

**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

**OPPOSITION OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ hereby opposes the Petition for Reconsideration filed by REC Networks, the musicFIRST Coalition and the Future of Music Coalition,² of the Report and Order in the above-captioned proceeding.³ In the Order, the Commission eliminated the radio duplication rule, which prohibited radio stations from devoting more than 25 percent of their average broadcast week to programming duplicated on a commonly-owned station in the same service (AM or FM), if the principal community contours of the stations substantially overlap.⁴ The FCC explained that radio has undergone significant technological and marketplace changes since the current radio duplication rule

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 Petition for Reconsideration, REC Networks (REC), musicFIRST Coalition and Future of Music Coalition (FMC) (Petitioners), MB Docket Nos. 19-310 and 17-105 (Nov. 20, 3020) (Recon Petition).

³ *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, Report and Order, 35 FCC Rcd 8383 (2020) (Order); see also *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, 35 FCC Rcd 11544 (2019) (Notice).

⁴ 47 CFR § 73.3556.

was adopted almost 30 years ago, and found that deleting the rule struck an appropriate balance between promoting radio competition and diversity and affording radio broadcasters greater flexibility to provide improved, community-responsive programming.⁵ Petitioners contend that eliminating the rule for FM stations will lead to a reduction in programming diversity and “encourage[e] corporate radio owners to hoard spectrum.”⁶ Petitioners’ arguments exhibit a complete misrepresentation of the business fundamentals of the radio industry and the intense competition radio faces, and a total lack of understanding of the market value of AM/FM radio spectrum. Once again,⁷ we see musicFIRST and FMC file in Commission proceedings concerning radio not because the companies and organizations those groups represent care about the proceedings at issue, but rather, to retaliate against broadcasters for those groups failing to convince Congress to enact a tax on radio stations when they play (promote) record labels’ music on terrestrial radio stations.

I. The Petition Should Be Denied Because It Does Not Raise Issues Not Already Considered and Rejected By The Commission

Petitioners repeat claims that eliminating the radio duplication rule will lead to reduced programming diversity and benefit larger broadcasters by allowing them to simulcast programming on multiple stations.⁸ However, Petitioners fail to offer any new arguments or information to justify their views on reconsideration.⁹ Indeed, their so-called

⁵ Order, 35 FCC Rcd at 8383.

⁶ Recon Petition at 1.

⁷ *2018 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 18-349, Joint Comment of musicFirst Coalition and FMC (Apr. 29, 2019) (Music Ownership Comments); *2020 Communications Marketplace Report*, GN Docket No. 20-60, Comments of musicFirst Coalition and FMC (Apr. 27, 2020) (Music Marketplace Comments).

⁸ Recon Petition at 5.

⁹ *Id.* at 4.

“support” consists almost entirely of cites to REC’s earlier comments on the Notice.¹⁰ For this reason alone, the Petition should be rejected.¹¹

The FCC has already fully considered and disposed of Petitioners’ arguments in the Order. The FCC correctly determined that, even absent the radio duplication rule, radio stations have no incentive to limit their appeal to listeners or advertising revenues by simulcasting the same content on multiple stations in the same market.¹² To the contrary, the FCC explained that the best way for stations to reach the widest audience possible and maximize profits is to provide distinctive programming on their various stations,¹³ which is exactly the practice of broadcasters with multiple stations in the same market.¹⁴ Consider a station group in Chicago, for example, that currently airs different formats on each of its six stations (e.g., news, sports, country, classic hip hop, etc.), or one in Philadelphia that does the same on each of its seven stations. With the lifting of the duplication rule, there is simply no incentive for these broadcasters trying to compete in today’s challenging environment to duplicate programming in the same area to entice listeners of only one format instead of trying to reach as many people as possible. As the FCC correctly determined, even without the radio duplication rule, it will be extremely rare for a station to simulcast programming on multiple stations for a meaningful period of time.

¹⁰ *Id.* at notes 13-14, 16-18, 21-23 and 25 citing Comments of REC Networks, MB Docket No. 19-310, et al. (Jan. 19, 2020).

¹¹ 47 C.F.R. § 1.429(b).

¹² Order, 35 FCC Rcd at 8390-91.

¹³ *Id.*

¹⁴ FCC, 2007 Ownership Study No. 5, Tasneem Chipty, CRA International, Inc., *Station Ownership and Programming in Radio*, at 40-45 (June 24, 2007) (finding that (1) “consolidation of radio ownership does not diminish the diversity of local format offerings”; and (2) “[i]f anything, more concentrated markets have less pile-up of stations on individual format categories and large national radio owners offer more formats and less pile-up.”).

Moreover, Petitioners do not point to a single instance where a radio station has taken such a step since the FCC repealed the duplication rule. If Petitioners' claims were accurate, surely we would see at least one radio station among the thousands licensed today decide to forego offering unique programming so that it can simulcast in the same market. But since there is no business model where such an action would make any sense, stations have not pursued this course as the Commission rightly predicted.

