

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

In the Matter of)	
)	
Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Stations)	MB Docket No. 19-310
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ hereby comments on the above-captioned Notice of Proposed Rulemaking, in which the Commission seeks comment on whether to modify or eliminate the radio duplication rule.² Under this rule, radio stations may not devote more than 25 percent of their average broadcast week to programming duplicated on a commonly-owned, same service station, if the principal community contours of the stations substantially overlap.³ NAB submits that the radio duplication rule is no longer necessary to promote the goals for which it was originally intended.

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² *Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Stations; Modernization of Media Regulation Initiative*; MB Docket Nos. 19-310 and 17-105, Notice of Proposed Rulemaking (rel. Nov. 25, 2019) (Notice); 47 C.F.R. § 73.3556.

³ The rule applies to stations where the overlap constitutes more than 50 percent of the total principal community contour service area of either station. *Id.*

I. The Radio Duplication Rule has Outlived its Usefulness

NAB applauds the Commission's continued efforts to modernize its media regulations. Like the main studio rule,⁴ the EEO Mid-Term Report⁵ and others,⁶ the radio duplication rule is ripe for elimination as an outdated, unnecessary limit on broadcasters' ability to serve their audiences. The rule was adopted more than 50 years ago (and later amended in 1986 and 1992) to promote three goals: competition; programming diversity; and spectrum efficiency.⁷

However, radio has undergone dramatic changes since the rule was last addressed in 1992. The number of radio stations grown from approximately 13,300 to over 23,600, and the FCC has authorized more than 2,000 new low power FM stations and thousands of translators that rebroadcast AM signals on the FM band.⁸ Changes in technology have altered the audio landscape, as more 170 million persons ages 12+ listen to online audio at least weekly.⁹ Streaming music services have exploded, with the number of listeners paying for music subscriptions nearly quintupling since 2015, and on-demand music streaming volume passing 900 billion streams in 2018.¹⁰ Today, more than 700,000 podcasts are available, and over 62 million people listen to podcasts on a weekly basis.¹¹ Satellite radio has also

⁴ *Elimination of Main Studio Rule*, Report and Order, MB Docket No. 17-106, 32 FCC Rcd 8158 (2017).

⁵ *Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(f)(2), Modernization of Media Regulation Initiative*, Report and Order, 34 FCC Rcd 668 (2019)

⁶ *Amendment of Parts 0, 1, 5, 73, and 74 of the Commission's Rules Regarding Posting of Station Licenses and Related Information, Modernization of Media Regulation Initiative*, Report and Order, 33 FCC Rcd 4757 (2018).

⁷ Notice at ¶¶ 2-4. The rule was initially intended to foster the growth of FM service. *Amendment of Part 73 of the Commission's Rules Regarding AM Station Assignment Standards and the Relationship Between the AM and FM Broadcast Services*, Report and Order, 45 FCC 1515 (1964).

⁸ Notice at ¶¶ 6 and 8.

⁹ Comments of the National Association of Broadcasters, MB Docket Nos. 17-289 and 18-349 (NAB Ownership Comments), at 8-9.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 12.

grown, from fewer than 600,000 subscribers in 2003 to over 34 million today.¹² Non-audio services also compete fiercely for listeners' attention, including television and cable programming, rapidly increasing offerings from over-the-top services, social media and a host of other platforms.¹³

Given these developments, radio duplication rule is no longer needed to promote competition, programming diversity or spectrum efficiency. Radio stations today compete against a vastly expanded universe of services and outlets, all providing an unlimited volume of news, information and entertainment. Listeners have boundless options for alternative audio sources and diverse content. The Commission also notes that radio spectrum is fully utilized.¹⁴

Accordingly, market forces already incentivize radio broadcasters to provide interesting, distinct content, especially community-responsive programming. In addition, the scarcity and the overwhelming demand for spectrum push broadcasters to use their frequencies as efficiently as possible. Even without the radio duplication rules, broadcasters will continue to operate their stations to attract as many listeners as possible, leading to higher quality and diverse programming. As the Commission found when it eliminated the radio duplication rule for cross-service AM-FM combinations in 1986, market forces "can be expected to lead licensees to provide [diverse] programming to reach the maximum number of listeners. By doing so, stations would tend to increase both their revenues and profits."¹⁵

The same logic holds for eliminating the rule for same-service stations. Given all the choices available to listeners, the audio marketplace is already substantially fragmented.

¹² *Id.* at 11.

¹³ *Id.* at 44-48.

¹⁴ Notice at ¶ 10.

¹⁵ *Amendment of Section 73.242 of the Commission's Rules and Regulations in Regard to AM-FM Program Duplication*, Report and Order, 103 FCC 2d 922, 926 (1986) (1986 Order).

