

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

In the Matter of)
)
Petition for Rulemaking of) RM- _____
Garvey Schubert Barer to Repeal) MB Docket No. _____
the Main Studio Rule)

**PETITION FOR RULEMAKING OF
GARVEY SCHUBERT BARER’S
MEDIA, TELECOM AND TECHNOLOGY GROUP**

Pursuant to Sections 1.1, 1.41, and 1.401 of the Federal Communications Commission’s (FCC or Commission) rules,¹ Garvey Schubert Barer’s (GSB) Media, Telecom and Technology Group hereby petitions the Commission to initiate a rulemaking proceeding to repeal Section 73.1125 of the Commission’s rules (the “Main Studio Rule”) that currently applies to licensees of radio and television broadcast stations.²

Adoption of this proposal will not reduce or remove broadcasters’ “bedrock obligation” to serve the needs and interests of their local communities.³ Instead, it is meant to recognize the technological and economic realities of today’s broadcast marketplace – that stations can serve their communities while realizing substantial and necessary cost savings by maintaining fewer offices and smaller staff;⁴ that most listeners and viewers contact their local stations by

¹ 47 C.F.R. §§ 1.1, 1.41, 1.401.

² GSB’s Media, Telecom and Technology Group represents radio and television broadcast licensees that are directly impacted by the existing requirements and would be impacted by any efforts to update the Commission’s rules to reflect the current technological and economic reality.

³ See *Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15693 (1998)(“1998 Report and Order”).

⁴ See *Application for Review of Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991)(finding that “a main studio must, at a minimum, maintain full-time managerial and full-time staff personnel...during normal business hours to be considered ‘meaningful.’”).

telephone, mail, email or online; and that the Commission has already eliminated the underlying program origination requirement and, more recently, has provided that licensee's must make their public file available entirely online, thereby further undermining any rationale for maintaining a physical main studio location.⁵

I. BACKGROUND AND SUMMARY

For over half a century, the Commission has required radio and television stations to maintain a main studio within or near their communities of license.⁶ For several decades, this rule was coupled with a requirement that stations originate a certain minimum percentage of their non-network programming from the main studio, but the Commission repealed this program origination requirement in 1987.⁷ The Commission partly based the decision to repeal the local origination requirements on changes in broadcasting industry technology and the diminished role of the main studio in the production of programming.⁸ In 1987, the FCC also noted that a studio in the community of license was no longer necessary to assure physical accessibility to residents, since most community members communicated with stations by telephone or mail.⁹ In 1998, the FCC again amended the Main Studio Rule to further enlarge the area within which a broadcast station's main studio could be located, citing a desire to grant stations flexibility and to allow more multi-station licensees to combine the resources of their jointly-owned stations.¹⁰ When relaxing the Main Studio Rule, the Commission commented: "We believe that these changes

⁵ See *infra* note 13.

⁶ *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report and Order, 2 FCC Rcd 3215 (1987) ("1987 Report and Order").

⁷ *Id.*

⁸ *Id.* at 3218 ¶ 30 ("Current broadcast technology and innovative production methods enable stations to present programming in numerous ways and from a diversity of locations. Competitive marketplace forces compel stations to utilize a diversity of programming sources and formats to meet the interests and needs of their communities.")

⁹ *Id.* at 3218 ¶ 32.

¹⁰ *1998 Report and Order*, 13 FCC Rcd at 15694 ¶ 7.

will reduce substantially the burdens the previous rule imposed on the licensee, and can generate savings that can be put to more productive use for the benefit of the community served by the station.”¹¹

The Main Studio Rule was long tied to the additional requirement that broadcast stations maintain physical public inspection files at their main studios, for the purposes of allowing members of the public to monitor station performance and to foster community involvement.¹² However, in 2012 (for television broadcasters) and 2016 (for radio broadcasters), the Commission dramatically altered the public file requirement in an effort to modernize the procedures stations use to inform the public about how they are serving their communities.¹³ Calling the change “plain common sense,” the FCC now requires licensees to post their public inspection files online in a centralized, Commission-hosted database.¹⁴ Although, at the time, the FCC exempted one component of the public file from the online posting requirement – letters and emails from the public¹⁵ – the Commission then removed this last vestige of the local public

¹¹ *1998 Report and Order*, 13 FCC Rcd at 15695-96 ¶ 9. Most recently, in seeking comment on whether to expand its AM Radio Revitalization proceeding to include possible modifications of the Main Studio Rule, the Commission has specifically recognized the “financial strain on many AM broadcasters.” *See Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145, 12179-81 ¶¶ 85-88 (2015).

¹² *1998 Report and Order*, 13 FCC Rcd at 15700 ¶ 18.

¹³ *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) (“*2012 Second Report and Order*”); *See also Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) (“*2016 Report and Order*”).

¹⁴ All noncommercial educational radio stations and those commercial radio stations either (a) located in markets below the top 50 or (b) with fewer than five full-time employees have until March 1, 2018, to comply with the Commission’s mandatory online public file requirements. *See 2016 Report and Order*, 31 FCC Rcd at 558-559 ¶ 83. *See also 2012 Second Report and Order*, 27 FCC Rcd at 4536 ¶ 2; *2016 Report and Order*, 31 FCC Rcd at 527 ¶¶ 1-2.

