



Federal Communications Commission
Washington, D.C. 20554

January 28, 2013

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Re: Request for Waiver of Main Studio Rule
KUPK, Garden City, Kansas
Facility ID No. 65535

Dear Counsel:

We write in response to your August 24, 2012 request for a waiver of Section 73.1125(a)¹ of the Commission's rules, the main studio rule, on behalf of Gray MidAmerica TV Licensee Corp., licensee of KUPK-TV ("KUPK"). For the reasons discussed below, we grant your request pursuant to the Commission's authority under Section 73.1125(d)(2).

The main studio rule is rooted in Section 307(b) of the Communications Act of 1934, as amended (the "Act"), which mandates 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."² In carrying out this mandate, the Commission has established a model for distributing broadcast service in which every television station is assigned to a community of license with a primary obligation to serve that community.³ A central component of this scheme requires a station's main studio to be reasonably accessible to its community of license.⁴ Accordingly, Section 307(b) of the Act creates a "bedrock obligation" of each broadcast licensee to serve the needs and interests of the community.⁵

¹ 47 C.F.R. § 73.1125(a).

² 47 U.S.C. § 307 (b).

³ See *Review of the Commission's Rules Regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15692 (1998), *recon. granted in part*, 14 FCC Rcd 11113 (1999).

⁴ *Id.*

⁵ *Id.* at 15693.

The main studio rule requires each television broadcast station to maintain a local studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any . . . broadcast station licensed to the station's community of license; or within twenty-five miles from the reference coordinates of the center of its community license. . . ."⁶ A licensee must acquire written authorization to move and maintain a main studio outside of these locations.⁷

In responding to such waiver requests, the Commission has considered a number of factors, including but not limited to: (i) the size of the market in which the television station is located; (ii) the economic viability of operating a main studio within the community where the license is held, a factor which evaluates both economic data concerning the community and its surrounding towns and whether a main studio has successfully operated in the community in the past; (iii) whether other television stations are based in the community and whether granting a waiver would put those other stations at a competitive disadvantage; and (iv) the accessibility of the planned new studio location to the licensee community.⁸ The Commission has cautioned that a waiver request "based solely on the economic benefit to the licensee" will be denied.⁹

Licensee Gray MidAmerica TV Licensee Corp. ("Gray") reports that KUPK is located in the Wichita-Hutchinson, Kansas Nielsen DMA, which is approximately three hundred miles long and two hundred miles wide. The DMA has declined in ranking from the No. 59 DMA in 1990 to the No. 68 DMA in 2011.¹⁰ Gray further reports that KUPK has struggled to generate sufficient revenue from establishments within its service area to offset the station's operating costs. Moreover, Garden City's population has declined 6.3 percent since 2000 and its average annual per capita income from 2006 through 2010 was 23 percent below the state average. Gray reports that a waiver is "essential to Gray's ability to continue operating this station for the benefit of the few over-the-air households in the rural Garden City area."¹¹

Gray states that it will continue to maintain its presence in the Garden City community should the waiver win approval. Gray reports that it will establish an auxiliary news bureau in the Garden City area, assign a full-time reporter to cover stories of interest to local residents, continue its long-time sponsorship of annual community events, and maintain a toll-free telephone number in the studio and a website through which Garden City residents may obtain programming and other information. Gray

⁶ 47 C.F.R. § 73.1125(a)(1)-(3)

⁷ 47 C.F.R. § 73.1125(d)(2).

⁸ See, e.g., *WFRV and WJMN Television Station, Inc.*, Letter, 26 FCC Rcd. 9236 (Vid. Div. 2011); *LMC BET Holdings, LLC*, Letter, 22 FCC Rcd. 6794 (Vid. Div. 2007); *Mark III Media, Inc.*, 21 FCC Rcd. 6255 (Vid. Div. 2006); *Living Faith Ministries, Inc.*, Letter, 21 FCC Rcd. 5046 (Vid. Div. 2006).

⁹ *Max Radio of the Carolinas, LLC*, Letter, 21 FCC Rcd 8668, 8670 (Aud. Div. 2006).

¹⁰ Gray Television Licensee Request for Waiver of Main Studio Rule ("Waiver Request Letter") at 1-2 (Aug. 24, 2012).

¹¹ *Id.* at 2.

further notes that the main studio location in Wichita would be accessible to Garden City residents via major highways such as US-400.¹²

Commission records show that two stations are licensed to Garden City: KUPK, and KSNG (Fac. Id. No. 72361).¹³ The Commission has granted authority for television stations in the DMA to share a main studio with their parent station on two previous occasions, in 2003 and 2007.¹⁴

We conclude that the facts presented justify a waiver in this case.¹⁵ First, Gray has made an adequate showing that the Wichita-Hutchinson DMA has declined in the rankings from No. 59 to No. 68 over the past two decades. Second, Gray has shown that the declines in the population and per capita income of Garden City and its surrounding communities make the maintenance of a main studio in the community less viable. Third, based on our concurrent actions today, neither television station in the community will maintain a main studio and neither station will be placed at a competitive disadvantage. Fourth, and finally, Gray reports that it will continue to maintain its presence in the Garden City community and maintain a toll-free telephone number in the studio and a website through which residents may obtain programming and other information.¹⁶

We conclude, for the reasons above, that a waiver would serve the public interest. ACCORDINGLY, the request for a waiver of Section 73.1125 of the Commission's Rules for station KUPK, Garden City, Kansas, **IS GRANTED**.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹² *Id.* at 3-4.

¹³ In a separate decision released today, KSNG requested and was granted a permanent waiver from the main studio rule.

¹⁴ *Clear Channel Broadcasting Licenses, Inc.*, 22 FCC Rcd 21196 ¶¶ 26-28 (Vid. Div. 2007) (granting waiver allowing KAAS-TV to utilize KSAS-TV as its main studio); File No. BPCT-20030430ACM (Vid. Div. 2003) (granting main studio waiver request for KLBV to utilize the main studio of KAKE).

¹⁵ 22 FCC Rcd at ¶¶ 26-28 (granting waiver in same DMA upon similar showing).

¹⁶ 26 FCC Rcd. at 9237 (finding similar showing sufficient to justify continuing waiver).