Radio companies have no incentive to further limit their appeal by simulcasting the same programming on multiple stations. Broadcasters understand that airing diverse content on commonly owned stations is the best way to reach the widest audience possible and maximize revenues. Numerous studies, including those commissioned by the FCC, support this reasoning and demonstrate that programming diversity is increased by the presence of commonly owned stations in a market.¹⁶

II. Eliminating the Radio Duplication Rule Would Enhance Broadcasters' Flexibility to Operate Efficiently and Economically

If anything, the radio duplication rule may artificially constrain broadcasters' flexibility to respond to economic and technical developments. Regarding AM radio, for example, elimination of the rule will advance the Commission's goal of providing broadcasters with tools to revitalize AM service. As the FCC is aware, AM stations have suffered from a decline in listenership and revenues that have made it difficult to compete with the increasing number of competitors for listeners' attention.¹⁷ Unlike its non-broadcast competitors, however, AM stations are constrained in their ability to implement strategies – such as simulcasting programming on commonly-owned same-market stations – that could reduce operating costs and improve their ability to attract listeners and advertisers. Elimination of the radio duplication rule would create flexibility for struggling AM stations to experiment with various ways of serving listeners in their markets while they determine the most effective and efficient means of operating an AM station in today's marketplace, such as streamlining operations, co-locating sites, consolidating back-end systems and other options.

¹⁶ FCC, 2007 Ownership Study No. 5, Tasneem Chipty, CRA International, Inc., *Station Ownership and Programming in Radio*, at 44-45 (June 24, 2007); see also NAB Comments, MB Docket No. 09-182, at 87-88 (July 12, 2010).

¹⁷ *Revitalization of the AM Radio Service*, Notice of Proposed Rulemaking, 28 FCC Rcd 15221 (2013).

As the Commission stated when eliminating the rule for cross-service operations, where separate programming is not economically feasible, duplication of AM service is preferable to a struggling station reducing programming or going off the air entirely to comply with the rule.¹⁸ Simulcasting under these circumstances serves the public interest because it would enable broadcasters to build and maintain a robust audience across the market while evaluating how best to not only survive, but thrive, in the future. The same reasoning would also support eliminating the rule for FM stations that may require additional flexibility to respond to economic or technical developments.

We also note that the FCC has started a proceeding to allow AM broadcasters to transition to an all-digital signal because such a voluntary transition would benefit both listeners and broadcasters.¹⁹ Eliminating the radio duplication rule could also facilitate this effort by allowing a broadcaster to simulcast a new all-digital AM station on a commonly-owned analog AM station in order to increase public awareness of the digital signal.

In the same vein, for both AM and FM, eliminating the duplication rule would also assist broadcasters seeking to transition the programming format of one station to another. Stations often want to simulcast programming on both stations for a temporary period to facilitate the format change. However, under the current rule, broadcasters must incur the expense of seeking a waiver and wait for the FCC to devote its limited resources to processing the request. As a result, broadcasters sometimes decide against seeking a waiver, especially since they typically need permission to simulcast for only a limited period of time in such situations. Eliminating the rule would be a more efficient approach for such timely, temporary cases.

¹⁸ 1986 Order, 103 FCC 2d at 925-27.

¹⁹ *All-Digital AM Broadcasting, Revitalization of the AM Radio Service*, Notice of Proposed Rulemaking, MB Docket Nos. 19-311 and 13-249 (rel. Nov. 25, 2019).

Additionally, the rule applies to radio stations where the overlap constitutes more than 50 percent of the total principal community contour service area of either station.²⁰ However, NAB understands that while sometimes the predicted contours of stations illustrate a certain overlap, in reality such an overlap does not exist due to hills, mountains and other terrain conditions. Thus, some stations that should be eligible to simulcast some programming are denied. Eliminating the radio duplication rule would resolve such situations and increase broadcasters' flexibility to respond to technical and market conditions.

Finally, although not raised in the Notice, we note that Section 74.1232(b) of the rules imposes a similar limit on a broadcaster's ability to hold translator authorizations in the same area.²¹ Under this rule, broadcasters must submit a showing of "technical need" for an additional translator serving substantially the same area as the first, such as a description of any relevant terrain obstructions possibly including a shadowing study.²² Although the FCC has recognized that parties rarely need multiple translators,²³ situations occasionally arise where denying simulcasted translators may not be suboptimal, such as in very large markets or mountainous areas. To facilitate more efficient operations in such cases, NAB respectfully requests that the Commission consider modernizing the translator duplication rule for the same reasons described above for the radio duplication rule.

²⁰ 47 C.F.R. § 73.3556.

²¹ *Id.* at § 74.1232(b)

²² *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7222 (1990).

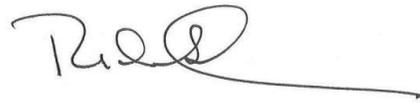
²³ *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3392 (2012).

III. Conclusion

For the reasons stated above, the Commission should eliminate the radio duplication rule as an outdated, unnecessary constraint on broadcast operations.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right.

Rick Kaplan
Larry Walke

January 22, 2020