>12</sup> In order to meet that goal, the Commission has explained that “[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.”<sup>13</sup> The Commission has defined a minimally acceptable “meaningful presence” as managerial and staff personnel present at the studio on a full-time basis.<sup>14</sup> Although 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.”<sup>15</sup> To qualify as managerial, the Commission stated that the employee should be “authorized to make typical managerial decisions pertaining to facilities, equipment, programming, sales and emergency procedures.”<sup>16</sup> The staffing requirements apply equally to both NCE and commercial stations.<sup>17</sup>

We will deny the Waiver Request for several reasons. First, although the Commission has found “good cause” for waiver of the main studio rule based upon a showing that centralized operations will provide an economic benefit to NCE stations with limited funding, the District has cited no precedent for waiving the studio staffing requirements on the facts presented here, and we are aware of none. The cases cited by the District are either inapposite or clearly distinguishable. *Miami University*, *Cedarville College*, *Sound of Life*, and *Outreach Ministries* were each Hearing Designation Orders involving mutually exclusive applicants for an NCE frequency in which the staff found good cause for waiving the main studio rule for applicants proposing “satellite” operation to duplicate the programming of a co-owned station. The District does not, and indeed cannot, propose satellite operation here.<sup>18</sup> *Georgia State* and

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<sup>10</sup>*WAIT Radio*, 418 F.2d at 1157.

<sup>11</sup> See 47 C.F.R. § 73.1125(a).

<sup>12</sup> *FM-TV Main Studio Rules*, Report and Order, 27 FCC 2d 851, 852 (1971).

<sup>13</sup> *Main Studio and Program Origination Rules*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988).

<sup>14</sup> *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991), clarified, 7 FCC Rcd 6800 (1992). To qualify as a main studio, the studio must be staffed by at least one management-level employee and one staff-level employee at all times during “regular business hours.” *Id.*

<sup>15</sup> *Jones Eastern of the Outer Banks*, 7 FCC Rcd at 6802.

<sup>16</sup> *Id.* at 6801 ¶ 10.

<sup>17</sup> See, e.g., *First Baptist Church, Inc.*, Forfeiture Order, 23 FCC Rcd 919 (EB 2008) (forfeiture issued to NCE licensee for, inter alia, failure to comply with main studio staffing requirements); *Puget Sound Educational TV, Inc.*, Forfeiture Order, 22 FCC Rcd 17326 (EB 2007) (same).

<sup>18</sup> Waivers of Section 73.1125 for “satellite” operations are based on the recognition that the cost savings from a single main studio for a regional or statewide network of stations can enable service to be provided to rural areas that otherwise would lack such service. See, e.g., *University of North Carolina*, Letter, 23 FCC Rcd 1205, 1206 (MB 2008) (“grant of the waiver request will better serve the public interest, as it will allow UNC to provide quality public television programming to viewers throughout the state of North Carolina”); *F. William LeBeau, Esq.*, Letter, 22 FCC Rcd 2183, 2185 (MB 2007) (Rocky Mountain Public Broadcasting Network, Inc. “operates its network in (footnote continued)

*NETC* also involved a “satellite” television station that were or would be part of a state-wide educational network.

Additionally, the principal financial reason for requesting the waiver is that the District can no longer afford to retain a faculty advisor on staff to supervise the Lakota High School Radio Club, members of which program the Station and maintain its day-to-day operations. Although the Commission requires that licensees remain in control of their student-run stations, it does not require that a dedicated faculty advisor be employed to supervise station operations. We also do not require that “full time” employees perform station duties on a full-time basis. They may also take on other responsibilities as their station duties permit and as long as the main studio remains attended during normal business hours.<sup>19</sup> In light of this flexibility accorded licensees, the unquantified cost savings of eliminating one faculty advisor position are insufficient to justify the elimination of the Station’s main studio and the requested relief from staffing obligations as proposed in the Waiver Request.

Accordingly, the July 15, 2011, “Request for Main Studio Waiver” filed on behalf of Lakota Local School District IS HEREBY DENIED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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widely scattered communities, often with small populations” and “grant of a waiver of the main studio rule [for a station in Steamboat Springs, Colorado] will serve the public interest in that it will allow Rocky Mountain to use its resources to provide superior television programming” throughout the region). The rationale for waivers of the main studio rule for satellite stations does not apply to this case.

<sup>19</sup> See, e.g., *Michael R. Birdsill*, Letter, 7 FCC Rcd 7891 (MMB 1992).