

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

In the Matter of)
)
Elimination of Main Studio Rule) MB Docket No. 17-106
)
Petition for Partial Reconsideration)

MEMORANDUM OPINION AND ORDER

Adopted: April 2, 2018

Released: April 2, 2018

By the Media Bureau:

I. INTRODUCTION

1. On January 8, 2018, De La Hunt Broadcasting Corp. (De La Hunt) filed a Petition for Partial Reconsideration¹ of the Federal Communications Commission’s (Commission) *Main Studio Order*, which eliminated the main studio rule and related requirements.² De La Hunt asks the Commission to modify the *Main Studio Order* to provide an additional six months to any permittees with less than six months remaining on their unbuilt construction permits for new facilities.³ For the reasons set forth below, we dismiss and otherwise deny the Petition.

II. BACKGROUND

2. On October 24, 2017, the Commission eliminated its rule that required each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license.⁴ The Commission also eliminated requirements associated with its main studio rule, including the requirement that the main studio have full-time management and staff present during normal business hours, and that it have program origination capability.⁵ The *Main Studio Order* cited record evidence “that in some small towns and rural areas the cost of complying with the current main studio rule dissuades broadcasters from launching a station, even if the broadcaster has already obtained a

¹ De La Hunt Broadcasting Corp., Petition for Partial Reconsideration (filed Jan. 8, 2018) (Petition).

² *Elimination of Main Studio Rule*, Report and Order, 32 FCC Rcd 8158 (2017) (*Main Studio Order*). The *Main Studio Order* became effective on January 8, 2018. See *Elimination of Main Studio Rule*, 82 FR 57876 (Dec. 8, 2017) (publication of the *Main Studio Order* in the Federal Register); *Elimination of Main Studio Rule*, 82 FR 59987 (Dec. 18, 2017) (announcing that all rules adopted in the *Main Studio Order* have an effective date of January 8, 2018); *Elimination of Main Studio Rule*, 82 FR 61479 (Dec. 28, 2017) (making a minor correction to the Dec. 18, 2017 Federal Register publication).

³ Petition at 2.

⁴ *Main Studio Order*, 32 FCC Rcd at 8158, para. 1.

⁵ *Id.*

construction permit for the station.”⁶ It did not otherwise address broadcasters with existing construction permits. De La Hunt filed a comment in the proceeding, but it did not request that the Commission provide an extension of time for existing construction permits,⁷ nor did other commenters.

3. On January 8, 2018, De La Hunt timely filed its Petition.⁸ De La Hunt supports the Commission’s elimination of the main studio rule.⁹ It explains that prior to adoption of the *Main Studio Order*, it obtained a construction permit for Pine River, Minnesota (File No. BNP-20041029AGK), which expires on April 23, 2018.¹⁰ Until the Commission adopted the *Main Studio Order*, De La Hunt states that it was too expensive for it to construct the Pine River facility.¹¹ As a result of the elimination of the main studio rule, it is now feasible for De La Hunt to construct the facility, but it needs additional time since it cannot do so during the winter in Minnesota.¹² Accordingly, De La Hunt asks the Commission to modify its *Main Studio Order* “to provide that any permittees with unbuilt construction permits for new facilities with less than six months left in their construction periods (as of the effective date of the new Main Studio Rule) be afforded an additional six-months beyond their current construction period, in order to [sic] all the time necessary for them to construct facilities that will allow implementation of the new Main Studio Rule.”¹³

III. DISCUSSION

4. As stated above, although De La Hunt filed a comment in this proceeding, it did not request that the Commission provide an extension of time for existing construction permits, nor did other commenters.¹⁴ Section 1.429(b) of the Commission’s rules provides that a petition for reconsideration which relies on facts or arguments not previously presented to the Commission will only be granted if one of three circumstances is present.¹⁵ The first circumstance is if “[t]he facts or arguments relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission.”¹⁶ That circumstance is not met here because De La Hunt already possessed its construction permit during the comment period in the Commission’s proceeding to eliminate the main studio rule. The second circumstance is if “[t]he facts or arguments relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.”¹⁷ That circumstance also is not met here because De La Hunt already possessed its

⁶ *Id.* at 8162, para. 8.

⁷ Comments of Edward De La Hunt.

⁸ *See* 47 CFR § 1.429(d).

⁹ Petition at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 1-2. *See also* De La Hunt Comments on Petition at Attach. 1-5.

¹³ Petition at 2.

¹⁴ *See supra* para. 3.

¹⁵ 47 CFR § 1.429(b).

¹⁶ *Id.* § 1.429(b)(1).

