



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 17-106; FCC 17-59]

Elimination of Main Studio Rule

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to eliminate its rule that requires each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license. The Commission tentatively finds that the main studio rule is now outdated and unnecessarily burdensome for broadcast stations. The Commission also proposes to eliminate existing requirements associated with the main studio rule, including the requirement that the main studio must have full-time management and staff present during normal business hours, and that it must have program origination capability.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by MB Docket No. 17-106, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, Diana.Sokolow@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 17-59, adopted and released on May 18, 2017. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis:

1. In this Notice of Proposed Rulemaking (NPRM), we propose to eliminate the Federal Communications Commission (Commission) rule that requires each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license.¹ When the rule was conceived almost eighty years ago, local access to the main studio was designed to facilitate input from community members as well as the station's participation in community activities. Today, however, widespread availability of electronic communication enables stations to participate in their communities of license, and members of the community to contact broadcast radio and television stations, without the physical presence of a local broadcast studio. In addition, because the Commission has adopted online

¹ 47 CFR 73.1125(a) through (d).

public inspection file requirements for AM, FM, and television broadcast stations, community members no longer will need to visit a station's main studio to access its public inspection file. Television broadcasters completed their transition to the online public file in 2014, and radio broadcasters will complete their transition by March 1, 2018.² Given these changes, in this proceeding we tentatively find that the main studio rule is now outdated and unnecessarily burdensome for broadcast stations and propose to eliminate it. We also propose to eliminate existing requirements associated with our main studio rule.³

2. We propose to eliminate our rule requiring each AM, FM,⁴ and television broadcast station to maintain a local main studio.⁵ We also propose to eliminate the associated staffing and program origination capability requirements that apply to main studios. We tentatively conclude that technological innovations have rendered a local studio unnecessary as a means for viewers and listeners to communicate with or access their local stations and to carry out the other traditional functions that they have served. In particular, it appears that a local main studio with staffing sufficient to accommodate visits from community members no longer will be justified once broadcasters fully transition to online public inspection files. We invite comment on these proposals.

3. We also seek comment on the costs that AM, FM, and television broadcast stations face

² As of June 24, 2016, commercial broadcast radio stations in the top 50 Nielsen Audio radio markets with five or more full-time employees were required to place new public and political file documents in the online file on a going-forward basis. By December 24, 2016, these entities were required to upload their existing public file documents to the online file, with the exception of existing political file material. As of March 1, 2018, all noncommercial educational (NCE) broadcast radio stations, commercial broadcast radio stations in the top 50 Nielsen Audio radio markets with fewer than five full-time employees, and commercial broadcast radio stations in markets below the top 50 or outside all markets must have placed all existing public file material in the online public file, with the exception of existing political file material, and must begin placing all new public and political file material in the online file on a going-forward basis.

³ The associated requirements include the requirement that the main studio must have full-time management and staff present during normal business hours, and that it must have program origination capability.

⁴ Although LPFM stations have no main studio requirement, points are awarded under the service's comparative selection procedures to those applicants that pledge to locally originate at least eight hours of programming per day and to maintain a main studio with local origination capability.

⁵ We note that on April 19, 2017, Garvey Schubert Barer's (GSB) Media, Telecom and Technology group filed a petition asking the Commission to initiate a rulemaking to repeal its main studio rule. Because our proposals effectively satisfy GSB's request, we dismiss GSB's rulemaking petition as moot.

in complying with the current main studio rule and associated requirements. How significant are these costs, particularly for small stations? Would eliminating the main studio rule, as well as the associated staffing and program origination capability requirements, enable broadcasters to allocate greater resources to programming and other matters? Would eliminating the rule make it more efficient for co-owned or jointly operated broadcast stations to co-locate their offices, rather than operating a main studio in or near each station's community of license? We invite comment on these and other efficiencies that could be achieved by eliminating the main studio rule. Are there any particular issues we should be aware of with regard to eliminating the main studio rule for non-commercial broadcast stations?

