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

REPORT AND ORDER

Adopted: August 6, 2020 **Released: August 7, 2020**

By the Commission: Chairman Pai and Commissioner Carr issuing separate statements; Commissioners Rosenworcel, and Starks concurring in part, dissenting in part and issuing separate statements.

I. INTRODUCTION

1. In this Report and Order (Order), we eliminate section 73.3556 of the Commission's rules (the radio duplication rule) to reflect technological and marketplace changes over the past three decades. As noted in the underlying Notice of Proposed Rulemaking (*NPRM*), there have been significant changes in the broadcast radio industry since the current version of this rule, which restricts the duplication of programming on commonly owned stations operating in the same geographic area, was adopted in 1992.[1] By today's Order, we eliminate the radio duplication rule for both AM and FM stations. This approach will strike an appropriate balance between fostering our public interest goals of promoting competition and diversity and affording broadcast radio licensees greater flexibility to address issues of local concern in a timely fashion, facilitate digital broadcasting by AM stations, and ultimately allow stations to improve service to their communities. Through this Order, we continue our efforts to modernize our rules and modify or eliminate outdated and unnecessary media regulations.[2]

II. BACKGROUND

2. The Commission's broadcast radio programming duplication rules have evolved over time consistent with changes in the broadcast radio market. The Commission first limited radio programming duplication by commonly owned stations serving the same local area in 1964 by prohibiting FM stations in cities with populations over 100,000 from duplicating the programming of a co-owned

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[1] *Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Stations*, MB Docket No. 19-310 et al., Notice of Proposed Rulemaking, 35 FCC Rcd 11544, 11544, para. 1 (2019) (*2019 Radio Duplication NPRM*). The current rule prohibits any commercial AM or FM radio station from devoting "more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any other station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours . . . of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station." 47 CFR § 73.3556. Principal community contours are defined as "predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations." *Id*. A time brokerage agreement generally involves the sale by one radio licensee of blocks of time to a broker who then supplies programming to fill that time and sells the commercial spot advertising to support it. *See 2019 Radio Duplication NPRM,* 35 FCC Rcd at 11544, para. 1, n.1.

[2] The Commission launched its media modernization efforts in 2017. *See Commission Launches Modernization of Media Regulation Initiative*, MB Docket No. 17-105, Public Notice, 32 FCC Rcd 4406 (2017).

AM station in the same local area for more than 50% of the FM station's broadcast day.[3] The Commission observed that it had never regarded program duplication as an efficient use of FM frequencies; instead, it had allowed program duplication as, "at best, . . . a temporary expedient to help establish the FM service."[4] Accordingly, the Commission envisioned "a 'gradual' process to end programming duplication once the number of applicants seeking licenses exceeded the number of vacant FM channels available in large cities."[5] At that time, the Commission sought to minimize the economic impact to radio broadcasters from limiting programming duplication.[6] In particular, the rule allowed for waivers upon a showing that programming duplication would be in the public interest. It further provided that compliance would be monitored through the license renewal process.[7]

3. In 1976, the Commission tightened the radio duplication restriction to limit FM stations to duplicating only 25% of the average program week of a co-owned AM station in the same local area if either the AM or FM station operated in a community with a population of over 25,000.[8] At that time, the Commission observed that "the public does not have to depend on non-duplication to add diversity" when new broadcasting frequencies remained available.[9] But given "the virtually complete absence of available [FM] channels as well as the strengthened economic position of FM" stations, the Commission adopted a tighter limit, finding that "the greatly diminished availability of FM channels in communities of any substantial size" could inhibit programming diversity. It also noted again "the inherent wastefulness of duplication," *i.e.*, that duplication of programming was an inefficient use of spectrum.[10]

4. In 1986, in response to a petition for rulemaking seeking to exempt late-night hours when determining compliance with the radio duplication rule, the Commission eliminated the cross-service radio duplication rule entirely. It found that FM service had developed sufficiently to eliminate the rule and that FM stations were fully competitive, obviating the need to foster the development of an independent FM service through a requirement for separate programming.[11] The Commission further found that the rule was no longer necessary to promote spectrum efficiency because market forces would lead stations to provide separate programming where economically feasible and, where separate programming was not economically feasible, duplication was preferable to a station's reducing

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[3] *2019 Radio Duplication NPRM*, 35 FCC Rcd at 11544-45, para. 2.

[4] *Amendment of Part 73 of the Commission's Rules Regarding AM Station Assignment Standards and the Relationship Between the AM and FM Broadcast Services*, Docket No. 15084, Report and Order, 45 FCC 1515, 1530, para. 36 (1964) (*1964 Radio Duplication Order*).

[5] *Id.* at 1532-33, paras. 41-42.

[6] *Id*. at 1532, paras. 41-42.

[7] *Id.* at 1533-34, 1537, para. 46, App. A.

[8] *AM-FM Program Duplication*, Docket No. 20016, Report and Order, 59 F.C.C.2d 147, 151, para. 9, App. A. (1976) (*AM-FM Program Duplication Order*). Based on its 12 years of experience observing the effects of the radio duplication rule, the Commission delayed implementation of the tightened 25% limit on smaller cities for approximately four years, establishing interim limits that prohibited FM stations from duplicating more than 25% of average broadcast week programming of a commonly owned AM station in communities over 100,000 and 50% of programming of a commonly owned AM station in communities over 25,000 but under 100,000. *Id.* at 153, paras. 12-13.

[9] *Id.* at 151, para. 9, App. A.

[10] *Id*. at 151, paras. 8-9. This change also made the city size criterion apply both to the size of the city of the AM station as well as the size of the city of the FM station, rather than considering the size of the city of the FM station alone, as the previous rule had.