¹⁷ *Id.* § 1.429(b)(2).

construction permit during the comment period in the Commission's proceeding to eliminate the main studio rule.

5. The third circumstance is if “[t]he Commission determines that consideration of the facts or arguments relied on is required in the public interest.”¹⁸ De La Hunt claims that “[a]doption of this across-the-board extension will affect relatively few outstanding permits, but will undeniably be in the public interest, in so far as it will allow the FCC to fully implement its policy goal of permitting broadcasters that already had obtained construction permits (but that were dissuaded from launching their stations because of the prior Main Studio Rule) to instead have sufficient time to construct their permits for brand new facilities without the constraints of the prior Main Studio Rule, thereby providing increased broadcast service in such areas.”¹⁹ We find that there is no correlation between the new rules and policies adopted in the *Main Studio Order* and the fact-specific construction difficulties that De La Hunt asserts it faces.²⁰ Rather, Section 73.3598 of the Commission's rules, which was not even mentioned in the *Main Studio Order*, governs the period of construction pursuant to a construction permit for a new facility.²¹ De La Hunt states that it has already requested a waiver of Section 73.3598 from the Media Bureau.²² Because this is a fact-specific inquiry, and not an issue of general applicability, a waiver request under Section 73.3598 is the proper means for considering this issue. For these reasons, consideration of the Petition is not required in the public interest.²³

6. We conclude that it is appropriate for the Media Bureau, rather than the full Commission, to act upon the Petition. Section 1.429(l) of the Commission's rules provides examples of instances in which the relevant bureau or office may dismiss or deny a petition for reconsideration of a Commission

¹⁸ *Id.* § 1.429(b)(3).

¹⁹ Petition at 2.

²⁰ The example of a six-month extension that De La Hunt provides is inapposite and supports our conclusion. In the *AM Revitalization* proceeding, the Commission noted that a large number of construction permits (a “substantial majority of the approximately 1300 outstanding”) were about to expire, and noted that the permittees could seek a waiver of the construction deadline. *See Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Propose Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145, 12152, n.36 (2015). *See also* De La Hunt Comments on Petition at 3-4; Skidelsky Comments.

²¹ 47 CFR § 73.3598.

²² De La Hunt Comments on Petition at 3, n.2.

²³ The Petition was published in the Federal Register on February 26, 2018. *See Petition for Partial Reconsideration of Action in Rulemaking Proceeding*, 83 FR 8181 (Feb. 26, 2018). Oppositions were due on March 13, 2018, and replies were due on March 23, 2018. There were three commenters. One commenter, Barry Skidelsky, supports the Petition but he does not demonstrate that any other broadcaster is similarly situated to De La Hunt, nor does he provide any support for his claim that failure to grant the Petition “would be arbitrary and capricious, if not unconstitutional.” Skidelsky Comments. Media Alliance filed comments that are entirely unrelated to the Petition; it objects to the Commission's interpretation of Section 307(b) of the Communications Act of 1934, as amended. *See* Media Alliance Comments. If Media Alliance intended to seek Commission reconsideration of that separate issue, it should have filed a timely petition for reconsideration, which it failed to do. *See* 47 CFR § 1.429(d) (“The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b)”). The *Main Studio Order* was published in the Federal Register on December 8, 2017, and any petitions for reconsideration thus were required to be filed by Monday, January 8, 2018. *See Elimination of Main Studio Rule*, 82 FR 57876 (Dec. 8, 2017). The only other comments responding to the Petition were filed by De La Hunt itself. No reply comments were filed.

action “that plainly do[es] not warrant consideration by the Commission.”²⁴ One such example is petitions that “[r]ely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of paragraphs (b)(1) through (3) of this section.”²⁵ As part of the main studio proceeding, no party presented to the Commission the argument that it should provide an extension of time for existing construction permits. In addition, as explained in paragraphs 4 and 5 above, the requirements of Section 1.429(b)(1) through (3) are not met. Hence, the Media Bureau has authority to act upon the Petition.

7. For all of the above reasons, we find that pursuant to Section 1.429(b) of the Commission’s rules, the Petition should be dismissed and otherwise denied.²⁶

IV. ORDERING CLAUSES

8. Accordingly, De La Hunt Broadcasting Corp.’s Petition for Partial Reconsideration in the above-captioned proceeding **IS DISMISSED** and otherwise **DENIED**.

9. This action is taken pursuant to authority delegated by Sections 0.283 and 1.429 of the Commission’s rules.²⁷

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

²⁴ 47 CFR § 1.429(l).

²⁵ *Id.* § 1.429(l)(2).

²⁶ *Id.* § 1.429(b).

²⁷ *Id.* §§ 0.283, 1.429.