

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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

**REPLY COMMENTS OF COMMON FREQUENCY**

**INTRODUCTION**

Common Frequency, Inc. ("CFI") is a 501(c)(3) nonprofit corporation dedicated to the dissemination of non-commercial broadcast information and advocating in the public interest. The Federal Communications Commission ("FCC" or "Commission") seeks comments on changes to the program duplication rules through this Notice of Proposed Rulemaking ("NPRM"). CFI here supplies a reply comment.

**REPLY COMMENTS**

Through this NPRM the Commission seeks comments on whether to modify or eliminate Section 73.3556 of the Commission's rules. The Commission received four comments -- two representing the commercial radio industry -- National Association of Broadcasters ("NAB"), one from Bryan Broadcasting Corporation ("BBC") -- and two from broadcast advocates, CFI and

REC Networks (“REC”). From the dearth of total comments, the industry does not seem to have much of an interest in liberalizing these rules.

## **COMMENTS OF NAB**

NAB characterizes the radio duplication rule as an “outdated, unnecessary limit on broadcasters’ ability to serve their audiences.” CFI disagrees. NAB cites the increase of licensed broadcast facilities, presumably increasing program diversity and licensee competition, as support for removing the rule. However, in CFI’s comment, it explained: (1) the overall number of full power stations has, for the most part, remained the same in major urban areas (given a few community-of-license changes and new NCE FMs on the urban edges here and there), (2) broadcast ownership has been consolidated, (3) radio programming studies have demonstrated a decrease in diversity of airplay, and (4) minority ownership has been flat at 5%. Technology and elimination of the main studio has concentrated program creation to centralized headquarters. Furthermore, most of the increases in new facility licensing has been relegated to FM translators, which simply duplicate programming from other licensed stations (hence blocking-out fringe FM channels that once offered more diversity, and offering no new diversity in themselves). Overall there is a plunge in broadcast diversity.

NAB cites online sources for content and “listeners paying for music subscriptions.” However, the Commission has found that “alternative sources of audio programming are not currently meaningful substitutes for broadcast radio stations in local markets.”<sup>1</sup> NAB also

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<sup>1</sup> See 2014 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, 2010 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, 31 FCC Rcd 9864, at ¶ 94 (2016).

mentions satellite radio listenership as a major factor. However, an Edison Research study has shown 96% of Americans are not reached by ad-supported Sirius XM.<sup>2</sup> NAB cites “television and cable programming” as a growing competing agent. NAB fails to reveal television viewership has decreased<sup>3</sup> and cable TV providers are losing subscribers.<sup>4</sup> NAB’s uncorroborated opinions for reasons to eliminate the duplication rule are unfounded.

NAB states:

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.<sup>5</sup>

These statements are not anchored in fact. If market forces motivated broadcasters to produce quality local content, programming would be better now than it was 10, 20, 30 years ago. Localism is, instead, drying up. In 1992 stations had live/local DJs in the booth at business hours, maintained by the main studio rule. Deregulation and technology has allowed automation, voice tracking, and duplication of programming from a centralized office in a city far from the station. Today’s programming is not in any way more responsive to the community. Furthermore, “scarcity” is a reduced factor: In recent years, stations are selling for a fraction of the price they used to. And then *attracting as many listeners as possible* does not lead to “higher quality and diverse programming.” The mantra of the industry has always been to

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<sup>2</sup> See “Despite Expansive Audience, SiriusXM Offers Little For Advertisers.” Inside Radio. May 22, 2018.

<sup>3</sup> “TV Long View: Five Years of Network Ratings Declines in Context.” *The Hollywood Reporter*. Rick Porter. September 21, 2019.

<sup>4</sup> “Cord-Cutting Sped Up in 2018: Biggest Pay-TV Ops Shed 3.2 Million Subscribers Last Year” *Variety*. February 13, 2019.

<sup>5</sup> NAB Comment, page 3.

pander to the lowest common denominator, with a playlist of 40 songs for a popular station, or a few hundred songs for historical formats. Talk radio has wizened to a roster of the same divisive syndicated hosts in every market. There is only one centralized public radio affiliate in most places. Christian contemporary satellite stations are buying up local commercial stations and relaying content to them via satellite.

NAB goes on to then contradict itself. It states “Radio companies have no incentive to further limit their appeal by simulcasting the same programming on multiple stations.” The next paragraph is headed by “Eliminating the Radio Duplication Rule Would Enhance Broadcasters’ Flexibility to Operate Efficiently and Economically.” NAB spent three pages arguing how market forces propel stations to choose diversity over duplicated programming, with there being “no incentive” to duplicate programming. But then, it suggests that in the current marketplace, there are economic reasons to opt for duplication. Which is it? The true intention for the deletion of the duplication rule is to “reduce operating costs” and “streamlining operations, co-locating sites, consolidating back-end systems and other options.”<sup>6</sup> The overall goal is to save money, fire station personnel, and automate and duplicate programming. The public has seen this same trend since deregulation of radio in the early 1980s (where the program playlist got tighter), after consolidation in 1996, and after repeal of the main studio rule. There is less localism, less programming diversity, less local interaction, and no more ownership diversity.

As for more AM simulcasting, this will lead to broadcasters duplicating programming on AM and FM instead of LMA’ing their AM stations to diverse, new minority operators. The FCC should continue scrutinize waivers of the program duplication rule rather than offer the option of

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<sup>6</sup> NAB Comment, page 4.

carte blanche duplication. A station-by-station approach would allow for better oversight of the local public interest.