II. Petitioners Disregard Broadcasters' Competitive Incentives to Provide Diverse, Distinctive Content

Even if Petitioners' arguments are not foreclosed, they easily fail on the merits. As the FCC stated in the Order, with reference to REC's earlier comments, "bare assertions as to the continued usefulness of the radio duplication rule for the FM service—for instance, that the rule ensures 'some basic level of diversity and . . . prevent[s] spectrum warehousing'—are not persuasive."¹⁵ Petitioners point to no evidence that stations have incentives to provide less diversity and make no attempt to sketch out an argument as to what value "warehousing" AM or FM spectrum would have.

Petitioners insist on demonstrating their consistent misunderstanding of what it takes for radio stations to survive in today's hyper-competitive audio marketplace.¹⁶ For example, in comments earlier this year for the FCC's communications marketplace report, musicFIRST and FMC discounted the impact of competition that radio stations face from an array of content providers for both listeners beyond other over-the-air radio stations.¹⁷ They also failed to acknowledge the well-documented movement of radio advertising revenues to digital platforms at a time when the overall ad market is shrinking, which has forced some

¹⁵ *Id.* citing REC Comments at 5.

¹⁶ *Communications Marketplace Report*, GN Docket No. 20-60, Reply Comments of NAB at 5 (May 28, 2020) (NAB Marketplace Reply).

¹⁷ Music Marketplace Comments at 8-21.

stations to lay off employees in recent years.¹⁸ Both musicFIRST and FMC appeared blissfully unaware of how difficult it is for radio stations to endure in this environment, never mind serve the public interest effectively. These are cynical arguments coming from organizations that represent industries with no formal public interest obligations.

Petitioners also fail to mention – let alone grapple with – the incredible growth in audio diversity since the radio duplication rule was created. As NAB has described, since 1992, more than 15,000 additional full-power and low power radio stations have launched service, the growth of online streaming music services has shattered expectations, and satellite radio has reached more than 34 million subscribers.¹⁹ All of these outlets provide a broad range of programming options. Given these developments, it should be clear that Petitioners need not worry that eliminating the radio duplication rule will have any noticeable impact on the nearly limitless content diversity that is already available to listeners. Instead of disputing the FCC's actions on the obsolete radio duplication rule, Petitioners should be applauding the FCC and Congress for their efforts that have unleashed this explosion of programming diversity.

III. Petitioners Discount the Potential Benefits of Eliminating the Radio Duplication Rule

Petitioners argue that eliminating the radio duplication rule was unnecessary because stations instead could have continued to seek a waiver of the rule as needed.²⁰ Apart from the fact that the rule has no justification in the first instance (which is enough of a reason for its' elimination), the FCC's action creates new public interest opportunities for stations. For example, during a weather or other emergency situation, one station may need

¹⁸ NAB Marketplace Reply at 3-6.

¹⁹ Comments of NAB, MB Docket Nos. 19-310 and 17-105, at 2-4 (Jan. 22, 2020).

²⁰ Recon Petition at 6-8.

to simulcast programming from a sister station for a limited period of time either because of technical difficulties or to ensure that its listeners have access to up-to-date news and information. This scenario is even more likely for smaller stations, in the event they lose one of their few employees needed to operate. The FCC thus found it worthwhile to delete the duplication rule as a way to provide broadcasters the ability to “quickly repurpose programming on commonly owned stations,” especially when they need to share critical news and health information with the local community during an emergency.²¹ The FCC found no reason for retaining the rule and needlessly force stations to incur the time and expense of pursuing a waiver, thereby hindering the ability of stations to rapidly react to local emergencies,²² particularly for a short-term situation.

The FCC also noted that eliminating the rule could help stations to facilitate a format change on a sister station seeking to better serve the needs and interests of its’ listeners, or more efficiently cover a specific issue of local interest, for a limited period of time.²³ Given these benefits, and the fact that any negative impact of eliminating the rule should be minimal, the FCC determined that the costs of continued regulation and the benefit of eliminating the rule outweighed any speculative benefits of retaining the rule.²⁴

IV. Conclusion

Finally, the entire point of the FCC’s media regulation modernization initiative is to modify or eliminate regulations that no longer serve an important purpose.²⁵ Petitioners do not present any new arguments or evidence in support of retaining the radio duplication

²¹ Order, 35 FCC Rcd at 8390.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 8391.

²⁵ FCC, Public Notice, *Commission Launches Modernization of Media Regulation Initiative*, 32 FCC Rcd 4406 (2017).

rule. Indeed, the rule is a perfect example of an unnecessary regulation that can needlessly hinder broadcasters' ability to efficiently serve Americans, particularly during crises. NAB respectfully submits that the Commission should not alter its original decision and dismiss the Petition for Reconsideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry A. Walke".

Rick Kaplan
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January 5, 2021

CERTIFICATE OF SERVICE

Pursuant to 47 C.F.R. § 1.429(f), I, Larry Walke, do hereby certify that a copy of this Opposition to Petition for Reconsideration in MB Docket Nos. 19-310 and 17-105 was served, this 5th day of January 2021, to the following:

VIA U.S. MAIL

Law Offices of Rachel Stilwell
26565 Agoura Road Suite 200
Calabasas, California 91302

A handwritten signature in cursive script that reads "Larry Walke".

Larry Walke