

FCC FACT SHEET*

Proposal to Eliminate the Main Studio Rule
Notice of Proposed Rulemaking – MB Docket No. 17-106

Background: The FCC's current main studio rule requires each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license. 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 public inspection file requirements for AM, FM, and television broadcast stations, community members will no longer need to visit a station's main studio to access its public inspection file.

What the Notice of Proposed Rulemaking Would Do:

- 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 a local studio has served.
- Tentatively find that the main studio rule is now outdated and unnecessarily burdensome for broadcast stations and propose to eliminate it.
- Propose 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.
- Seek comment on how to ensure that community members have access to a station's public file that is not online if the station no longer maintains a local main studio.
- Propose to retain section 73.1125(e) of the FCC's rules, which requires each 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.
- Seek comment on the costs and benefits of eliminating the main studio rule and on any alternative proposals, such as whether to eliminate the rule for only a certain subset of stations, such as those in small markets or those with few employees.

* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in MB Docket No. 17-106, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR § 1.1200 *et seq.*

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

In the Matter of
Elimination of Main Studio Rule
MB Docket No. 17-106

NOTICE OF PROPOSED RULEMAKING*

Adopted: []

Released: []

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Commission:

I. INTRODUCTION

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.2 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 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.3 Television broadcasters completed their transition to the online public file in 2014, and radio broadcasters will

* This document has been circulated for tentative consideration by the Commission at its May 2017 open meeting. The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 47 CFR § 73.1125(a)-(d).

2 See, e.g., Applications of the Tribune Company, Tampa, Florida, et al., 19 FCC 100, 148 (1954) (“The accessibility of the broadcast station’s main studio may well determine in large part the extent to which the station (a) can participate and be an integral part of community activities, and (b) can enable members of the public to participate in live programs and present complaints or suggestions to the stations.”).

3 See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Second Report and Order, 27 FCC Rcd 4535 (2012) (Television Online Public File Order); 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) (Expanded Online Public File Order).

(continued...)

complete their transition by March 1, 2018.⁴ 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.⁵

II. BACKGROUND

2. The main studio rule stems from section 307(b) of the Communications Act of 1934, as amended (the Act), which requires the Commission to “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 In furtherance of this statutory provision, each broadcast radio and television station is assigned to a community of license that it is obligated to serve. The Commission initially adopted main studio requirements more than 70 years ago.⁷ Previously, the Commission stated that the existence of a main studio allowed stations to be accessible and responsive to their communities.⁸

3. In the 1970s, the Commission consolidated its previous main studio rules and adopted a single rule requiring each station to have a main studio that is reasonably accessible to its community of license.⁹ Section 73.1125(a) of the Commission’s rules currently requires each AM, FM, and television broadcast station to maintain a main studio that is located either: “(1) [w]ithin the station’s community of license; (2) [a]t any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station’s community of license; or (3) [w]ithin twenty-five miles from the reference coordinates of the center of its community of license as described in § 73.208(a)(1).”¹⁰

⁴ 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. *See Expanded Online Public File Order*, 31 FCC Rcd at 528, para. 3; *Effective Date Announced for Expanded Online Public Inspection File Database*, Public Notice, 31 FCC Rcd 4699 (rel. May 12, 2016).

⁵ 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. *See infra* para. 4.

⁶ 47 U.S.C. § 307(b).

⁷ *FCC Rules Governing Standard Broadcast Stations*, 4 Fed. Reg. 2714 (June 30, 1939) (47 CFR §§ 3.12, 3.30, 3.31); *Classification of Television Stations and Allocation of Frequencies*, 11 Fed. Reg. 33 (Jan. 1, 1946) (adopting 47 CFR §§ 3.603, 3.604); *Amendment of Section 3.606 of the Commission’s Rules and Regulations*, Sixth Report and Order, 17 Fed. Reg. 3905, 4061 (May 2, 1952) (adopting 47 CFR § 3.613), *on reconsideration*, 17 Fed. Reg. 7547 (Aug. 19, 1952).

⁸ *See, e.g., Amendment of Parts 1 and 73 of the Commission’s Rules and Regulations Pertaining to the Main Studio Location of FM and Television Broadcast Stations*, Report and Order, 27 FCC 2d 851, 852 (1971); *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, 3218, para. 36 (1987) (*1987 Main Studio and Program Origination Order*).

⁹ The Commission initially consolidated the main studio rules for AM, FM, and television stations into a single rule in 1979, and it has amended that rule multiple times since then. *See* 44 Fed. Reg. 69933 (Dec. 5, 1979).

¹⁰ 47 CFR § 73.1125(a). A separate subsection of the rule requires each Class A television station to maintain its main studio at a location within the station’s predicted Grade B contour. *Id.* § 73.1125(c).

