

FCC Reinstates Radio Duplication Rule for Commercial FM Stations

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On June 10, 2024, the Federal Communications Commission (FCC or Commission) released an Order on Reconsideration (Order) reinstating section 73.3556 of the Commission's rules (the radio duplication rule) for commercial FM stations. The radio duplication rule prohibits commonly owned commercial FM stations, or those in a time brokerage agreement, with significantly overlapping signals, from duplicating more than 25% of their total hours of programming in an average broadcast week.

The Order, adopted by a 3-2 vote over a strong dissent from Commissioner Carr, reimposes requirements that the Commission previously lifted in an August 2020 Order. The Commission will provide broadcasters with a six-month grace period after the reinstated rule becomes effective to come into compliance. The FCC will also consider requests for waivers.

Background

The FCC's radio duplication rule was first enacted in 1964. Originally, the rule prohibited FM stations in cities with more than 100,000 people from duplicating programming of a co-owned AM station for more than 50% of the FM station's broadcast day. In 1976, the Commission tightened the rule by limiting duplicate programming to 25% of the average program week of a co-owned AM station in the same geographic area if the station served a population of 25,000 or more. Ten years later, citing competition among FM stations, the FCC repealed the duplicate programming rule.

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In 1992, the Commission adopted a new rule that revived duplicate programming restrictions. This rule limited duplicate programming by commonly owned stations or stations commonly operated through time brokerage agreements in the same service (AM or FM) with substantially overlapping signals to no more than 25% of the average broadcast week.

These restrictions remained in place for 28 years until the FCC repealed them in August 2020, citing the need for stations to have greater flexibility to address local issues, including those related to the COVID-19 pandemic. REC Networks, the musicFIRST Coalition, and the Future of Music Coalition filed a petition for reconsideration asking the FCC to reinstate the radio duplication rule for FM stations.

Reinstated Radio Duplication Rule for Commercial FM Stations

In the Order, the FCC reinstated section 73.3556 of the Commission's rules for FM stations. According to the Commission, this reinstatement will "further the goals of competition, programming diversity, localism, and spectrum efficiency."

Under the reinstated rule, a commercial FM station may devote no more than 25% of its total hours in an average broadcast week to programs that duplicate those of another FM station that:

- Is commonly owned or with which it holds a time brokerage agreement, and
- Shares overlapping principal community contours (predicted 3.16 mV/m) and that overlap constitutes over 50% of the total principal community contour service area of either station.

The Commission determined that the record did not demonstrate that eliminating the radio duplication rule for FM stations would serve the public. The FCC disputed that the radio duplication rule imposes an economic burden or potential harm to stations. Instead, the Commission described the rule "as a useful guiderail in the FM service" that would "encourage the diversification of programming." While the FCC acknowledged that relaxing the rule during the COVID-19 pandemic had "particular value," the Commission claimed there was insufficient evidence in the record to justify permanent, as opposed to temporary, relief.

Commissioner Carr dissented to the Order, describing the Commission's actions as "putting unnecessary regulations back in place" that make it difficult for broadcasters to "compete on a level playing field" with new and unregulated competitors. According to Commissioner Carr, the FCC presents "theoretical harms that never materialized" as support for reinstating the radio duplication rule.

Looking Ahead: Six-Month Grace Period and Waivers

FM stations currently broadcasting duplicate content exceeding the 25% programming threshold will have six months to come into compliance. The six-month grace period will begin when the reinstated rule takes effect 30 days after publication in the Federal Register.

As before, stations may seek a waiver from the rule's requirements. The FCC strongly encourages those stations seeking a waiver to submit their requests within the first 90 days of the rule becoming effective.

Wiley's Media Practice has extensive experience counseling broadcasters, including commercial FM radio stations, on FCC compliance. If you have any questions or would like more information, please contact one of the attorneys listed on this alert.

Anthony Paranzino, a Wiley 2024 Summer Associate, contributed to this alert.