



Federal Communications Commission
Washington, D.C. 20554

September 26, 2017

DA 17-934

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Washington, DC 20003

Re: WGTW-TV, Millville, NJ
Fac. ID No. 7623
LMS File No. 26792
Request for Waiver of Main Studio Rule

Dear Counsel:

This letter is in reference to the above-captioned application for construction permit filed by Trinity Christian Center of Santa Ana, Inc., doing business as Trinity Broadcasting Network (Trinity) to implement channel sharing for WGTW-TV, Millville (formerly Burlington), New Jersey (WGTW-TV or station). Trinity has requested a permanent waiver of section 73.1125 of the Federal Communications Commission's (Commission) rules¹ to continue to use the station's existing studio as its main studio location. For the reasons set forth below, we deny Trinity's request for permanent waiver, but on our own motion we grant Trinity a temporary waiver to permit it to operate the station without a main studio that complies with the rule for a period not to exceed one year from the date of this letter.

Background. Trinity was a winning "relinquishment" bidder in the Commission's incentive auction (Auction 1000) and entered into a channel sharing agreement (CSA) to share channel 36 with WMGM-TV, Wildwood, New Jersey, licensed to LocusPoint WMGM Licensee, LLC.² In order to implement the shared operation and continue to comply with the Commission's rule concerning coverage to the station's community of license,³ Trinity proposed moving WGTW-TV's community of license from Burlington, New Jersey to Millville, New Jersey. Trinity notes in its waiver request that its current main studio is located at 1810 Columbia Avenue in Folcroft, Pennsylvania and that location would not satisfy the main studio rule once the station relocates to Millville. Trinity seeks a waiver of the main studio rule in order to continue to locate the station's main studio at the Folcroft location.

Trinity maintains that waiver of the main studio rule in this case is consistent with Commission precedent. Trinity argues that "the Commission repeatedly has waived the main studio rule for television

¹ 47 CFR § 73.1125.

² See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (MB & WTB, 2017).

³ See 47 CFR § 73.625.

broadcasters licensed to communities that could not support a main studio.”⁴ Trinity cites to decisions where the Commission considered, among other things, declining population in the county containing the community of license, the median income in the community of license compared to the rest of the state, and the distance between the community of license and the main studio.⁵ In this case, Trinity represents that Millville, New Jersey, had just over 28,000 residents as of 2016, a decline since the 2010 Census.⁶ Trinity also notes that Millville is located in Cumberland County, the population of which Trinity maintains likewise has declined since the 2010 Census.⁷ In addition, Trinity notes that the median household income in Millville, \$49,133, is just 68 percent of the statewide average, \$72,093.⁸ Finally, Trinity argues that station’s Folcroft main studio is located less than 37 miles from Millville, which Trinity notes is less than an hour’s drive and is “far closer than the 70 and 90 mile distances” approved in other Commission decisions.⁹

Trinity also pledges that it will continue to staff WGTW-TV’s main studio as required by the current rule, and the Station has fully transitioned to an online public file. Further, Trinity maintains that allowing the Station to maintain its main studio at its current location will allow any community members desiring to visit the Station’s main studio to do so at its current, familiar location. In addition, while this waiver is in effect, Trinity pledges to maintain a telephone number local to its community of license or, in the alternative, a toll-free number.

Finally, Trinity notes that the Commission has proposed to eliminate the main studio rule.¹⁰ Trinity argues that it does not seek relief from the rule in its entirety but, instead, is asking that it be permitted to maintain the station’s studio at its current location. Trinity argues that maintaining WGTW-TV’s current main studio location allows a continuity of service and access by the public during a time of what Trinity describes as a “significant change in the broadcast industry.”¹¹ Trinity points out that, as a result of the incentive auction and repacking, established community and public service relationships will be “upset and changed, causing public confusion as stations move to new channels and communities.”¹² Allowing the station to maintain its current main studio location, Trinity argues, “will ease some of this confusion and the impact of the changes, and allow continuity for the public.”¹³ Trinity concludes that “this is a meaningful and important public service supporting waiver.”¹⁴

Discussion. For the reasons set forth below, we deny Trinity’s request for permanent waiver of the main studio rule. Although we find that permanent waiver is not in the public interest, in order to facilitate the implementation of Trinity’s post-incentive auction channel sharing arrangement and

⁴ Waiver at 1.

⁵ See *KAKE(TV)*, 31 FCC Rcd 354 (Vid. Div. 2016); *WFRV-TV*, 26 FCC Rcd 9236 (Vid. Div. 2011); *Living Faith Ministries, Inc.*, 21 FCC Rcd 5046 (Vid. Div. 2006) (*Living Faith*).

⁶ Waiver at 1 citing Bureau of the Census American FactFinder database, <http://factfinder.census.gov>.

⁷ *Id.*

⁸ *Id.*

⁹ Waiver at 1 citing *Living Faith, supra* at n. 5.

