

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS,
CONCURRING IN PART, DISSENTING IN PART**

Re: *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.

At the risk of sounding like a broken record, it feels necessary to start by saying true regulatory “modernization” means more than just getting rid of rules. We should not make these decisions while leaving basic statutory and regulatory obligations unmet, such as our mandate to serve the public interest by promoting localism and diversity in broadcasting. In opening this inquiry last year, we sought to determine whether the radio programming duplication rule “remains necessary to serve the public interest goals of competition, programming diversity, and spectrum efficiency that it was originally intended to foster.”¹ This decision relegates that inquiry to an afterthought.

Three weeks ago, the Chairman presented for our vote an item that granted relief only to AM broadcasters, allowing them greater flexibility to duplicate programming given “the unique technical and economic challenges that AM broadcasters currently confront, coupled with the desire to facilitate an AM digital broadcasting transition.”² That decision had support in the record, with a majority of commenters expressing agreement with at least some relaxation of the rule for AM broadcasters.³ Only one party advocated in favor of relaxing the rule for FM stations, which explains why the earlier draft concluded that the record did not support eliminating the rule as applied to FM stations. The majority now finds “that the benefits of eliminating the rule for FM licensees outweigh any potential negative impacts on public interest objectives of competition, program diversity, and spectrum efficiency for which the radio duplication rule was originally adopted.”⁴ Unfortunately, the majority doesn’t explain the dramatic change of heart, nor does it explain how the benefits to FM broadcasters outweigh the public interest in protecting truly local broadcast programming and local audiences from the potential harms caused by unfettered duplicate programming.

Instead, the majority attempts to justify expanding relief to FM broadcasters by citing to the COVID-19 national emergency and the need for increased flexibility to react nimbly to local needs in this time of crisis. It fails to mention, however, that the current rule allows some duplication of up to 25 percent of average weekly programming to accommodate such needs.⁵ Moreover, if the need to broadcast COVID-19-related or other emergency information requires additional programming duplication, FM licensees can seek a waiver. The majority’s finding that “the existing waiver process is not an efficient means of granting regulatory relief in this context” might be more persuasive if the record contained

¹ *Amendment of Section 73.3556 of the Commission’s Rules Regarding Duplication of Programming on Commonly Owned Radio Stations*, MB Docket Nos. 19-310, 17-105, Notice of Proposed Rulemaking, 35 FCC Rcd 11544, 11544, para. 1 (2019).

² *Report and Order*, para. 8.

³ See Comments of REC Networks at 3; Comments of Bryan Broadcasting Corporation (BBC) at 1; Reply Comments of Common Frequency, Inc. at 9 (“AM duplication, as proposed by BBC, should be assessed by the Commission on a per-case basis.”).

⁴ *Report and Order*, para. 8.

⁵ Indeed, upon adopting the radio duplication rule in 1992, the Commission “was persuaded that limited simulcasting, particularly where expensive, locally produced programming such as on-the-spot news coverage is involved, could economically benefit stations and does not so erode diversity or undercut efficient spectrum use as to warrant preclusion.” *Revision of Radio Rules and Policies*, MM Docket No. 91-140, 7 FCC Rcd 2755, 2784 para. 57 (1992).

actual evidence that the waiver process would be particularly burdensome here.⁶ Also absent from the record is any evidence that FM licensees have found the existing 25 percent duplication allowance to be insufficient for responding to emergencies, particularly given their claim that they have no incentive to simulcast the same programming on multiple stations for long periods of time.

The earlier version also recognized that retaining the radio duplication rule for FM service would “encourage the diversification of programming on commonly owned FM stations” and discourage spectrum warehousing, consistent with the stated goals of the rule. That is as true today as it was three weeks ago, but that language is gone as well. I have concerns that today’s decision will undoubtedly make it easier and more cost-effective for large station groups to hoard local stations without any obligation to provide significant programming that meets local community needs. Moreover, I fear it will reward ownership consolidation, and thus will likely exacerbate an already huge disparity in the number of media outlets owned and controlled by people of color and women, which often translates to a lack of locally relevant and diverse programming that addresses local needs and interests.

I concur with the decision to grant relief for AM broadcasters because there is a reasonable basis for relaxing the rule to help AM licensees overcome the technical shortcomings of AM service, to deal with the financial hardship brought about by a steady and significant loss of audience, and to facilitate the transition to digital AM broadcasting. As to the remainder of the decision, I dissent.

⁶ *Report and Order*, para. 13.