4. In addition, the Commission has held that a main studio must have a “meaningful management and staff presence” to fulfill the main studio’s function,¹¹ which at a minimum requires “management and staff presence on a full-time basis during normal business hours.”¹² Although this requirement has not been codified in our rules, it has operated as one means for residents of a community of license to communicate with a station. The main studio is also subject to a program origination capability requirement.¹³ That is, broadcasters are required under Commission precedent to “equip the main studio with production and transmission facilities” and to ensure that the main studio has “continuous program transmission capability.”¹⁴

5. In a 2015 proceeding seeking to revitalize the AM service, the Commission sought comment on whether and how to modify the main studio rule.¹⁵ The majority of commenters in that proceeding supported changes to lessen the main studio requirements for certain AM stations.¹⁶ For example, the National Association of Broadcasters explained that “advances in technology have virtually eliminated the need for a local main studio, as almost all audience contact with broadcasters is by email or telephone.”¹⁷ With regard to AM stations specifically, Blount Masscom stated its belief that relaxation of the main studio requirement is “vital and necessary to the continued longevity of AM radio. Monies that would otherwise be devoted to the maintenance of an expensive main studio can be diverted to other more critical areas resulting in better overall service to the local community.”¹⁸ Although at that time, the Commission stated that it was “reluctant to eliminate main studio requirements entirely, because of the [] importance of the main studio to the goal of ensuring station compliance with local service obligations,”¹⁹ it sought comment on whether it should be “more open” to waiver “requests by commercial stations that can co-locate in studio facilities used by co-owned stations in a given market.”²⁰ The Commission

¹¹ See *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*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026, para. 24 (1988) (*1988 Main Studio and Program Origination Reconsideration Order*)

¹² *Application for Review of Jones Eastern of the Outer Banks, Inc. Licensee, Radio Station WRSF(FM) Columbia, North Carolina*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616, n.2 (1991).

¹³ *1988 Main Studio and Program Origination Reconsideration Order*, 3 FCC Rcd at 5026, para. 24.

¹⁴ See *id.*; see also *University of San Francisco (Assignor) and Classical Public Radio Network LLC (Assignee), Application for Consent to Assignment of License Station KOSC(FM), San Francisco, CA*, Memorandum Opinion and Order, 30 FCC Rcd 10530, 10533-34, para. 6 (2015). In 1987, the Commission deleted its rule requiring each broadcast station to originate more than 50 percent of its non-network programs from its main studio or other points within its community of license. See *1987 Main Studio and Program Origination Order*, 2 FCC Rcd at 3218-19, paras. 39-43.

¹⁵ *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145, 12180, para. 88 (2015) (*AM Revitalization NOI*).

¹⁶ See, e.g., Bemidji Radio, Inc. Comments, MB Docket No. 13-249, at 7 (Mar. 21, 2016); Blount Masscom, Inc., *et al.* Comments, MB Docket No. 13-249, at 1-4 (Mar. 15, 2016) (Blount Masscom AM Revitalization Comments); McCarthy Radio Enterprises, Inc. Comments, MB Docket No. 13-249, at 18-24 (Mar. 21, 2016); Multicultural Media, Telecom and Internet Council Comments, MB Docket No. 13-249, at 5 (Mar. 21, 2016); National Association of Broadcasters Comments, MB Docket No. 13-249, at 7-13 (Mar. 21, 2016) (NAB AM Revitalization Comments); Robert Bittner Comments, MB Docket No. 13-249, at 4 (Mar. 21, 2016); Starboard Media Foundation, Inc. Comments, MB Docket No. 13-249, at 1-4 (Mar. 10, 2016).

¹⁷ NAB AM Revitalization Comments at 10.

¹⁸ Blount Masscom AM Revitalization Comments at 2.

¹⁹ *AM Revitalization NOI*, 30 FCC Rcd at 12180, para. 88.

²⁰ *Id.*

recognized, however, that online public file requirements may impact its analysis.²¹ At that time, the Commission had adopted online public file requirements only for television broadcast licensees, but, as noted above, it subsequently adopted such requirements for broadcast radio licensees and other entities.²²

III. DISCUSSION

6. We propose to eliminate our rule requiring each AM, FM, and television broadcast station to maintain a local main studio.²³ We also propose to eliminate the associated staffing and program origination capability requirements that apply to main studios described above.²⁴ 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.

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

8. 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? 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."²⁵ We seek comment on whether the current main studio rules and related requirements are necessary to implement section 307(b) of the Act. Relatedly, we ask commenters to describe any remaining benefits of the main studio requirements and the associated staffing requirements.

²¹ *Id.* at 12181, para. 88 (asking whether "any relaxation of main studio or staffing rules [should] be linked to a station's posting of its public file to the Commission's online database").