4. How frequently do stations receive in-person visits from members of the community, and are those visits to request access to hard copy public inspection files or for other purposes? To what extent do people contact stations by telephone, by mail, or online, rather than through in-person visits? Have technological advances, including widespread access to the Internet, mobile telephones, email, and social media, obviated the need to accommodate in-person visits from community members? If we eliminate the main studio rule, would competitive market conditions ensure that stations will continue to keep apprised of significant local needs and issues? Would eliminating the main studio rule impact a station's ability to communicate time-sensitive or emergency information to the public? If the existence of a local main studio no longer plays a significant role in ensuring that broadcast stations serve their local communities, then eliminating the main studio requirement likely will not significantly impact the requirement that the Commission "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide for a fair, efficient, and equitable distribution of radio service to each of the same."⁶ We seek comment on whether the current main studio rules and related requirements are necessary to implement section 307(b) of the Communications Act of

⁶ 47 U.S.C. 307(b). We do not herein propose any modifications to the existing requirements pertaining to submission of quarterly issues/programs lists and requirements pertaining to a station's coverage of the community served.

1934, as amended. Relatedly, we ask commenters to describe any remaining benefits of the main studio requirements and the associated staffing requirements.

5. Although the Commission eliminated its program origination requirement in 1987, it subsequently clarified that stations must nonetheless “equip the main studio with production and transmission facilities that meet applicable standards [and] maintain continuous program transmission capability . . . [to] allow broadcasters to continue, at their option, and as the marketplace demands, to produce local programs at the studio.” We invite comment on the continued relevance of the program origination capability requirement that currently applies to main studios. What function does it serve today? To what extent do stations produce local programming at their main studios? If we eliminate the main studio rule, should we maintain the program origination capability requirement, and, if so, how? Would program origination, to the extent it happens today, occur anyway absent any capability requirement as stations seek to continue to meet viewers’ and listeners’ interests?

6. We propose to retain section 73.1125(e) of our 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.” We invite comment on this proposal. Would retention of this requirement help ensure that members of the community continue to have access to their local broadcast stations, for example, to share concerns or seek information, if the current main studio requirements are eliminated? Stations currently are required to post their telephone numbers in their online public files. If we eliminate the main studio rule, should we encourage stations to also publicize their phone numbers in additional ways, such as on their websites? Should we require the telephone number to be staffed during normal business hours so that community members may seek assistance during that time? Or, should we require the telephone number to be staffed at all times in which the AM, FM, or Class A TV station is on the air? Alternatively, is a staffed telephone number requirement unnecessary so long as station staff regularly retrieves and responds promptly to voicemail messages from the public left at that telephone number? If community members must leave a voicemail message in order to reach a local broadcast station, will this impede the station’s ability to relay time-sensitive emergency information to the public? Should we

instead require each station to designate a point of contact to respond to communications from the public? We invite comment on these alternatives and any other approaches we should consider to ensure that members of the public can easily contact station representatives and receive timely responses. Should broadcasters establish processes to ensure their ability to receive time-sensitive or emergency information during non-business hours?

7. To the extent that stations are no longer required to have a local main studio, we seek comment on how we should ensure that community members have access to a station's public file. In this regard, we note that television stations already have fully transitioned their public file materials to the online public file as have some radio stations. We recognize that under current rules, some stations may continue maintaining public inspection files locally, and not online, even after the applicable compliance deadline. In addition, certain existing political materials that are part of the public inspection file may remain in the local public inspection file, rather than the online public inspection file, until the station is no longer required to retain the materials in question. If all or a portion of a station's public inspection file is not available via the online public file, we invite comment on how best to ensure that community members have access to the relevant materials in the absence of a local main studio. For example, should we require the station to provide community members with access to its local public inspection file at another location in the community of license, such as a local library or another station's main studio?⁷ Commenters advocating that approach should explain how stations would notify community members of the location of their public inspection file. Alternatively, should we eliminate the main studio rule only for stations that have fully transitioned all public file material to the online public file, including existing political file materials?⁸ Would it be reasonable to permit a station to eliminate its local main studio if it

⁷ Applicants without a main studio currently have a similar requirement. See 47 CFR 73.3526(b)(1) (“ . . . An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.”).

