



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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FCC Eliminates the Main Studio Rule and Related Requirements, Including Full-Time Staffing Obligation – But Changes Not Yet in Effect

As expected, the FCC at its October meeting adopted a [Report and Order](#) (“Order”) eliminating the main studio rule and several requirements associated with it, including the requirement that broadcasters have full-time management and staff present at the main studio during normal business hours. The Order, approved by a 3-2 vote along partisan lines, also eliminates the local programming origination obligation (which required that the main studio be equipped with production and transmission facilities and capable of transmitting programming). The Order gives broadcasters more flexibility in terms of programming and operations, and it is hoped that cash-strapped stations, particularly smaller stations in rural areas, will reap significant financial benefits.

Note that the Order does not take effect, however, until 30 days after it is published in the Federal Register (which has not yet occurred)—so [the main studio rule and its staffing and](#)

programming requirements are still in place for now. We will let you know when they are gone for good!

What Does the Order Eliminate? The main studio rule, mandating that broadcast stations maintain a main studio in or near their community of license so that stations would be accessible and responsive to their communities, was adopted nearly 80 years ago. The Order recognizes that times and technology have changed—and that a physical studio, staffed with at least two people and capable of originating programming, is no longer necessary.

The transition from paper to online public inspection files (which will be virtually complete for all broadcasters by March of 2018) has all but done away with the public's need to actually visit a main studio to review a station's public documents. (More on that below.) In addition, remote monitoring and control of broadcast stations is now possible, and the FCC believes that broadcasters can interact with the local community and broadcast information about local events even without a local main studio and corresponding personnel. As such, the Order determines that licensees should make their own decisions—unencumbered by any regulatory requirement—regarding the location and number of staff members. The FCC rejected arguments that eliminating the main studio rule and staffing requirements could lead to job losses, countering that saving stations money may prevent some stations from going dark, enable other stations to launch, and potentially promote employment in the long run.

Do Any Requirements Remain? The FCC decided to retain certain, limited requirements that were associated with the main studio rule. Chief among these is the local telephone number rule: broadcasters must still maintain a phone number that is toll-free or local to a station's community of license, and calls made to the number must be answered during business hours. The Order encourages, but does not require, stations to use voicemail or other mechanisms for the public to leave messages outside of those hours. Stations must post their phone numbers in their online public files, but nowhere else (the FCC acknowledges that broadcasters already make their phone numbers available in other ways, including on station websites).

The Order also requires every broadcaster to continue to maintain and make available for public inspection at an “accessible place” within its community of license during regular business hours any portion of its public file that is not yet online. Broadcasters have some discretion here; the “accessible place” could be a station office or studio or it could be a different location, such as a public library or another local office or business, so long as it is located within the community of license. For such stations, the FCC encourages broadcasters to provide the address of their paper public file’s “accessible place” on station websites; and, if a community member asks a station about the location of the physical file, the station is required to promptly provide such information within one business day.

As a practical matter, hard copy public file materials are quickly becoming a thing of the past themselves. All television stations and commercial top-50 market radio stations with at least five full-time employees have already transitioned to the online public inspection file system, so the only public file documents that they may still have in their physical public files are certain political file materials. (Recall that such stations did not have to upload political files that existed at the time they transitioned to the online public file, and they are allowed to keep hard copies for

the requisite two-year retention period.) All other radio broadcasters will complete the transition to online by March 1, 2018; as of that time, the only documents they might have in their physical public files will, likewise, be then-existing political file materials (also until the end of the two-year retention period). And, any station can avoid the local public file requirement altogether by putting all of its public file material online.

Finally, it's worth noting that the FCC emphasized in the Order that stations still have an obligation to serve their local communities, regardless of whether they have local studios or originate local programming. The Order kindly reminds licensees that they must continue to maintain quarterly Issues/Programs lists and that the FCC considers whether a station has aired programming responsive to the needs and interests of its community of license at license renewal time.

Stations that are considering shuttering their main studio or moving it beyond the limits allowed by the still-effective current main studio rule are strongly encouraged to consult with legal counsel before taking any such steps.

Media Bureau Announces Long-Form Filing Window for “Singleton” FM Translator Applications; Window Open from December 1 to December 21, 2017

On November 1, the Media Bureau released a [Public Notice](#) announcing the opening of the filing window—from December 1, 2017, to December 21, 2017—for long-form FM translator construction permit applications by AM stations who timely filed “Tech Box proposals” that are not mutually exclusive with any other proposals from the [Auction 99](#) July 26 – August 2, 2017, filing window. A [list](#) of those qualified to participate in this upcoming filing window was released with the Public Notice. Parties may start work on completing these so-called “singleton” applications immediately, although the filing window will not open until December 1.

Applicants must submit a complete Form 349 long-form application for each qualifying Tech Box proposal by no later than December 21. Those filers who are not fee-exempt must also pay the required FCC filing fee and submit payment-related Form 159 for each application.

