

LEGAL MEMORANDUM

FCC ELIMINATES BROADCAST MAIN STUDIO RULE, TOGETHER WITH RELATED STAFFING AND PROGRAM ORIGINATION REQUIREMENTS

As most clients may already know, the FCC has eliminated the rule requiring each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license (*i.e.*, the Main Studio Rule). In the same *Order*, the FCC eliminated existing requirements that are associated with the Main Studio Rule.

Under the prior Rule and policies, a station's Main Studio had to be located: (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license. In order for a studio to qualify as a "main studio," (1) the studio within the principal community contour had to have program origination capabilities, regardless of whether that capability ever was likely to be used; and (2) a licensee had to maintain a "meaningful presence" at the studio. The Commission had stated that employing full-time management and a staff person (*i.e.*, two persons) at the "main studio" constituted the requisite "meaningful presence."

This now has all changed. Effective January 8, 2018, the FCC has eliminated the requirement that a station have a Main Studio within the geographic limits established previously; and has eliminated the requirement that a Main Studio have full-time management and staff present during normal business hours and that the Main Studio have program origination capabilities.

1. Elimination of Main Studio Rule

The FCC has determined that the Main Studio Rule and related policies are no longer necessary because technological advances have rendered these rules and policies somewhat obsolete. Specifically, stations' viewing and listening audiences now have the ability to keep in contact with their local stations through email, websites, and social media, rather than through in-person visits. Therefore, the rule requiring the maintenance of a Main Studio has been eliminated.

2. Main Studio Staffing Requirements Eliminated

In connection with the Main Studio Rule, the FCC also has eliminated the prior-existing staffing requirements. While some commenters raised concerns that this could lead to unfortunate losses of jobs for station staff, the FCC's *Order* counters that "preventing stations from going dark and enabling broadcasters to launch stations that they otherwise may not launch may promote

employment.” In any case, the level of station staffing is now purely a business decision for broadcasters.

The FCC’s *Order* does caution, however, that “the deletion of the main studio rule does not in any way limit or reduce broadcast licensees’ obligation and responsibility to retain and maintain *control* over essential station matters, such as personnel, programming, and finances.” The FCC’s *Order* notes that the Commission expects that “broadcast licensees will continue to be able to demonstrate such control notwithstanding the elimination of the Main Studio Rule and the staffing requirements associated with the Main Studio Rule.”

3. Programming Origination Capability Requirement Eliminated

The FCC also has eliminated the requirement that a licensee have the ability to originate programming locally from its Main Studio. The FCC has noted that “technology makes it easier than ever before to originate locally relevant programming from locations outside of the station’s community of license” and that there “is no evidence in the record that the current program origination capability requirement has enhanced local programming or otherwise served the public interest.”

4. Requirement for Local or Toll-Free Telephone Number Continues in Place

The Commission has retained Section 73.1125(e) of the rules, which requires “[e]ach AM, FM, TV and Class A TV broadcast station [to] maintain a local telephone number in its community of license or a toll-free number.” The FCC’s *Order* retains the requirement to post this telephone number in the station’s online public file, but the FCC declined to require stations to publicize the number in additional ways. The FCC’s *Order* notes that implicit in the requirement to *maintain* a local number is the requirement that telephone calls to that number be *answered* during normal business hours. The FCC’s *Order* also includes the helpful suggestion that licensees use voicemail as a method to allow listeners to leave messages even *outside* of normal business hours.

5. Access to Public Inspection Files

As noted in another Memorandum, beginning March 1, 2018, all stations must maintain online Public Inspection Files. Therefore, there soon will be only limited instances in which any portion of a station’s public inspection file will be permitted to be maintained at a station’s main studio or locally rather than simply online. The only potential exception will be the local maintenance of pre-March 1 portions of a licensee’s political file (that a station is permitted to retain locally until the expiration of the two-year retention period for such materials in lieu of uploading online).

However, beginning January 8, 2018, the FCC’s *Order* requires every broadcast station applicant, permittee, or licensee to maintain any portion of its public file that is not part of the online public file at either a station’s currently authorized studio or at an accessible place within its community

of license. Therefore, permissible locations for the locally maintained public file include: a station's currently authorized studio (regardless of the studio's location), a station office or studio (if it is located within the community of license), a local library, or another locally situated station's office or studio. The local public file must be available for public inspection at any time during regular business hours, as is currently the case with regard to access to a public file maintained at a station's main studio. Thus, under this policy, if you shutter your Main Studio *before* March 1 and *before* you upload your public file to the FCC's online site, your public file *must* still be maintained locally.

For locally maintained files, the FCC states that a community member seeking access to a station's local public inspection file should be able to readily contact a station to inquire as to the location of the local file, for example via its required telephone number or email. The FCC is requiring that stations must promptly provide information regarding the location of the local file within one day of a request. In addition, the FCC is encouraging stations that are choosing to make local public file materials available at an accessible place in the community to provide that location on their website (if such a website exists) or by any other means the station licensee deems effective.

Discussion. This action by the FCC may dramatically reduce the cost of operations for many broadcasters, particularly those in small and rural markets. This action also will dramatically reduce the costs of Time Brokerage Agreements and Local Marketing Agreements, insofar the requirement for the licensee, itself, to maintain staffing now is being eliminated.

Licensees are cautioned, however, that this does not mean that a station owner can abdicate its responsibility to maintain "control" over a radio or television station, which typically is defined to be ultimate control over three things: (i) programming (*i.e.*, the right to reject a broker's programming); (ii) finances (*i.e.*, the responsibility to pay station expenses such as tower leases and utility bills); and (iii) and staffing (*i.e.*, the licensees' right to hire and fire its own employees). As noted above, the FCC's *Order* notes that the Commission expects that "broadcast licensees will continue to be able to demonstrate such control notwithstanding the elimination of the Main Studio Rule and the staffing requirements associated with the Main Studio Rule." A paper trail demonstrating ongoing licensee involvement in the station (even when a station is subject to an LMA or TBA) and the licensee's adherence to these requirements therefore will become more and more important.

Please call this office if you have any questions.