[11] *See Amendment of Section 73.242 of the Commission's Rules and Regulations in Regard to AM-FM Program Duplication*, Report and Order, 103 F.C.C.2d 922, 924, paras. 5, 7; *see also id.* at 925, 930, paras. 9-10, App. B (1986) (*1986 Radio Duplication Order*).

programming or going off the air entirely in order to comply with the rule.[12] In reaching this conclusion, the Commission noted that duplication could save costs for many AM stations experiencing economic difficulties due to listeners switching to FM.[13]

5. In 1992, as part of a broad proceeding reviewing its national and local radio ownership rules, the Commission adopted a new radio duplication rule limiting the duplication of programming by commonly owned stations or stations commonly operated through a time brokerage agreement in the same service (AM or FM) with substantially overlapping signals to 25% of the average broadcast week.[14] In setting the limit on programming duplication at 25% of the total hours of a station's average weekly programming, the Commission sought to strike an appropriate balance between affording stations the ability to repurpose costly programming and continuing to foster competition, diversity, and spectrum efficiency in the local market. The Commission saw no public benefit from allowing commonly owned same-service stations in the same local market to duplicate programming more than 25%, observing that, "when a channel is licensed to a particular community, others are prevented from using that channel and six adjacent channels at varying distances of up to hundreds of kilometers. The limited amount of available spectrum could be used more efficiently by other parties to serve competition and diversity goals."[15] The Commission concluded, however, that some programming duplication had benefits, stating "we are 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."[16]

6. As part of its continuing commitment to modernizing its media regulations, the Commission issued the *NPRM* initiating this proceeding in November 2019, seeking comment on the radio duplication rule and whether it should be retained, modified, or eliminated.[17] As we noted in the *NPRM,* the broadcast industry has changed significantly since the Commission adopted the current radio programming duplication rule in 1992.[18] In particular, significant growth in the number of radio broadcasting outlets,[19] the advent of digital HD Radio, and the evolution of new and varied formats in which to disseminate programming (*i.e.*, digital satellite radio, streaming via station websites, and mobile applications[20]) have led to greater competition and programming diversity in radio broadcasting.[21]

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[12] *Id*. at 925, 926, 927, paras. 11, 13, 15.

[13] *Id*. at 927-928, paras. 16-17.

[14] *Revision of Radio Rules and Policies*, MM Docket No. 91-140, Report and Order, 7 FCC Rcd 2755, 2783, para. 57 (1992) (*1992 Radio Rules Order*); 47 CFR § 73.3556.

[15] *1992 Radio Rules Order,* 7 FCC Rcd at 2783, para. 57 (citing *Review of The Technical Assignment Criteria for the AM Broadcast Service*, MM Docket No. 87-267, Report and Order, 6 FCC Rcd 6273, 6329-30, para. 179 (1991)); *see id.* at 2788, para. 64 (explaining that the Commission also incorporated time brokerage agreements in the rule because it was concerned about the possibility that "widespread and substantial time brokerage arrangements among stations serving the same market, in concert with increased common ownership permitted by our revised local rules, could undermine our continuing interest in broadcast competition and diversity").

[16] *Id.* at 2798, para. 57.

[17] *See 2019 Radio Duplication NPRM*, 35 FCC Rcd at 11544, para. 1.

[18] *Id.* at 11546, para. 6.

[19] *Id.* at 11546, para. 6. In 1992, there were roughly 11,700 commercial AM and FM and FM translator stations; today, there are over 19,500. *See* FCC, Broadcast Station Totals, https://www.fcc.gov/document/broadcast-station-totals-june-30-2020 (last visited July 9, 2020); FCC, Broadcast Station Totals as of June 30, 2020, News Release (July 1, 2020), https://docs.fcc.gov/public/attachments/DOC-365271A1.pdf. There are also significantly more non-commercial/educational radio stations (4,192 versus 1,588 in 1992), as well as more than two thousand low power FM stations, all contributing to programming diversity. *Id.*

[20] *2019 Radio Duplication NPRM*, 35 FCC Rcd at 11546, para. 6 (citing *Communications Marketplace Report* et al., Report, GN Docket No. 18-231 et al., 33 FCC Rcd 12558, 12632, para. 143 (2018)).

Accordingly, we asked commenters to address several issues, including the impact of market forces on programming consolidation and the impact of the radio duplication rule on the Commission's public interest goals of localism and diversity, as well as on spectrum efficiency.[22] We also sought comment on whether the Commission's prior rationale for eliminating the cross-service duplication programming rule—that duplication is preferable to curtailing programming or going off the air entirely where separate programming is not economically feasible—applies equally to the same-service duplication rule.[23] We sought input on the benefits of allowing some level of programming duplication, as well as potential modifications to the rule.[24] In addition, we asked whether the rule should treat stations in the AM service and the FM service differently in light of the particular economic and technical challenges facing AM stations.[25] Finally, we asked commenters to discuss potential costs and benefits of modifying or eliminating the rule.[26]

7. Four parties filed comments in response to the *NPRM*[27] and two parties filed reply comments.[28] Though the number of commenters in the proceeding was small, commenters represent a cross-section of the broadcast industry and proffer a variety of arguments both supporting and opposing changing the rule.[29]

III. DISCUSSION

8. As discussed below, we eliminate section 73.3556 of our rules in order to provide radio broadcasters with increased flexibility in programming decisions.[30] We conclude that the costs of

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[21] *Id.* at 11546, para. 6.

[22] *Id.* at 11547-48, paras. 9-10.

[23] *Id.* at 11548, para. 11.

[24] *Id.* at 11548-49, paras. 12-13.

[25] *Id.* at 11549, para. 14

[26] *Id.* at 11549, para. 15.