Applicants are permitted to make minor modifications to the engineering data submitted in their Tech Box proposals earlier this year. Such minor changes include changes to power, height, directional pattern, and channel. However, applications that include any major change as defined by the FCC’s rules, or any change that creates a new conflict to any pending Auction 99 Tech Box proposal or to any prior-filed Form 349 application, will be dismissed.

Any applications filed during the window that do not comply with the procedures contained in the Public Notice will be dismissed. The Public Notice states that the application deadline of December 21, 2017, will be strictly enforced. Thus, such applicants should immediately begin working on their long-form application and not leave it to the last minute.

At some point after the December 21 filing deadline, the Media Bureau will release Public Notices in the FCC’s Consolidated Database System (CDBS) entitled “Broadcast Applications.” These Broadcast Applications Public Notices will list applications determined to be “acceptable for filing”—i.e., grantable and not subject to dismissal. Any petition to deny a long-form application must then be filed within 15 days following the release of the relevant public notice. Interested parties will obviously need to monitor these Broadcast Applications Public Notices.

AM stations that filed FM translator proposals in the Auction 99 filing window should review the list of eligible participants and the Public Notice for additional detail on procedures as soon as possible, and plan to complete and file their long-form applications during the December 1 to December 21 window.

We will continue to monitor Auction 99 and keep you apprised of significant developments.

Four Day Countdown: All Stations Must Report Multilingual EAS Alerting Practices to State SECCs by November 6, 2017

As you know, the FCC in 2016 resolved a decade-old petition relating to multilingual EAS messages by declining to adopt any multilingual EAS alerting requirements, except that the FCC did adopt a new rule that requires all EAS Participants—including all broadcast stations—to furnish certain information to their respective State Emergency Communications Committees (“SECCs”). The deadline for stations to furnish the required information to SECCs is fast-approaching: **it is due by November 6, 2017**. In turn, SECCs will be required to revise, by early May 2018, State EAS Plans to summarize the information provided by EAS Participants.

What Must Be Reported to SECCs. Broadcast stations will be required to provide, by November 6, 2017, the following information to their respective SECCs:

- **Actions Already Taken.** A description of any actions **already underway** by the station (acting individually, in conjunction with other EAS Participants in the geographic area, and/or in consultation with state and local emergency authorities), to make EAS alert content available in languages other than English to the station’s non-English speaking audience(s).
- **Actions Planned for the Future.** A description of any **future** actions planned by the station to provide EAS alert messages in languages other than English to the station’s non-English speaking audience(s), along with an explanation for the EAS Participant’s decision to plan or not plan such actions.
- **Other Relevant Information.** Any other relevant information that the station may wish to provide, including state-specific demographics on languages spoken within the state (other than English), and identification of resources used or necessary to originate current or proposed multilingual EAS messages. The FCC urges stations and SECCs to include

information about any pilot projects or other initiatives that involve translation technologies or other innovative approaches to providing non-English alerts and emergency information to the public.

Brief Statements Acceptable. According to the FCC, a broadcaster may satisfy its reporting requirements by advising the SECC that “no steps have been taken” (if, in fact, a station has taken no steps, and has no future plans to take steps, toward multilingual EAS messaging).

Virginia Stations Should Have Received a Survey from VAB and Should Respond. Virginia broadcasters should have already received a memo from VAB about this deadline, and you should have received a link to a survey to facilitate your compliance with the reporting requirement. **If you have not received a survey email from VAB, please contact the Association office immediately.** As with any survey or questionnaire, we strongly recommend that you consult internally with management before providing your responses to the survey.

Countdown to November 13 Deadline for Filing EAS Form Three Report with Nationwide Test Results

As all stations should be aware, FEMA and the FCC conducted a nationwide test of the Emergency Alert System (“EAS”) on September 27, 2017. As we previously advised, all stations should have filed their EAS Form Two reports via the FCC’s EAS Test Reporting System (“ETRS”) before midnight ET on September 27. Form Two merely asked stations whether they had received the nationwide test and whether they had retransmitted the nationwide test. Details about a station’s experience with the test—good, bad, or otherwise—were not required to be submitted as part of the Form Two report, but such details must now be submitted as part of the Form Three report, which is **due by November 13, 2017**. (To access, complete, and submit Form Three, follow the same steps you used to access, complete, and submit Form Two.)

Remember, the nationwide test was exactly that—a *test*. If your station didn’t receive the test or had problems with the audio, or if some other aspect of your receipt or retransmission of the test was less than perfect, the FCC and FEMA want to hear about those issues, and they should be included in your Form Three report. In other words, reporting these types of issues in your Form Three report does not mean that the FCC will necessarily think you have violated a rule. On the other hand, if the reason your station didn’t receive and/or retransmit the test was because your station does not have compliant EAS equipment, you may wish to consult with legal counsel prior to filing your Form Three report.

Many stations have already filed their Form Three reports; if your station has not yet filed its Form Three report, you now have less than two weeks until the deadline of November 13, 2017.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

Stephen Hartzell, Editor

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