

MEMORANDUM

FCC REINSTATES RULE LIMITING PROGRAMMING DUPLICATION ON FM RADIO STATIONS

The FCC has announced that it is reinstating Section 73.3556 of the Commission's rules (the "Radio Duplication Rule") for commercial FM stations, which limits the amount of program duplication on commonly owned or programmed stations. The Radio Duplication Rule does not apply to noncommercial educational stations or AM stations.

The FCC in the past limited the duplication of programming to 25% of common programming for commonly-owned stations (or stations commonly operated with a time brokerage agreement) in the same service. Therefore, this rule applied to both AM and FM stations. After finding that the radio marketplace had changed significantly since the rule was first adopted in 1964, the previous Radio Duplication Rule was eliminated in August 2020. Reconsideration of the elimination of the Radio Duplication Rule, as applied to FM commercial stations, was requested by a number of groups, leading to the FCC's latest decision.

On reconsideration, after finding that the record did not provide sufficient evidence that the rule, as applied to FM commercial radio service, has caused or will cause harm to FM licensees, the reinstated Radio Duplication Rule will once again prohibit commercial FM stations from devoting more than 25% of the total hours in their average broadcast week to programs that duplicate those of any other commonly-owned FM station (or with which it has a time brokerage agreement) if the principal community contours (defined as predicted 3.16 mV/m contour) of the stations overlap and the overlap constitutes more than 50% of the total principal community contour service area of either station. Stations that exceed this limit may file a waiver request to exceed the 25% duplication allowance based on special circumstances, so long as such deviation serves the public interest.

The new Radio Duplication Rule takes effect on August 2, 2024.

Commercial FM stations currently duplicating more than 25% of station programming will have a six-month grace period (until February 3, 2025) to comply with the reinstated Radio Duplication Rule or to request a waiver to continue that level of duplicated programming on an ongoing basis. The FCC encourages stations needing to file waiver requests to do so by October 31, 2024, although waiver requests filed after that time still will be considered. The FCC will permit FM station licensees *currently* engaging in local FM programming duplication that exceeds the 25% duplication allowance and who are seeking waivers to *continue* to transmit their programming in excess of the 25% duplication allowance unless and until the waiver request is denied. In the event that the FCC denies such a waiver, the FCC may grant additional time, not to exceed six months, for the licensee to come into compliance with the Radio Duplication Rule.

The general process for seeking a waiver of the reinstated Radio Duplication Rule will continue to remain available beyond, and apart from, the grace period and ninety-day recommendation for requesting a waiver. Therefore, licensees of FM stations that seek to commence exceeding the 25% programming duplication limit in the future may seek a waiver of the Radio Duplication Rule at any time.

Please contact this office if you have any questions, or would like to file for a waiver.