[27] The parties that submitted comments were Bryan Broadcasting Corporation (BBC Comments) (supporting, at a minimum, elimination of the rule as pertains to AM stations when one station transitions to all-digital transmission and one remains operating in analog and taking no position on the rule as pertains to the FM service), Common Frequency, Inc. (CFI Comments) (opposing elimination of the rule as to both AM and FM stations), National Association of Broadcasters (NAB Comments) (supporting elimination of the rule as pertains to both AM and FM stations), and REC Networks (REC Comments) (supporting partial elimination of the rule as pertains to AM stations and opposing elimination of the rule as pertains to FM stations).

[28] The parties that submitted reply comments were Common Frequency, Inc. (CFI Reply) (opposing elimination of the radio duplication rule as to both AM and FM stations) and Kern Community Radio (Kern Reply) (opposing elimination of the radio duplication rules as to both AM and FM stations and offering several proposals for strengthening the rule).

[29] The *NPRM* also sought comment on whether the radio duplication rule could implicate the First Amendment to the U.S. Constitution. *2019 Radio Duplication NPRM*, 35 FCC Rcd at 11549, para. 12. However, no commenters addressed this issue.

[30] Because we eliminate the rule, we decline to adopt CFI's proposals to (1) extend the programming duplication signal coverage area for AM stations and (2) assess duplication in the AM service on a case-by-case basis. *See* CFI Comments at 17; CFI Reply at 9. We also decline to adopt (1) Kern's proposal that we extend the overlap areas of full-service stations; (2) REC's proposal that the Commission impose upon AM stations entering such duplication arrangements a requirement to surrender any cross-service FM translators after a certain time period; and (3) CFI's similar proposal to limit the number of FM translators licensed to a duplicated AM station or disallow use of FM translators by a duplicated AM station. *See* Kern Comments at 5-6; REC Comments at 3, 4; CFI Reply at 9 (acknowledging that "this should be mulled further"). The record does not support these proposals. In particular, commenters fail to explain why their proposals would be sufficient to alleviate industrywide pressures that make

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continued regulation of radio programming duplication exceed the benefits of regulation, which we believe is no longer necessary. We find that the unique technical and economic challenges that AM broadcasters currently confront, coupled with the desire to facilitate an AM digital broadcasting transition,[31] warrant eliminating the rule for AM licensees in order to provide them with greater flexibility.[32] Similarly, we find 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. For these reasons, we find that the current rule no longer strikes the right balance between affording stations the ability to repurpose programming and continuing to foster competition, diversity, and spectrum efficiency in the local market.

9. *AM Service.* We conclude that the radio duplication rule no longer serves the public interest as applied to commonly owned AM stations in light of current marketplace conditions. As we have noted in several recent proceedings, the AM broadcasting service faces persistent interference issues that have hampered the service and frustrated both consumers and licensees. In particular, the service has faced an increase in the level of environmental and man-made noise over time, which has increased the amount of interference in the band.[33] In addition, AM stations continue to be more difficult to operate and

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continued application of the rule overly burdensome. Additionally, having concluded that industrywide relief from non-duplication restrictions is warranted, we decline to require potentially struggling licensees to endure the administrative costs and burdens of seeking individual waivers that otherwise might be required were we to retain at least some radio duplication restrictions. Further, because we eliminate the rule for the FM service, we decline to adopt proposals to tighten or expand the radio duplication rule for the FM service, as requested by some commenters. *See* CFI Comments at 17 (proposing that we extend the programming duplication signal coverage area for FM stations); *supra* note 28 (citing Kern Comments at 5-6 (proposing expansion of the radio duplication rule, including extending the overlap areas of full-service stations)). As the commenters have provided only bare assertions as to these proposals, offering no specific evidence or analysis, we reject these suggestions that we expand the existing rule instead of eliminating it. We also decline to adopt proposals to expand the radio duplication rule to cover translators and NCE stations, as we find these proposals to be outside the scope of this proceeding. *See* REC Comments at 3-4; CFI Comments at 15-18. We similarly decline to address various other proposals, including NAB's request to modernize the translator duplication rule, because they are likewise outside the scope of this proceeding. *See* NAB Comments at 6; CFI Reply at 8 (recommending changes to the translator rule and that broadcasters should specify the origin of programming received by satellite); Kern Reply at 5-6 (raising various suggested changes beyond the scope of the *NPRM*).

[31] Currently, AM stations may operate in a "hybrid" mode, transmitting both an analog and a digital signal using In-Band On-Channel (IBOC) technology. IBOC refers to the method of transmitting a digital radio broadcast signal centered on the same frequency as the AM or FM station's present frequency. Like FM band transmissions using IBOC technology, AM band transmissions place the digital signal in sidebands above and below the existing AM carrier frequency. By this means, the digital signal is transmitted in addition to the existing analog signal. In both instances, the digital emissions fall within the spectral emission mask of the station's channel. The present IBOC system is referred to as a "hybrid" because it is neither fully analog nor fully digital. During hybrid operation, existing receivers continue to receive the analog (non-digital) signal, while newer receivers incorporate both modes of reception, automatically switching to receive either the analog or the digital signal. FCC, *Digital Radio*, https://www.fcc.gov/media/radio/digital-radio (last visited June 22, 2020). Recently, the Commission has proposed to permit AM stations to operate in all-digital mode, rather than requiring that they maintain an analog signal alongside the digital signal in hybrid operations. *See All-Digital AM Broadcasting* et al., MB Docket No. 19-311 et al., Notice of Proposed Rulemaking, 34 FCC Rcd 11560 (2019) (*All-Digital AM Broadcasting NPRM*). That rulemaking proceeding remains ongoing.