¹⁰ *Elimination of Main Studio Rule*, Notice of Proposed Rulemaking, 32 FCC Rcd 4415, 4418 (2017).

¹¹ Waiver at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 2.

minimize as much disruption of service to the public as possible, we will grant Trinity a temporary waiver of the main studio rule.¹⁵ We will permit Trinity to operate the station without a main studio that complies with the rule for a period not to exceed one year from the date of this letter. Given the unique circumstances, we find providing such temporary relief is both warranted and consistent with Video Division precedent.¹⁶

When an applicant seeks a waiver, it must plead with particularity the facts and circumstances which warrant such action¹⁷ and “[a] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹⁸ We do not find that the public interest will be served by permanent waiver of the main studio rule in this case.

The main studio rule requires a station to locate its main studio: (1) within its principal community contour; (2) within the principal community contour of any other broadcast station licensed to its community of license; or (3) within 25 miles of the center of its community of license.¹⁹ A licensee must acquire written authorization from the Commission to move and maintain a main studio outside of these locations.²⁰

Contrary to Trinity’s claims, waiver in this case is not supported by the precedent it cites. All of the cases cited by Trinity involved television stations that had obtained approval from the Commission to operate (or continue to operate) as satellite stations. In this case, the station is not a satellite of any other Trinity station and will be a fully operational local Millville, New Jersey station. Further, in previous instances where a commercial licensee has attempted to justify a waiver of the main studio rule based solely on the economic benefit to the licensee, the Commission has denied the waiver.²¹

Finally, the station was not reassigned to a new channel as a result of the incentive auction and repacking process and it was Trinity’s voluntary decision to channel share with a Wildwood, New Jersey station and to seek to relocate its community of license to Millville. Although it encouraged channel

¹⁵ All winning relinquishment bidders that either entered into a pre-auction CSA or reserved the right to channel share are required to file a construction permit to channel share by November 24, 2017, and must terminate operations on their relinquished channel no later than January 23, 2018. *See* 47 CFR § 73.3700(b)(1)(vii), (b)(4)(ii). *See also Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 878-89, paras. 63-66 (MB 2017); *Incentive auction Task Force and Media and Wireless Telecommunications Bureaus Announce the commission is Ready to Pay Reverse Auction Winning Bids*, Public Notice, DA 17-702 (MB & WTB, rel. Jul. 20, 2017) (for purposes of calculating post-auction deadlines a relinquishment bidder is considered to have received its incentive payment five (5) business days after the release date of this Public Notice).

¹⁶ *See Sunflower*, 22 FCC Rcd at 21530 (recognizing that changed circumstances may warrant temporary relief from the main studio rule).

¹⁷ *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968). In addition, Section 73.3566(a) of the Commission's radio broadcast rules provides that requests for waiver “shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof.” 47 C.F.R. § 73.3566(a).

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*citing WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969)). *See* 47 CFR § 1.3 (waiver for good cause shown).

¹⁹ 47 C.F.R. § 73.1125(a).

²⁰ 47 C.F.R. § 73.1125(d)(2).

²¹ *See Maines Broadcasting, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 5501, 5502 (1993); *Radio Redentor, Inc.*, Letter Decision, 14 FCC Rcd 17754, 17755 (MMB 1999); *Eclectic Enterprises, Inc.*, Letter Decision, 14 FCC Rcd 17751 (MMB 1999) (rejecting main studio rule waiver requests based on financial considerations).

sharing among auction bidders and permitted stations' to change their community of license in order to better implement their sharing arrangements, the Commission required channel sharing stations to provide the requisite principal contour coverage to their new community of license as provided for by the rules. Currently, channel sharing stations must also maintain a main studio for their new community of license that complies with the requirements of the rule.²² While we recognize that the Commission has proposed to eliminate the main studio rule, the Commission has established that, until such time as a policy has been modified or changed, it should be applied according to its terms, and the Commission has not issued an order formally eliminating the rule.²³ For these reasons, we deny Trinity's request for permanent waiver of the main studio rule.

ACCORDINGLY, a temporary waiver of Section 73.1125 of the Commission's Rules with respect to WGTW-TV's main studio, **IS GRANTED** for a period not to exceed one year from the date of this letter.

FURTHERMORE, Trinity's request for a permanent waiver of Section 73.1125 of the Commission's rules with respect to WGTW-TV's main studio, **IS DENIED**.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6728, para. 376 (2014), *subsequent history omitted*.

²³ *See In re Application of Catocin Broadcasting Corp.*, FCC 86-335 (July 31, 1986); *Palm Beach Cable Television Co.*, Memorandum Opinion and Order, 78 FCC 2d 1180, 1183 (1980); *Metromedia, Inc. (WNEW-TV)*, Opinion, 66 FCC 2d 566, 568 (1977). Therefore, the pendency of the Commission's proceeding to eliminate the main studio rule was not a factor in our decision.