²² See *Television Online Public File Order*, 27 FCC Rcd 4535; *Expanded Online Public File Order*, 31 FCC Rcd 526.

²³ 47 CFR § 73.1125(a)-(d). 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.

²⁴ See *supra* para 4.

²⁵ 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. See 47 CFR §§ 73.3526(e)(11)(i), 73.3526(e)(12), 73.3527(e)(8), 73.24(i), 73.315, 73.625.

9. Although the Commission eliminated its program origination requirement in 1987,²⁶ 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.”²⁷ 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?

10. 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.”²⁸ 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.²⁹ 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? In the alternative, is such a requirement unnecessary so long as station staff regularly retrieves and responds promptly to voicemail messages from the public left at that telephone number? Or, should we 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.

11. 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.³⁰ 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.³¹ 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

²⁶ *1987 Main Studio and Program Origination Order*, 2 FCC Rcd at 3218-19, paras. 39-43.

²⁷ *1998 Main Studio and Program Origination Reconsideration Order*, 3 FCC Rcd at 5026, para. 24.

²⁸ 47 CFR § 73.1125(e).

²⁹ *See id.* §§ 73.3526(b)(2)(ii), 73.3527(b)(2)(iii).

³⁰ In the *Expanded Online Public File Order*, the Commission adopted a process by which an entity may seek a waiver of the online public file requirements if the entity believes that transitioning to the online file will impose an undue hardship. *Expanded Online Public File Order*, 31 FCC Rcd at 544, para. 44.

³¹ 47 CFR §§ 73.3526(b)(3)(i)-(iii) (requiring commercial stations either to retain previously existing political file material at the station until the end of the two-year retention period, or to opt instead to place that existing political file material in the online public inspection file), 73.3527(b)(2)(i)-(ii) (imposing the same requirement on NCE stations).

another location in the community of license, such as a local library or another station's main studio?³² 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?³³ Would it be reasonable to permit a station to eliminate its local main studio if it 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?³⁴ We seek comment on the pros and cons of these various approaches.

12. 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.³⁵ 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?³⁶ For example, Class A stations are required to broadcast an average of at least three hours per week of "locally produced programming" each quarter.³⁷ 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."³⁸ 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

³² 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.")

³³ 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 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.

³⁴ *See supra* n.31.

³⁵ 47 CFR §§ 73.3538(b)(2) ("Relocation of a main studio outside the principal community contour may require the filing and approval of a letter request for authority to make this change prior to implementation."), 73.1690(c)(8)(ii) (stating that both commercial and NCE FM stations must comply with the main studio rule), 73.1690(d)(1) (change in studio location within the principal community contour may be made without FCC authorization, but informal notification of the change must be made in accordance with the main studio rule). Proposed conforming revisions to the remainder of sections 73.3538(b), 73.1690(c)(8), and 73.1690(d) are set forth in Appendix A. 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. *See Amendment of Parts 73 and 74 of the Commission's Rules to Permit Unattended Operation of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements*, Report and Order, 10 FCC Rcd 11479, App. A (1995).

³⁶ *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).

³⁷ *Id.* § 73.6001(b)(2).

³⁸ *Id.* § 73.6000.

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?³⁹ Is there some other relevant requirement we can substitute, to the extent necessary to meet our statutory requirements for Class A stations?

13. 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?⁴⁰

14. 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.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁴¹ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this NPRM. The IRFA is set forth in Appendix B.

B. Initial Paperwork Reduction Act Analysis

16. 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, Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 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.”

³⁹ *See Establishment of a Class A Television Service*, Report and Order, 15 FCC Rcd 6355, 6366, para. 25 (2000), *on reconsideration*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8256, para. 31 (2001) (grandfathering the location of a Class A station’s main studio, if any, as of November 28, 1999).

⁴⁰ 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. *See, e.g., Nexstar Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 3528, 3534 (MB, Mar. 3, 2008) (“With respect to personnel, the [shared services agreement (SSA)] provides that Mission will employ a general manager and business manager for Station KFTA-TV, and that these managerial employees will report solely to Mission. The SSA thus complies with the minimum staffing requirements of the main studio rule.”).

⁴¹ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

C. Ex Parte Rules

17. Permit-But-Disclose. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴² 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.

D. Filing Requirements

18. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

⁴² 47 CFR §§ 1.1200 *et seq.*

19. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

20. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

E. Additional Information

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

V. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in 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), this Notice of Proposed Rulemaking **IS ADOPTED**.

23. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
Proposed Rules

The Federal Communications Commission proposes to amend 47 CFR part 73 to read 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. Revise § 73.1690 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. Revise § 73.3538 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 17, or is not appropriate for other reasons.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this 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 this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the 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.⁴ 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.⁵ 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 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.⁶ Television broadcasters completed their transition to the online public file in 2014, and radio broadcasters will complete their transition by March 1, 2018.⁷ Given these changes, in this proceeding we tentatively find that the main studio rule is now

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ 47 CFR § 73.1125(a)-(d).