[32] *See, e.g.*, BBC Comments at 3-4 (supporting, at a minimum, elimination of the rule as pertains to AM stations when one station transitions to all-digital transmission and one remains operating in analog); NAB Comments at 4-5 (supporting elimination of the rule as pertains to AM stations); REC Comments at 3-4 (supporting relaxing the rule as to AM stations to permit two commonly owned AM stations to duplicate their programming as long as one of the AM stations is operating in analog or hybrid digital mode and the other station is operating in all-digital).

[33] *See generally Revitalization of the AM Service*, MB Docket No. 13-249, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd 12145 (2015).

more expensive to maintain than FM stations, requiring larger and more complex physical plants, which are increasingly under pressure in urban areas.[34]

10. Moreover, the AM service continues to contend with lower quality non-stereo audio and declining listenership.[35] The technical challenges that the AM service has long faced have been compounded in recent decades by the continued predominance of FM radio in the broadcast industry and the introduction of alternative sources of higher-quality audio signals. These technical challenges lead to economic challenges, as the interference issues and lower-quality audio endemic to analog AM radio may drive down listenership,[36] further reducing stations' ability to invest in order to meet these technical challenges. Additionally, the impact of the COVID-19 pandemic is exacerbating the economic challenges that many AM stations are already confronting.[37] We find that permitting the additional flexibility of simulcasting may be useful to AM stations that are financially struggling. As the Commission observed in addressing this issue in the past, "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."[38] Given these ongoing challenges, we conclude that the AM service would benefit from greater flexibility in making programming decisions and, in particular, from having the option to potentially repurpose costly programming on commonly owned stations.[39]

11. Additionally, although the foregoing reasons alone provide a sufficient basis to eliminate the radio duplication rule for AM stations, we also agree with the majority of commenters in this proceeding that eliminating the radio duplication rule could help to ease the AM service transition from analog to digital broadcasting, both for stations and their audiences.[40] That is, while our decision to eliminate the radio duplication rule for AM stations is not dependent on a Commission decision to permit AM stations to operate in all-digital mode rather than hybrid mode,[41] we note that, in the event that the Commission permits all-digital AM operations, eliminating the duplication rule would permit a broadcaster with two commonly owned AM stations to simulcast the same programming on both stations, one in analog and one in digital.[42] Digital radio holds significant promise for AM stations, enabling them to provide sound quality that is equivalent, or superior, to standard analog FM sound quality.[43] Digital AM radio also provides a clear, interference-free signal in contrast to AM analog radio, which is more susceptible to interference. Furthermore, experimentation in all-digital signals has shown potential

[34] *See generally id.*

[35] *Id.*

[36] *Id.* at 15222-23, paras. 4-6.

[37] *See, e.g.*, Paul McLane, "COVID-19 Operational Concerns for Radio," Radio World (Mar. 17, 2020), https://www.radioworld.com/news-and-business/coronavirus-operational-concerns (noting that Sun Broadcast Group was offering free programming "to any radio stations that need to fill airtime due to the recent pandemic").

[38] *1986 Radio Duplication Order*, 103 F.C.C.2d at 925-27; *see also* NAB Comments at 5.

[39] *See, e.g.*, NAB Comments at 4-5.

[40] *See supra* notes 27 and 28. As BBC observes, allowing AM broadcasters to operate in, and experiment with, all-digital transmissions, while retaining the ability to serve both analog and digital listeners would foster the conversion of the AM service to digital "without disenfranchising the listeners of a station who do not yet own a digital AM receiver." BBC Comments at 3. Similarly, NAB and REC assert that eliminating the radio duplication rule would increase public awareness of the all-digital mode. NAB Comments at 5; REC Comments at 3-4.

[41] As noted above, the Commission has proposed to permit AM stations to operate in all-digital mode, rather than being limited to hybrid operations. *See All-Digital AM Broadcasting NPRM*.

[42] We note that, should stations be permitted to make the digital transition, the technical capacity exists for them to transition from analog to hybrid to all-digital, rather than transitioning directly from analog to all-digital or simulcasting in hybrid and all-digital. *See supra* note 31.

[43] *Communications Marketplace Report*, 33 FCC Rcd at 12631, n.402.

promise in signal coverage robustness.[44] In addition, technological innovations in all-digital radio allow for "advanced consumer-friendly features, such as real-time data and information displays, that are not available via analog AM radio."[45] Thus, allowing simulcasting could attract new listeners with the higher audio quality made possible by digital operations without eliminating the ability of analog listeners to continue to access the station's programming should all-digital signals ultimately be permitted.[46] Furthermore, as NAB asserts, permitting such simulcasting would serve the public interest by enabling "broadcasters to build and maintain a robust audience across the market while evaluating how best to not only survive, but thrive, in the future."[47]

12. By eliminating the rule as applied to AM service, we would therefore eliminate a potential obstacle to a new technology that may serve to revitalize the AM industry.[48] Although IBOC hybrid operations offer some ability for AM stations to provide digital service, the IBOC technology has not been widely used by AM stations. As stations are now increasingly exploring the potential for switching from all-analog to all-digital operations, it is logical for the Commission to remove legacy rules that may serve as impediments to a possible all-digital transition. Accordingly, eliminating the radio duplication rule as to the AM service has the potential to drive adoption of this new technology, if eventually authorized by the Commission, by enabling co-owned stations to offer digital programming to the community while maintaining the programming in analog.

13. *FM Service.* We conclude that the record demonstrates that eliminating the radio duplication rule as applied to the FM service would serve the public interest. Although the FM service does not face precisely the same persistent technical and economic challenges as the AM service, we find that the record supports eliminating the rule for FM stations in order to provide greater flexibility to address issues of local concern in a timely fashion, particularly in times of crisis. Moreover, we find that the existing waiver process is not an efficient means of granting regulatory relief in this context.