¹⁵ *2012 Second Report and Order*, 27 FCC Rcd at 4566 ¶ 62; *2016 Report and Order*, 31 FCC Rcd at 564 ¶ 94.

file requirement in January of this year, thereby enabling broadcasters to fully satisfy their entire public inspection file obligations through online availability.¹⁶

II. REPEAL OF THE MAIN STUDIO RULE WOULD ALLOW BROADCASTERS TO REALIZE EFFICIENCIES WHILE MAINTAINING LOCAL SERVICE OBLIGATIONS

In remarks last month before the Hispanic Radio Conference, FCC Commissioner Michael O’Rielly noted, in reference to the Main Studio Rule, that broadcasters “face some of the most archaic FCC rules, with many that no longer make sense in today’s competitive marketplace.”¹⁷ The current rule places a significant financial burden on small stations, which must devote scarce resources to maintaining their main studios during business hours and employing full-time managerial and staff personnel. Furthermore, under the current rule, many co-owned stations are unable to realize efficiencies by collocating their operations and offices. Commissioner O’Rielly commented that eliminating or severely modifying the rule could not only “allow for cost savings that could make a real difference for some stations,” but also could provide stations “a security dividend through more efficient channeling of public access.”¹⁸

As the Commission acknowledged as far back as 1987, the broadcasting industry continues to face challenges from dramatic changes, including radical competitive, financial and technological transformations. Yet, the anachronistic Main Studio Rule remains a source of substantial cost for licensees.¹⁹ The FCC has recognized the desirability of increased licensee flexibility and reduced administrative and compliance costs as it has relaxed the Main Studio

¹⁶ *Revisions to Public Inspection File Requirements – Broadcaster Correspondence File and Cable Principal Headend Location*, Report and Order, 32 FCC Rcd 1565 (2017)(“2017 Report and Order”).

¹⁷ Michael O’Rielly, Comm’r, FCC, Address at the 2017 Hispanic Radio Conference, at p.3 (Mar. 28, 2017) (“O’Rielly Address”), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0328/DOC-344114A1.pdf.

¹⁸ *Id.*

¹⁹ *1987 Report and Order*, 2 FCC Rcd at 3216 ¶ 12.

Rule and related requirements over the last few decades.²⁰ Nevertheless, the current rule continues to prevent broadcasters from realizing full efficiencies. Technology and consolidation have progressed to the point where a broadcaster can deliver responsive local programming without the economic drain of maintaining a main studio within an arbitrary geographic area.

Not only do licensees have the ability to continue to meet their “bedrock” local service obligations without a main studio, but competitive marketplace forces will ensure that stations will continue to be accessible and responsive to their audiences. Eliminating the Main Studio Rule could therefore greatly reduce the regulatory and economic burden that broadcasters face, especially small stations that are expending their very limited resources to comply with minimum operation and staffing requirements, without harming the relationship that these stations have with their communities. In addition, providing broadcasters with the flexibility to structure their operations more efficiently will lead to an elimination of the Commission’s current waiver request scheme, further reducing administrative costs.

III. TECHNOLOGY, CONSUMER PREFERENCE, AND PRIOR COMMISSION ACTIONS HAVE ELIMINATED THE RATIONALE FOR THE MAIN STUDIO RULE

Commissioner O’Rielly has pointed out that the justification for the Main Studio Rule has been “significantly weakened” due to the public’s virtually universal choice to contact their local stations via telephone, mail, or (more recently) online.²¹ This change in consumer preference has been recognized by the Commission in rulemakings since at least 1987.²² This phenomenon has become much more prevalent in recent years and further militates against the

²⁰ *Id.* at 3218 ¶ 33; *1998 Report and Order*, 13 FCC Rcd at 15695 ¶ 9; *2012 Second Report and Order*, 27 FCC Rcd at 4536 ¶ 1; *2017 Report and Order*, 32 FCC Rcd 1565 ¶ 3.

²¹ *O’Rielly Address* at p.3.

²² *1987 Report and Order*, 2 FCC Rcd at 3218 ¶ 32; *1998 Report and Order*, 13 FCC Rcd at 15702 ¶ 22.

need for a mandated local physical presence. The modern reality of, and overwhelming preference for, remote communication will allow stations to continue to be responsive to local interests and concerns – and to do so without the added regulatory cost of maintaining a main studio.

As the FCC noted when it moved the public inspection files online, “[t]he evolution of the Internet and the spread of broadband infrastructure have transformed the way society accesses information today. It is no longer reasonable to require the public to travel to a station or headquarters’ office to review the public file and make paper copies when a centralized, online file will permit review with a quick, easy, and almost costless Internet search.”²³ The same logic calls into question the need for broadcasters to maintain the very studios that the Commission has concluded are no longer needed for broadcasters to fulfill their traditional public interest obligations.

IV. CONCLUSION

The Commission has eliminated most, if not all, of the other primary justifications for the Main Studio Rule – first removing the program origination requirement, then moving the public inspection file online, and most recently repealing the local correspondence file rule. Thus, technology, consumer preference, and the Commission’s regulatory changes have eliminated the rationale for the Main Studio Rule. Licensees will be motivated by competitive market pressures to continue to meet their “bedrock” obligation to serve the needs and interests of their local communities. Public interaction with station ownership is readily available *via* telephone and the internet, and *via* the FCC’s online public inspection file database. Furthermore, the license

²³ 2016 Report and Order, 31 FCC Rcd at 527 ¶ 2.

renewal process continues to invite public input and comment. The current Main Studio Rule should be repealed, as not only is it burdensome and inefficient, but it has come unmoored from its underlying policy rationales, and therefore no longer serves a valid public interest objective.

For the reasons stated above, GSB respectfully requests that the Commission grant this Petition by initiating a rulemaking proceeding proposing to eliminate the main studio requirement for radio and television broadcast stations.

Respectfully submitted,

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