

## The Main Studio Rules

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While it's been nearly twenty years since the FCC laid out the policies for staffing a station's main studio, the rules are still confusing to many broadcasters. That is understandable, given that the details of the rules have changed, often in small ways, several times over the years since they were first adopted. Main studio location and staffing was also a major issue in last year's ill-fated FCC rulemaking on localism, and may well rise like a phoenix as localism is scrutinized again by the Obama administration. It may also become increasingly relevant as stations pare back on staff to cope with the recession. Here's a straightforward, although somewhat simplified, explanation of the rule at this juncture.

A threshold consideration is the location of each station's main studio. Revisions of the multiple ownership rules and cluster station management practices have led to multi-station studio consolidation. This presents a special issue in many of the smaller markets, now composed of clustered stations licensed to multiple communities. Operating the cluster under one roof may enable the broadcaster to realize the economies of scale required in today's business environment, but it may place the primary studio location for some of them beyond the limits of their community of license, where main studios once were required to be located. The rule now permits this so long as a station's main studio is located either within 25 miles from its community of license reference coordinates, or within the principal community contour of any station, of any broadcast service, licensed to the same community. Each AM, FM, TV and Class A TV broadcast station must maintain a local telephone number in its community of license or a toll-free number.

The foregoing deals only with location. There is another important issue regarding staffing. Each co-owned station must staff a "main studio" even if they are co-located. A licensee of a remotely-operated station must also staff a main studio unless the station is licensed as a satellite. The staffing standard dates back to a 1991 case, *Jones Eastern of the Outer Banks, Inc.*, where a station located its primary studio outside the permitted area, and maintained that it had another stripped down "main" studio, with no full-time employees, inside the city limits. The FCC staff disagreed and held that a "main studio" must be staffed by two full-time employees, one of whom must be supervisory (or managerial). On reconsideration, the Commission provided some additional guidance to clarify what will satisfy this requirement.

For example, it stated that the following categories of positions will constitute a "meaningful managerial presence" at a main studio: president or other corporate officer, general manager, station manager, program director, sales manager, chief engineer with managerial duties, news director, personnel manager, facilities manager, operations manager, production manager, promotion director, research director, controller and chief accountant. Emphasis is on job duties rather than mere titles, so someone who primarily performs any of these duties should qualify as the supervisory employee even without the title. Of course, merely bestowing the title without the responsibility will not suffice.

Even with that staffing met, another concern is how much time the employees must remain at the main studio. Because some of these positions may require the persons occupying them to conduct significant business outside the office, the FCC also held it will not require them to be "chained to their desks" during all business hours. However, the management person must report to work at the main studio on a daily basis and spend a substantial amount of time there, using the main studio as a "home base."

The Commission also will allow non-managerial main studio staff to take on responsibilities for another business outside the studio so long as the main studio is attended by some station employee during all normal business hours. It has been suggested that the other business interest may even be related to a time broker or an LMA programmer, for example by selling time for the LMA company while also working for the Licensee as a main studio employee, and this is a formula increasingly found in LMA arrangements. While this is a possibility, such an arrangement should be reserved for situations where the parties agree to maintain adequate records to detail the actual time and duties devoted to each function and where the staffer's dual loyalty will not give rise to a conflict of interest – often easier said than done.

Although the managerial person may not be a shared employee, FCC staff has provided some interesting and useful guidance. It will look more to the licensee maintaining full-time "positions" rather than full time "persons." Thus, the same person need not necessarily fulfill the job 40 hours a week. For example, if the full time managerial staff is the Chief Engineer, the requirement might be met by having Engineer A serve as Chief Engineer on Monday Tuesday and Wednesday while Engineer B serves on Thursday and Friday. Caution is particularly necessary here. It is important that, each "person" fulfilling the "position" perform all of the functions, including the management responsibilities, required of the position and that a paper record be kept of that performance. In one case the Commission held that the managerial person or position must be authorized to make typical managerial decisions such as those pertaining to facilities, equipment, programming, sales or emergency procedures and absent such a showing it could not confirm that the person in question had a significant management presence at the studio.

A third consideration is what facilities a studio has to contain to be considered the "main" studio. In 1987 the Commission eliminated the former rule requiring a broadcast station to originate a majority of its non-network programming from its main studio. However, a year later, it clarified that a station must nevertheless equip the main studio with production and transmission facilities that meet applicable standards and that will allow production of local programs at the studio. With today's technology, that is not a very difficult standard to satisfy.

There are special rules relating to Class A television stations, AM boosters.

Conclusion: Since the interplay of these factors can be complex, consult your lawyer before, not after, making a non-traditional main studio arrangement.