14. The current COVID-19 national emergency[49] highlights the need to provide broadcasters increased flexibility to react nimbly to local needs, as circumstances have changed rapidly in different jurisdictions across the country since the beginning of the outbreak. Efforts to slow the spread of COVID-19 "have resulted in the dramatic disruption of many aspects of Americans' lives, including social distancing measures to prevent person-to-person transmission that have required the closure of

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[44] *All-Digital AM Broadcasting NPRM*, 34 FCC Rcd at 11564, para. 7.

[45] *Revitalization of the AM Service*, MB Docket No. 13-249, Notice of Proposed Rulemaking, 28 FCC Rcd 15221, 15222-23, para. 4 (2013). We note that even in hybrid operations AM stations are unable to provide the same features as hybrid FM stations. Specifically, while hybrid AM stations can broadcast song title and artist name information, they lack the data capacity to offer other features provided by hybrid FM stations, such as album art, artist images, traffic and weather updates, and advertisement images.

[46] BBC Comments at 5.

[47] NAB Comments at 5.

[48] *See, e.g.*, *All-Digital AM Broadcasting NPRM*, 34 FCC Rcd at 11564-65, para. 8 (citing comments from proponents of all-digital AM broadcasting asserting that "'the benefits of authorizing all-digital AM will be widespread for broadcasters and listeners alike'" and "'a voluntary transition to all-digital AM service could help to reverse [waning AM audience share and advertising revenues] by enabling broadcasters to provide a pristine signal'").

[49] Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak. COVID-19 is a respiratory illness that has spread throughout the United States.

businesses across the country for indefinite periods of time."[50] In the past several months, the Commission has taken a number of steps to accommodate FCC licensees and regulatees in light of these disruptions.[51] With respect to the radio duplication rule, NAB states that "allowing FM broadcasters to duplicate programming on a commonly owned station could be particularly helpful in times of crisis, including the one our nation is currently undergoing."[52] NAB notes further that "small broadcasters with fewer resources are especially vulnerable if one of their studio employees contracts the virus," as "the rest of their staff may be forced to quarantine, making it difficult to produce original programming."[53] We agree and find that in such circumstances, the ability to quickly repurpose programming on commonly owned stations will allow such stations to use their limited resources efficiently, as well as to widely share critical news and health information with the local community. Of course, this same rationale applies to weather and other emergencies, "when it is in the public interest to allow stations to pool resources and simulcast emergency news and information without having to incur the expense and delay of obtaining a waiver."[54] In such emergencies, eliminating the radio duplication rule would provide FM stations with critical flexibility to duplicate programming from a sister station.[55] Although stations can always seek a waiver of the Commission's rules, the waiver process may unnecessarily inhibit the ability of stations to react quickly and effectively to local emergencies and changes in circumstances. In addition, although current economic conditions are expected to be temporary, they have dampened advertising revenues across the industry[56] and we see no reason to require broadcasters to bear the costs of seeking waivers where, as here, industry-wide relief is appropriate and, as discussed below, substantial program duplication on stations serving the same market is unlikely to be profitable.

15. Furthermore, we find that eliminating the radio duplication rule for the FM service has additional benefits, including helping stations inform listeners of a format change by permitting the simulcast of the new format on multiple stations.[57] Accordingly, just as with AM, we believe there are potential benefits to permitting FM stations to duplicate programming as circumstances warrant, and we therefore eliminate the rule as to both radio services.

16. Despite our action today, we continue to believe that broadcasters have no incentive to limit their appeal and thus their revenues by simulcasting the same programming on multiple stations for long periods of time.[58] Accordingly, bare assertions as to the continued usefulness of the radio

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[50] *Lifeline and Link Up Reform and Modernization*, WC Docket No.11-42, Order, DA 20-577, para. 1 (WCB rel. Jun. 1, 2020) (extending prior waivers of the Lifeline program's recertification, reverification, general de-enrollment, usage requirements, and income documentation requirements through August 31, 2020).

[51] *See, e.g., id.* at paras. 3, 12-15 (WCB rel. Jun. 1, 2020) (extending prior waivers of the Lifeline program's recertification, reverification, general de-enrollment, usage requirements, and income documentation requirements through August 31, 2020); *Sponsorship Identification*, Order, DA 20-679 (MB rel. June 26, 2020) (extending through August 31, 2020 the temporary waiver previously regarding certain sponsorship identification requirements).

[52] Letter from Rick Kaplan, General Counsel and Executive Vice President, Legal and Regulatory Affairs, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 19-310 and 17-105, at 2 (filed July 30, 2020).

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] NAB *Ex Parte* at 1-3.

[57] *Id.*; NAB Comments at 5.

[58] *See 1992 Radio Rules Order,* 7 FCC Rcd at 2784, para. 57 (stating that "same-service simulcasting is unlikely to be profitable for an individual station because the audience for the programming in question will be shared by two or more stations"); *see also* NAB Comments at 3-4 & n.16; NAB *Ex Parte* at 2.

duplication rule for the FM service—for instance, that the rule ensures "some basic level of diversity and . . . prevent[s] spectrum warehousing[59]—are not persuasive. Nor does the record provide any evidence that the current limit restricting the duplication of programming to 25% of the station's average broadcast week has provided public interest benefits. Rather, we agree with NAB's assertion that "airing diverse content on commonly owned stations is the best way to reach the widest audience possible and maximize revenues."[60] Therefore, although in today's Order we provide additional flexibility to broadcast radio stations, we believe that licensees will prefer to maximize the potential for their stations to reach the greatest number of listeners with the greatest amount of programming. That is, we do not believe that duplication will be a common practice by station owners as a substantially increased amount of it is unlikely to be well-received by the marketplace.[61] Rather, we anticipate that stations will likely use the ability to duplicate programming either in an effort to preserve broadcasting in both the AM and FM services, address issues of local concern in a timely fashion, respond to a crisis, or aid in a potential digital transition in the AM service. As a result, we believe that the costs of continued regulation outweigh the benefits of regulation; any potential negative impacts on public interest objectives that may result from our action will be minimal and will be outweighed by the public interest benefits identified above.[62]

IV. PROCEDURAL MATTERS

17. *Final Regulatory Flexibility Act Analysis*. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[63] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this *Order*. The FRFA is set forth in Appendix B.