⁸ For example, because television stations without waivers, and some radio stations, have fully transitioned all public file material to the online public file, they could eliminate their main studio upon the effective date of an order in this docket, if any, eliminating the main studio rule; whereas, radio stations that have not yet complied with the online public file requirements would not be able to take advantage of this potential rule change until they too had fully transitioned, if we only eliminate the main studio requirement for stations that have fully transitioned to an

has transitioned all of its public file materials to the online public file except for its political file materials for which it has a two-year retention period? We seek comment on the pros and cons of these various approaches.

8. In addition to the proposed revisions to section 73.1125 of the Commission's rules, we propose to eliminate other Commission rules that currently reference section 73.1125. Specifically, if we eliminate the main studio rule, we also will need to delete sections 73.3538(b)(2) (informal application to relocate main studio), 73.1690(c)(8)(ii) (location of FM studio within station principal community contour), and 73.1690(d)(1) (permissive change in studio location) of the Commission's rules, all of which are premised on the existing main studio rule.⁹ We invite comment on this proposal. Are any other rule changes needed to conform to the proposed elimination of the main studio rule and associated requirements, including with respect to any rules that reference "studio" or "main studio" instead of section 73.1125?¹⁰ For example, Class A stations are required to broadcast an average of at least three hours per week of "locally produced programming" each quarter. The Commission's rules define "locally produced programming" as programming "(1) Produced within the predicted Grade B contour . . . ; (2) Produced within the predicted DTV noise-limited contour . . . ; or (3) Programming produced at the station's main studio." If the main studio rule and associated location restrictions are eliminated, how does that impact the third option? Could a Class A station locate a "main studio" at a distance outside its contour and still qualify as having "locally produced programming"? We seek comment on how to address this issue. Should we eliminate the main studio option from this rule? If so, how should we address Class A stations with main studios currently located outside the applicable contour? Is there some other relevant requirement we can substitute, to the extent necessary to meet our statutory

online public file. A station has "fully transitioned," and thus could eliminate the main studio under this approach, only if all existing political file material was either voluntarily transitioned to the online public file, or, in the case of television stations, is older than the two year retention period.

⁹ In preparing this NPRM, we determined that section 73.1690(d)(2) of our rules references section 73.1410 of our rules, which has been deleted, and we thus propose to delete that outdated reference.

¹⁰ See, e.g., 47 CFR 73.3526(b)(1), (b)(2)(ii), (c)(2), (e)(4); Id. 73.3527(b)(1), (b)(2)(iii), (c)(2), (e)(3); Id. 73.3544(b)(3).

requirements for Class A stations?

9. We also invite comment on any other issues related to our proposals in this proceeding. What impact would elimination of the main studio rule and the associated staffing and program origination requirements have on other Commission proceedings?¹¹

10. Finally, we invite comment on any alternate proposals we should consider, rather than completely eliminating the main studio rule and associated requirements. For example, should we only eliminate the rule for a certain subset of stations, such as those that are located in small and mid-sized markets or those that have fewer than a certain number of employees? Commenters advocating this approach should explain with specificity how we should define those stations that will be permitted to eliminate their main studio. We have proposed to eliminate the main studio rule and the associated requirements for all AM, FM, and television broadcast stations. Is there any reason to distinguish between our treatment of AM, FM, and television broadcast stations in this context? We also invite comment on alternative ways we can reduce main studio-related burdens on broadcast stations.

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In summary, the NPRM proposes to eliminate the rule that requires each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license.¹² The NPRM also proposes to eliminate existing requirements associated with our main studio rule, including the requirement that the main studio must have full-time management and staff present

¹¹ For example, in certain cases Commission staff has assessed if one station is exercising de facto control over another by considering, among other things, compliance with the main studio minimum staffing requirements.