NAB also asks the Commission to consider repealing Section 74.1232(b), where “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.”<sup>7</sup> NAB provides a non-technical based argument of “situations occasionally arise where denying simulcasted translators may not suboptimal” so “to facilitate more efficient operations,”<sup>8</sup> the broadcaster would fare better without providing a reason on the application for its opted redundant coverage. This is not in the public interest, or efficient use of spectrum. It is intended to be used for a market-domination program duplication concept pioneered by religious satellite broadcasters. As provided in CFI’s original comment, translator programming duplication is an under-enforced issue that forecloses on diversity of programming on the radio dial. If anything, translator enforcement of Section 74.1232(b) needs stepped-up or even augmented with further regulation.

## **COMMENTS OF BBC**

BBC’s comment narrowly requests that an AM station should be able to broadcast on another same-market AM station. The proposal would be to have one digital AM station duplicating the programming of an analog AM station. CFI sympathizes with the plight of AM broadcasters, but there is some leanness surrounding the efficacy of AM digital technology. Would it actually help AM licensees as a whole? Or, would it cut-down on overall diversity?

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<sup>7</sup> NAB Comment, page 6.

<sup>8</sup> *Ibid.*

First, AM interference is cited as a reason to convert to digital (“AM band has become so overwhelmed by interference and impulse noise that the resultant audio product is rendered unacceptable to modern listeners”<sup>9</sup>). Digital is not going to remove all the worries of interference. CFI’s worry is that interference will simply render the digital AM broadcast unlistenable because the digital tuner cannot negotiate the decoding of an AM digital signal within that noise.

Second, digital AM receivers are not commonplace. BBC suggests having an AM analog station counterpart broadcast until much of the public has converted over. But it has been well over a decade since the adoption of HD. The public does not, still, seem to care about the adoption of HD, and the primary listenership of AM radio or HD radio is not a younger demographic (who most likely drives an economy car with a stock analog radio). (Aside: Younger people are downloading podcasts. Since AM is appropriately suited for voice, podcasts would port well to analog AM). The question is will the migration to digital-only ever happen? It is likely mobile broadband data services will inundate the market and supersede the digital AM interest. The digital and analog duplication channel could likely be a permanent accommodation.

Third, the prospect of all digital AM stations on the AM band will turn half the band into a cacophony of fax noises on top of the noise that is already there. The golden attribute of radio is the ability to funnel people onto a limited forum of working channels. The listener tunes-down the dial looking for stuff. Any new user to AM (in a digital AM scenario) would be greeted by fax noise and never tune back into it. Digital AM could be its death knell.

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<sup>9</sup> BBC Comment, page 3.

Fourth, for all users, radio diversity will be greatly reduced. Figure that now AM stations are broadcasting on FM translators. Combine two AM stations with their accompanying FM translators, and you have **the duplication of programming for one station on four total radio channels**. It does not bode well for radio diversity if many AM stations pursue this.

Fifth, there could be unforeseen ownership consolidation as a side-effect of allowing two AM stations to simulcast. Today, AM still has many more mom-and-pop owners and diverse foreign language uses than FM (this is possibly where the bulk of the commercial radio diversity resides). CFI would not want to see AM stations procured by larger group broadcasters simply for simulcast usage. This could completely de-diversify and consolidate ownership on the AM band.

The caveats, listed above, have to be carefully considered in permitting AM duplication because it could add to the downfall of (already paltry) diversity on AM and FM.

## **COMMENTS OF REC**

CFI is aligned with REC's points, especially "The reason why 'non-radio' is gaining dominance is because of the declining amount of compelling local programming."<sup>10</sup> Radio has been looking for technology, consolidation, duplication, workforce pair-down, and new efficiencies for decades to a point where radio is eating itself. Now broadcasters are eliminating radio's greatest attribute -- "live and local." At some point the FCC needs to take a barometer reading from the public to check the state of radio listening. Arguing the benefits of programming duplication in 2020 is demoralizing. Program duplication goes back to a day when

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<sup>10</sup> Comment of REC, para 9.

technology and program creation/dissemination was costly. We do not live in that world anymore.

CFI especially agrees with REC's idea that the area considered for duplication should be expanded from the 70 dBu contour (for FM) to an area that better approximates the station's actual coverage.

## **CONCLUSION**

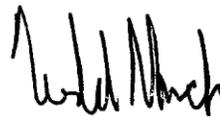
CFI believes:

- (1) From CFI's original comment, the programming duplication rule should not only be retained, but there are reasons why it should be extended to non-commercial radio (such as due to the proliferation of satellite-fed network stations using multiple NCE channels in certain areas).
- (2) The area considered for "duplication" should be extended from 70 dBu to the Longley-Rice 60 dBu contour-edge, or the 54 dBu FCC contour of an FM station -- whichever greater in distance (coverage-wise).
- (3) Section 74.1232(b) pertaining to *translator need* (duplication) should be stepped-up in enforcement. This rule is rarely enforced. The FCC translator construction permit form should further ask applicants for "a demonstration of need" (if multiple translators cover the same area -- especially for a fill-in translator).
- (4) Satellite-relayed content from outside a market is proliferating (from the demise of the main studio rule). Licensees should specify where the content is originating from. For

broadcasters that broadcast the same content in multiple markets, the broadcaster should specify why they need this efficiency.

- (5) AM duplication, as proposed by BBC, should be assessed by the Commission on a per-case basis. There are too many unknowns at this time to open the floodgates of something that could be a failed experiment. Duplicated AM stations should not have multiple FM translators, or maybe no FM translators (this should be mulled further).
- (6) AM band stations should still be migrated over to Low VHF (Channels 5 and 6, or just Channel 6, since analog Franken FM LPTV already occupies the spots). Digital AM and AM cross service translators are a sloppy piecemeal approach of migrating these services. They deserve a more comprehensive solution. But this commentary is obviously beyond the scope of this rulemaking.

Respectfully Submitted by,



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