18. *Paperwork Reduction Analysis.* This document does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13, (44 U.S.C. §§ 3501 through 3520). In addition, therefore, it does not contain any new or modified "information burden for small business concerns with fewer than 25 employees" pursuant to the Small

[59] REC Comments at 5. Kern, a self-described "prospective non-commercial community broadcaster," states that there is a need for spectrum for new, diverse, and hyperlocal programming in the FM service and claims that programming duplication "stifle[s] local programming, diversity of programming, and new broadcast entrants." Kern Comments at 1, 6. However, to the extent that Kern believes regulation of radio station duplication will affect the availability of LPFM channels, we note that eliminating the radio duplication rule in order to provide *commercial* broadcast radio licensees with increased flexibility, would have no impact on Kern's aspiration to become a noncommercial licensee.

[60] NAB Comments at 4.

[61] Some commenters note that some non-commercial educational licensees substantially duplicate programming on commonly owned NCE stations across separate markets across the country. *See* CFI Reply at 3-4; CFI Comments at 4-8; Kern Reply. As this programming duplication involves separate markets, these observations about non-commercial stations are inapposite to our consideration of the radio duplication rule, which addresses commonly owned commercial stations in the same market.

[62] We also find CFI's claim that elimination of the rule will harm minority broadcasters to be speculative and unsupported by the record. CFI supposes that, absent the non-duplication rule, a station that otherwise would have been "LMA'd to a minority broadcaster could simply just rebroadcast programming to another station." CFI Comments at 14. CFI provides no evidentiary support, analysis, or explanation as to why this outcome is likely. To the extent its position is that a change in the radio duplication rule will lead to more consolidation, we do not believe that this rule change will give rise to new acquisitions of stations solely for the purpose of replicating the programming of an incumbent station already serving the same local area, as such a strategy appears unlikely to be profitable. Thus, we dismiss any assertion that our rule change will result in an increase in consolidation of radio station ownership. Furthermore, as noted above, we believe that existing station owners may use programming duplication in an effort to preserve programming in both services, to respond to a crisis, or to aid in a potential digital transition in the AM service, benefits that would accrue to minority as well as non-minority broadcasters.

[63] *See* 5 U.S.C. § 604.

Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. § 3506(c)(4).

19. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of the *Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

20. *Additional Information*. For additional information on this proceeding, contact Jamile Kadre, Jamile.Kadre@fcc.gov, of the Industry Analysis Division, Media Bureau, (202) 418-2245.

V. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 303(r), this Order **IS ADOPTED.**

22. **IT IS FURTHER ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 303(r), the Commission's rules **ARE AMENDED** as set forth in Appendix A, effective as of the date of publication of a summary in the Federal Register.[64]

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

24. **IT IS FURTHER ORDERED** that, pursuant to Section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of the *Order* to Congress and to the Government Accountability Office.

25. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19-310 **SHALL BE TERMINATED** and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[64] These rules serve to "reliev[e] a restriction." 5 U.S.C. § 553(d)(1).

APPENDIX A

Rule Changes

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended 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, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Section 73.3556 is removed.

APPENDIX B

Final Regulatory Flexibility Act Analysis

A. Need For, and Objectives of, the Report and Order

1. The current radio duplication rule prohibits any commercial AM or FM radio station from devoting "more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any other station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours . . . of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station."[1] In this Report and Order (*Order*), we eliminate section 73.3556 of the Commission's rules (the radio duplication rule) to reflect technological and marketplace changes over the past three decades, including the digital transition. As noted in the underlying Notice of Proposed Rulemaking (*NPRM*), there have been significant changes in the broadcast radio industry since the current version of this rule was adopted in 1992. Eliminating the radio duplication rule for both AM and FM licensees will afford broadcast radio licensees greater flexibility to address issues of local concern in a timely fashion, facilitate digital broadcasting by AM stations, and ultimately allow stations to improve service to their communities.

2. For AM licensees, we find that the unique technical and economic challenges that AM broadcasters currently confront, coupled with the desire to facilitate an AM digital broadcasting transition, warrant eliminating the rule for AM licensees in order to provide them with greater flexibility. The AM broadcasting service faces persistent interference issues that have hampered the service and frustrated both consumers and licensees. In particular, the service has faced an increase in the level of environmental and man-made noise over time, which has increased the amount of interference in the band.[2] In addition, AM stations continue to be more difficult to operate and more expensive to maintain than FM stations, requiring larger and more complex physical plants, which are increasingly under pressure in urban areas.[3] Thus, we find that permitting a broadcaster who owns two AM stations in the same local area to duplicate programming without regard to the degree of contour overlap between the two stations will serve the public interest by affording AM broadcast licensees greater flexibility to respond to marketplace conditions and ultimately will allow stations to improve service to their communities.[4]

3. We also find that the record demonstrates that eliminating the radio duplication rule as applied to the FM service would serve the public interest. Although the FM service does not face precisely the same persistent technical and economic challenges as the AM service, we find that the record supports eliminating the rule for FM stations in order to provide greater flexibility to address issues of local concern in a timely fashion. Moreover, we find that the existing waiver process is not an efficient means of granting regulatory relief in this context. In emergencies, the ability to quickly repurpose programming on commonly owned stations will allow stations to use their limited resources efficiently, as well as to widely share critical news and health information with the local community. Although stations can always seek a waiver of the Commission's rules, the waiver process may

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[1] 47 CFR § 73.3556. Principal community contours are defined as "predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations." *Id*. A time brokerage agreement generally involves the sale by one radio licensee of blocks of time to a broker who then supplies programming to fill that time and sells the commercial spot advertising to support it. *See 2019 Radio Duplication NPRM,* 35 FCC Rcd at 11544, para. 2, n.1.