⁵ See, e.g., *Applications of the Tribune Company, Tampa, Florida, et al.*, 19 FCC 100, 148 (1954) (“The accessibility of the broadcast station's main studio may well determine in large part the extent to which the station (a) can participate and be an integral part of community activities, and (b) can enable members of the public to participate in live programs and present complaints or suggestions to the stations”).

⁶ See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) (*Television Online Public File Order*); *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) (*Expanded Online Public File Order*).

⁷ 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. See *Expanded Online Public File Order*, 31 FCC Rcd at 528,

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.⁸

B. Legal Basis

3. 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).

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹¹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹² Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. *Television Broadcasting.* This economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”¹³ The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.¹⁴ The 2012 U.S. Census indicates that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less.¹⁵ Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

6. Apart from the U.S. Census, the Commission has estimated the number of licensed

para. 3; *Effective Date Announced for Expanded Online Public Inspection File Database*, Public Notice, 31 FCC Rcd 4699 (rel. May 12, 2016).

⁸ 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.

⁹ 5 U.S.C. § 603(b)(3).

¹⁰ *Id.* § 601(6).

¹¹ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹² 15 U.S.C. § 632.

¹³ U.S. Census Bureau, 2012 NAICS Definitions, “515120 Television Broadcasting,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁴ 13 CFR § 121.201; 2012 NAICS code 515120.

¹⁵ U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 (515120)*, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodTtype=table.

(continued....)

commercial television stations to be 1,387 stations.¹⁶ Of this total, 1,221 stations (or about 88 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed Class A television stations to be 417.¹⁷ Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition. Based on these data, we estimate that the majority of television broadcast stations are small entities.

7. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations¹⁸ must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the revenue threshold noted above, our estimate of the number of small entities affected is likely overstated. In addition, we note that one element of the definition of “small business” is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, our estimate of small television stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

8. *Radio Broadcasting.* The SBA defines a radio broadcast station as a small business if such station has no more than \$38.5 million in annual receipts.¹⁹ Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.”²⁰ Census data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than \$25 million per year.²¹ According to review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of November 26, 2013, about 11,331 (or about 99.9 percent) of the then number of commercial radio stations (11,341) have revenues of \$35.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial radio stations to be 11,408.²² We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.²³ This estimate, therefore, likely overstates the number of small entities that might be affected, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

9. As noted above, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently

¹⁶ See *Broadcast Station Totals as of September 30, 2016*, Press Release (MB rel. Oct. 19, 2016) (“*Broadcast Station Totals*”), available at <https://www.fcc.gov/media/broadcast-station-totals>.

¹⁷ *Id.*

¹⁸ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

¹⁹ 13 CFR § 121.201, 2012 NAICS code 515112.

²⁰ U.S. Census Bureau, *2012 NAICS Definitions: 515112 Radio Broadcasting*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2012>.

²¹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

²² See *Broadcast Station Totals*, supra.

²³ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both.” 13 CFR § 121.103(a)(1).

owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

10. The NPRM proposes to eliminate the rule requiring each AM, FM, and television broadcast station to maintain a local main studio. It also proposes to eliminate the associated staffing and program origination capability requirements that apply to main studios. The NPRM tentatively concludes 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.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”²⁴

12. As an initial matter, we note that the proposed elimination of the existing requirements pertaining to the location of the main studio of each AM, FM, and television broadcast station, as well as the elimination of associated requirements, will eliminate requirements that may be outdated and unnecessarily burdensome on broadcast stations, including small stations. The proposal thus will lessen the cost of complying with the Commission’s rules on broadcast stations, including small stations. The NPRM specifically seeks comment on the costs that AM, FM, and television broadcast stations face in complying with the current main studio rule and associated requirements, including the significance of the costs, particularly for small stations.

13. At this time, the Commission believes that the best way to minimize the burdens of compliance with the main studio rule is to eliminate the rule and the associated requirements. The NPRM proposes to retain the language currently found in section 73.1125(e) of the Commission’s 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.” The Commission is considering whether a requirement that the telephone number 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. Declining to require the telephone number to be staffed during normal business hours could further lessen burdens on all broadcast stations, including small stations. The NPRM raises the possibility that 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. This alternative approach could enable the Commission to retain the main studio rule while still easing the burdens of compliance on small broadcasters. The NPRM also considers 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. Such an approach would reduce burdens associated with the main studio rule only on those stations that have fully transitioned to the online public file. The Commission invites comment on alternative ways it can reduce

²⁴ 5 U.S.C. § 603(c)(1)-(c)(4).

main studio-related burdens on broadcast stations, including small stations.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

14. None.