



July 30, 2020

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

Re: Notice of *Ex Parte* Communication, MB Docket Nos. 19-310 and 17-105

Dear Ms. Dortch:

On July 30, 2020, Rick Kaplan of the National Association of Broadcasters (NAB) spoke by telephone with Alex Sanjenis of Chairman Pai's office, Joel Miller of Commissioner O'Rielly's office and Ben Arden of Commissioner Carr's office to discuss the Commission's draft Report and Order regarding the duplication of programming on commonly owned radio stations.<sup>1</sup> NAB appreciates that the Draft Order would eliminate the radio duplication rule as it pertains to AM radio stations. We agree that the rule serves no public interest and that eliminating the rule will provide AM broadcasters greater flexibility to make programming decisions and improve service to listeners.<sup>2</sup> The FCC also correctly notes that allowing stations the option to repurpose programming on another station could be useful to AM stations that are financially struggling, especially in light of the impact of the COVID-19 pandemic on the advertising marketplace.<sup>3</sup>

Unfortunately, the Draft Order improperly denies equivalent relief to FM stations. Although the Draft Order highlights certain technical differences between AM and FM stations,<sup>4</sup> it ignores the difficult financial challenges faced by FM broadcasters, especially in light of the ongoing COVID-19 pandemic. Even prior to the current crisis, FM stations were competing against an expanding universe of digital and other audio

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<sup>1</sup> *Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Stations, Modernization of Media Regulation Initiative, [Report and Order](#)* (Public Draft), MB Docket Nos. 19-310 and 17-105, FCC-CIRC2008-02 (Draft Order).

<sup>2</sup> *Id.* at ¶ 10.

<sup>3</sup> *Id.*

<sup>4</sup> The Draft Order describes the persistent interference challenges that hinder AM service, the typically lower fidelity of AM service, and the prospect that deleting the duplication rule could facilitate the deployment of all-digital AM service. *Id.* at ¶ 11 n. 39 citing Comments of Bryan Broadcasting Corp., MB Docket Nos. 19-310 and 17-105 (Jan. 22, 2020), at 3.

platforms in a slowing advertising market.<sup>5</sup> On top of this, the economic shock of the pandemic has devastated advertising revenues, forced FM stations to layoff or furlough employees, and even caused some FM broadcasters to go silent.<sup>6</sup> Thus, FM broadcasters are no less deserving of relief than AM stations.

Multiple broadcasters have informed NAB 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. For example, we understand that small broadcasters with fewer resources are especially vulnerable if one of their studio employees contracts the virus. In such cases, broadcasters have expressed concern that the rest of their staff may be forced to quarantine, making it difficult to produce original programming. Deleting the duplication rule would provide FM stations with some important flexibility to efficiently simulcast content from a sister station. The same logic holds for 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. Finally, removing the rule would help stations inform listeners of a format change by permitting the simulcast of the new format on multiple stations, particularly during these difficult times when broadcasters must be able to nimbly respond to the interests of listeners and advertisers.

Moreover, the Draft Order undertakes the wrong inquiry. The Commission should start its review by examining whether the rule serves any public interest purpose. The record contains nothing to suggest that the rule combats any potential public interest harm in today's marketplace. Indeed, broadcasters have no incentive whatsoever to duplicate programming barring extreme circumstances. There is no financial or other incentive to reduce the diversity of programming in any marketplace. The record makes clear that FM broadcasters now compete against many more radio stations since the rule was created, as well as a plethora of digital, streaming and satellite audio sources. Collectively, these platforms offer listeners virtually limitless options for diverse programming.<sup>7</sup> As a result, FM broadcasters are strongly incentivized to provide attractive, distinct content, and given the scarcity of available FM frequencies, maximize use of their precious spectrum.<sup>8</sup>

Accordingly, the radio duplication rule no longer serves a critical purpose,<sup>9</sup> and its elimination from the FCC code would likely have minimal, if any, impact on the

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<sup>5</sup> Comments of NAB, GN Docket No. 20-60 (Apr. 27, 2020), at 16-22.

<sup>6</sup> *Id.* at 23.

<sup>7</sup> Comments of NAB, MB Docket Nos. 19-310 and 17-105 (Jan. 22, 2020), at 2-3.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> Even the Draft Order concedes that the rule is at best a “guiderail” that may encourage programming diversity in rare situations. Draft Order at ¶ 15.

operations of FM broadcasters. Market forces will continue to push FM broadcasters to carry unique programming on commonly owned stations as a means to maximizing their audiences and revenues.

Thus, the public interest is only served when FM broadcasters have the flexibility to quickly and effectively repurpose costly programming, where appropriate. As the FCC finds for AM, such an option could be extremely useful to FM stations trying to compete against much larger, unregulated digital alternatives, and to weather the current crisis and the long-term downward trend in the advertising market.

Finally, the entire point of the FCC's media regulation modernization initiative is to remove rules that no longer serve an important purpose. Here, the record is devoid of any rationale for the rule to remain for either AM or FM radio stations.<sup>10</sup> As a perfect example of an unnecessary regulatory burden that stands in the way of competition, NAB respectfully submits that eliminating the duplication rule for FM stations would serve the public interest.

NAB appreciates the opportunity to provide our views on this matter.

Respectfully submitted,

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

Rick Kaplan  
General Counsel and Executive Vice President  
Legal and Regulatory Affairs  
National Association of Broadcasters

cc: Alex Sanjenis  
Joel Miller  
Ben Arden

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<sup>10</sup> Public Notice, *Commission Launches Modernization of Media Regulation Initiative*, FCC 17-57, MB Docket No. 17-105 (May 18, 2017).