[2] *See generally Revitalization of the AM Service*.

[3] *See generally id.*

[4] *See* NAB Comments at 5 (eliminating the restriction 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.").

unnecessarily inhibit the ability of stations to react quickly and effectively to local emergencies and changes in circumstances. Furthermore, we find that eliminating the radio duplication rule for the FM service has additional benefits, including helping stations inform listeners of a format change by permitting the simulcast of the new format on multiple stations.[5] Accordingly, just as with AM, we believe there are potential benefits to permitting FM stations to duplicate programming as circumstances warrant, and we therefore eliminate the rule as to both radio services.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments to the IRFA filed.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[6] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Apply

6. 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.[7] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[8] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[9] 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.[10]

7. The rule changes adopted herein will directly affect certain small radio broadcast stations, specifically commercial AM and FM radio stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

8. *Radio Broadcasting.* This U.S. Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public."[11] Programming may originate in the establishment's own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $38.5 million or less

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[5] NAB *Ex Parte* at 2; NAB Comments at 5.

[6] 5 U.S.C. § 604(a)(3).

[7] 5 U.S.C. § 603(b)(3).

[8] *Id.* § 601(6).

[9] *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." *Id.* § 601(3).

[10] *Id.* § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[11] U.S. Census Bureau, 2017 NAICS Definitions, "515112 Radio Stations," http://www.census.gov./cgi-bin/sssd/naics/naicsrch.

in annual receipts.[12] Economic Census data for 2012 show that 2,849 firms in this category operated in that year.[13] Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more.[14] Based on this data, we estimate that the majority of commercial radio broadcast stations were small under the applicable SBA size standard.

9. The Commission has estimated the number of licensed commercial FM radio stations to be 6,726, the number of commercial FM translator stations to be 8,188 and the number of commercial AM radio stations to be 4,580, for a total of 19,494 commercial radio stations.[15] Of this total, nine commercial radio stations had revenues of $38.5 million or greater in 2018, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on June 15, 2020. All other commercial radio stations qualify as small entities under the SBA definition. Of this total, nine commercial radio stations had revenues of $38.5 million or greater in 2018, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on June 15, 2020. All other stations qualify as small entities under the SBA definition.

10. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[16] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the 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 radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the proposed rules may apply does not exclude any radio station from the definition of small business on this basis and is therefore possibly over-inclusive.

E. Description of Projected Reporting, Record Keeping and Other Compliance Requirements

11. The *Order* eliminates the radio duplication rule as applied to AM stations and FM stations. Accordingly, the *Order* does not impose any new reporting, recordkeeping, or compliance requirements for small entities. The *Order* thus will not impose additional obligations or expenditure of resources on small businesses.

F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.

12. The RFA requires an agency to describe any significant, specifically small business, 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

[12] 13 C.F.R. § 121.201; 2017 NAICS code 515112.

[13] U.S. Census Bureau, U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112 Radio Stations) https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515112|.

[14] *Id*.

[15] *See* FCC, Broadcast Station Totals as of March 31, 2020, News Release (Apr. 6, 2020), https://www.fcc.gov/document/broadcast-station-totals-march-31-2020.

[16] "[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 to power to control both." 13 CFR § 121.103(a)(1).

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.[17]

13. In this proceeding, the Commission has three chief alternatives available for the radio duplication rule—eliminating the rule in its entirety, retaining the rule in its entirety, or modifying the rule in some other form. The Commission finds that the public interest and marketplace realities support eliminating the rule in its entirety, i.e., eliminating the restriction on radio duplication for both AM and FM stations. Further, should the Commission permit AM stations to operate in all-digital format, elimination of this rule will facilitate the transition to all-digital broadcasting by allowing an AM station to simulcast its programming on two stations in analog and digital format. Given that most commercial broadcast stations qualify as small entities, eliminating the rule will help small entities by providing greater flexibility for those stations that require it in order to continue providing programming. Specifically, eliminating the radio duplication rule for both AM and FM stations would allow broadcasters to repurpose programming on commonly owned stations.

G. Report to Congress

14. The Commission will send a copy of this *Second R&O*, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[18] In addition, the Commission will send a copy of the *Second R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second R&O* and FRFA (or summaries thereof) will also be published in the *Federal Register*.[19]

H. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

15. None.

[17] 5 U.S.C. § 603(c)(1)-(c)(4).

[18] *See* 5 U.S.C. § 801(a)(1)(A).

[19] *See id*. § 604(b).

STATEMENT OF
CHAIRMAN AJIT PAI

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.

100 years ago, AM radio station KDKA in Pittsburgh made history with our nation's first commercial radio broadcast. That kicked off decades of distinguished service by AM broadcasters in big cities and small towns alike. But today, the AM radio service faces serious technical and economic challenges—challenges made worse by the COVID-19 pandemic. In order to help AM broadcasters overcome these challenges, the Commission has been looking for ways to help by alleviating unnecessary regulatory burdens, providing more flexibility, and improving sound quality. Eliminating the radio duplication rule for AM stations, as we do today, could help further all three objectives.