¹² 47 CFR 73.1125(a) through (d).

during normal business hours, and that it must have program origination capability. The proposed action is authorized pursuant to sections 4(i), 4(j), 303, 307(b), and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303, 307(b), 336(f). The types of small entities that may be affected by the proposals contained in the NPRM fall within the following categories: Television Broadcasting, Radio Broadcasting. The projected reporting, recordkeeping, and other compliance requirements are: (1) a proposal to eliminate the rule requiring each AM, FM, and television broadcast station to maintain a local main studio; and (2) a proposal to eliminate the associated staffing and program origination capability requirements that apply to main studios. There is no overlap with other regulations or laws. The Commission invites comment on alternative ways it can reduce main studio-related burdens on small entities, including whether a requirement that the local telephone number for a main studio be staffed during normal business hours is unnecessary so long as station staff regularly retrieves and responds promptly to voicemail messages from the public left at that telephone number, or whether the Commission instead should require each station to designate a point of contact to respond to communication from the public; whether instead of eliminating the main studio rule entirely, the Commission could only eliminate the rule for a certain subset of stations, such as those that are located in small and mid-sized markets or those that have fewer than a certain number of employees; and whether to adopt an alternate approach pursuant to which, if the Commission does not eliminate the main studio rule entirely, it could eliminate the rule only for stations that have fully transitioned their public file materials to the online public file.

12. This document does not contain any proposed new information collection requirements. It does, however, contain proposals to delete rules that contain information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements that would be impacted by the proposals contained in this document, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3501 through 3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, see 44 U.S.C. 3506(c)(4), the Commission

seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

13. Permit-But-Disclose. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

14. The proposed action is authorized pursuant to sections 4(i), 4(j), 303, 307(b), and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 307(b), 336(f).

List of Subjects in 47 CFR Part 73

Radio, Television.

FEDERAL COMMUNICATIONS COMMISSION

Katura Jackson,

Federal Register Liaison Officer.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

2. Revise § 73.1125 to read as follows:

§ 73.1125 Station telephone number.

Each AM, FM, TV and Class A TV broadcast station shall maintain a local telephone number in its community of license or a toll-free number.

3. In § 73.1690, revise paragraphs (c)(8) and (d) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(c) * * *

(8) FM commercial stations and FM noncommercial educational stations may decrease ERP on a modification of license application provided that exhibits are included to demonstrate that all five of the following requirements are met:

(i) Commercial FM stations must continue to provide a 70 dBu principal community contour over the community of license, as required by §73.315(a). Noncommercial educational FM stations must continue to provide a 60 dBu contour over at least a portion of the community of license. The 60 and 70 dBu contours must be predicted by use of the standard contour prediction method in §73.313(b), (c), and (d).

(ii) For commercial FM stations only, there is no change in the authorized station class as defined in §73.211.

(iii) For commercial FM stations only, the power decrease is not necessary to achieve compliance with the multiple ownership rule, §73.3555.

(iv) Commercial FM stations, noncommercial educational FM stations on Channels 221 through 300, and noncommercial educational FM stations on Channels 200 through 220 which are located in excess of the distances in Table A of §73.525 with respect to a Channel 6 TV station, may not use this rule to decrease the horizontally polarized ERP below the value of the vertically polarized ERP.

(v) Noncommercial educational FM stations on Channels 201 through 220 which are within the Table A distance separations of §73.525, or Class D stations on Channel 200, may not use the license modification process to eliminate an authorized horizontally polarized component in favor of vertically polarized-only operation. In addition, noncommercial educational stations operating on Channels 201 through 220, or Class D stations on Channel 200, which employ separate horizontally and vertically polarized antennas mounted at different heights, may not use the license modification process to increase or decrease either the horizontal ERP or vertical ERP without a construction permit.

* * * * *

(d) The following changes may be made without authorization from the FCC, however informal notification of the changes must be made according to the rule sections specified:

(1) Commencement of remote control operation pursuant to §73.1400.

(2) Modification of an AM directional antenna sampling system. See §73.68.

* * * * *

4. In § 73.3538, revise paragraph (b) to read as follows:

§ 73.3538 Application to make changes in an existing station.

* * * * *

(b) An informal application filed in accordance with § 73.3511 is to be used to obtain authority to modify or discontinue the obstruction marking or lighting of the antenna supporting structure where that specified on the station authorization either differs from that specified in 47 CFR part 17, or is not appropriate for other reasons.

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