Giving economically distressed stations greater flexibility to simulcast programming could help them stay afloat and continue serving their communities. As the Commission observed back in 1986, during what seem to be, in retrospect, AM's salad days, "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." Moreover, simulcasting could assist AM stations which might want to voluntarily transition to all-digital transmission. One station could offer the higher audio quality of digital transmission, while another could keep supplying analog programming to listeners who don't yet have digital-capable equipment.

In short, I'm optimistic that the step that we take today will help the AM band survive in an increasingly competitive marketplace and continue the grand tradition of stations like KDKA. My thanks to the Commission staff who got us here: from the Media Bureau, Michelle Carey, Brendan Holland, Jamile Kadre, Radhika Karmarkar, and Sarah Whitesell; from the Office of Economics and Analytics, Andy Wise; from the Office of Communications Business Opportunities, Belford Lawson; and from the Office of General Counsel, David Konczal, Bill Richardson, and Royce Sherlock.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

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.

Today, we clear away even more of the regulatory underbrush that imposed outdated burdens on America's radio broadcasters. We do so by eliminating a rule the FCC adopted nearly 30 years ago when the Commission tended to micromanage a market for news and information that faced far less competition than it does now.

As the record shows, there are clearly circumstances in which some measure of program duplication in the same market is beneficial. It can help AM broadcasters overcome technical and operational difficulties and potentially spur their transition to digital broadcasting. While FM stations do not have the same limitations as those in the AM band, they still face increased competition for advertising revenue and will benefit from the flexibility to rebroadcast locally oriented programming that is often expensive to produce but is of particular interest to local listeners. And the current pandemic has shown that increased flexibility to rebroadcast programming can help ensure continuity of operations, promote employee safety, and provide emergency information to residents throughout a station group's service area. When time is of the essence, the last thing broadcasters need to worry about is begging the FCC for permission to serve their local markets.

At the same time, there aren't always going to be compelling reasons to rebroadcast 100% of another station's programing. But there is no indication that this will happen as a result of our action today. And in any event, these programming decisions should be determined in the market by the listening public and not by the FCC.

So I want to thank my colleagues for agreeing to my request that we extend the relief provided here to the FM band, rather than limiting it to AM as proposed in the draft released three weeks ago. Competition has eroded the original justification for this rule and that is equally true for AM and FM broadcasters. First Amendment considerations also counsel in favor of our decision today, as there is no basis in the record for retaining this type of speech regulation.

Ultimately, the media marketplace is changing rapidly, and broadcasters need the freedom and flexibility to change with it. This is particularly true in the smallest markets, where we need to do everything we can to incentivize investment in local news and public interest programing. This decision is another step in the right direction, so I want to thank the Media Bureau for its work on the item. It has my support.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
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.

It was not that long ago that families would gather at night to bask in the glow of a single screen to watch together during the early days of television. Some time before that, the same ritual played out each evening in our homes with radio. Of course, more recent innovations in video and audio technologies have forever altered how and what we watch and hear.

Yet we are still drawn to the broadcast medium, especially radio. Because there is still something special about a voice in the air. That's because there is something powerful when a community has a station that delivers a connection to who they are and where they live.

So we need to consider how these local broadcast licensees using public airwaves can thrive. In so many ways, the economic models that sustained traditional media have been turned upside down by digitization. What happens when advertising migrates and listening practices change? What happens to locally-originated programming when stations consolidate? What happens to journalism? And what does this mean now, in a health care crisis, when we all need essential information to make decisions about our lives, our communities, and our country?

These questions are complicated. But I believe the answers lie in our most basic principles. For decades the Federal Communications Commission has built its media policies around the values of localism, competition, and diversity. These values may not be trendy, but they are the best guideposts we have for communications policymaking. In recent years, we haven't always honored these principles. In fact, we've chipped away at them, bit by bit. You see it in our misguided decision to roll back the main studio rule, freeing stations from the obligation to maintain facilities in the communities they are supposed to serve. You see it with more and more concentration. You see it in how this agency manages to look the other way when station ownership year after year grows less and less diverse.

It doesn't have to be this way. We can modernize our policies and honor our principles. In fact, today's decision was an opportunity to prove this point.

When this report and order was first shared with us, it simply eliminated the radio duplication rule in the AM band. As a result, AM stations would no longer be subject to the restriction limiting programming duplication to no more than 25 percent of time during a typical week. The reason for relaxing this policy this way was clear. There are persistent interference issues that are unique to the AM band that are not going away. These technical challenges are real and we see them in declining listenership and increasing costs. Plus, some AM stations have gone silent, shutting service in this pandemic.

As originally drafted, this decision would help alleviate some of the strain on these stations and experiment with rolling back this rule in the AM band. It would be a smart test bed to see how localism, competition, and diversity in the band fared when this rule was set aside.

But sometime in the last 36 hours, the agency threw this approach away. It decided instead it would eliminate the policy in the AM band and FM band in one fell swoop. But the signal quality issues in these bands are totally different. The economic issues are not identical and the impact of content duplication is not the same.

So what we have is yet another small chip in our principles. Because we have another decision that rushes ahead without doing the due diligence needed to consider the impact on localism, competition, and diversity. Radio has a storied past. It can have a bright future. But we need more thoughtful change than this if we want the medium to do more than survive and truly thrive. For these reasons, I concur with respect to this decision on the AM band, and dissent in all other respects.

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."[84] 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."[85] 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.[86] 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."[87] 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.[88] Moreover, if the need to broadcast COVID-19-related or other emergency information requires additional programming

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[84] *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).

[85] *Report and Order,* para. 8.

[86] *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.").

[87] *Report and Order,* para. 8.

[88] 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).

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 actual evidence that the waiver process would be particularly burdensome here.[89] 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.

VI.

[89] *Report and Order*, para. 13.