PART 102–76—DESIGN AND CONSTRUCTION

■ 1. The authority citation for part 102–76 is revised to read as follows:

Authority: 40 U.S.C. 121(c) (in furtherance of the Administrator's authorities under 40 U.S.C. 3301–3315 and elsewhere as included under 40 U.S.C. 581 and 583); 42 U.S.C. 4152.

■ 2. Add an undesignated center heading and §§ 102–76.100 through 102–76.125 to subpart C to read as follows:

Subpart C—Architectural Barriers Act

Sec.

* * * * *

Public Rights-of-Way

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Public Rights-of-Way

§ 102–76.100 What definition applies to this part?

Public right-of-way means public land acquired for or dedicated to transportation purposes, or other land where there is a legally established right for use by the public for transportation purposes.

§ 102–76.105 What standard must public rights-of-way subject to the Architectural Barriers Act and covered under § 102–76.65(a) meet?

(a) GSA adopts the appendix to 36 CFR part 1190 without additions or modification as the accessibility standard for pedestrian facilities in the public right-of-way. Pedestrian facilities in the public right-of-way subject to the Architectural Barriers Act (other than facilities in paragraphs (b) and (c) of this section) must meet the accessibility standard for pedestrian facilities in the public right-of-way so that pedestrian facilities located in the public right-of-way are readily accessible to and usable by pedestrians with disabilities. Compliance with this accessibility standard is mandatory; provided, however, that this standard does not address existing pedestrian facilities in the public right-of-way under the Architectural Barriers Act unless the pedestrian facilities are altered at the discretion of a covered entity.

(b) Residential public rights-of-way subject to the Architectural Barriers Act must meet the standards prescribed by the Department of Housing and Urban Development.

(c) Department of Defense and United States Postal Service public rights-of-way subject to the Architectural Barriers Act must meet the standards prescribed by those agencies.

§ 102–76.110 Where pedestrian facilities subject to the standard in § 102–76.105(a) are altered, must an alteration to a pedestrian facility be connected by a compliant pedestrian access route to an existing pedestrian circulation path?

Yes, pedestrian facilities in public rights-of-way subject to the standard in § 102–76.105(a) that are altered must always be connected by a compliant pedestrian access route to an existing pedestrian circulation path.

§ 102–76.115 Who has the authority to waive or modify the standards in § 102–76.105(a)?

The Administrator of General Services has the authority to waive or modify the accessibility standards for buildings and facilities covered by the Architectural Barriers Act (ABA) in § 102–76.105(a) on a case-by-case basis if an agency head or a GSA department head submits a request for waiver or modification and the Administrator determines that the waiver or modification is clearly necessary. The Administrator of General Services must consult with the Access Board to ensure that the waiver or modification is based on findings of fact and not inconsistent with the ABA.

§ 102–76.120 What recordkeeping responsibilities do Federal agencies have?

(a) The head of each Federal agency must ensure that documentation is maintained on each contract, grant or loan for the design, construction, or alteration of a pedestrian facility in a public right-of-way subject to the standard in § 102–76.105(a) containing one of the following statements:

(1) The standard has been or will be incorporated in the design, the construction, or the alteration.

(2) The grant or loan has been or will be made subject to a requirement that the standard will be incorporated in the design, the construction, or the alteration.

(3) The standard has been waived or modified by the Administrator of General Services, and a copy of the waiver or modification is included with the statement.

(b) If a determination is made that a pedestrian facility in a public right-of-way is not subject to the standard in § 102–76.105(a) because the Architectural Barriers Act does not apply to the facility, the head of the Federal agency must ensure that documentation is maintained to justify the determination.

§ 102–76.125 What portions of this subpart are severable?

All provisions included in this subpart are separate and severable from one another. If any provision is stayed or determined to be invalid, it is GSA's intention that the remaining provisions will continue in effect.

[FR Doc. 2024–14424 Filed 7–2–24; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 19–310, 17–105; FCC 24–66; FR ID 228050]

Reinstatement of Radio Non-Duplication Rule for Commercial FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopted an Order on Reconsideration that responds to a petition requesting reinstatement of the prohibition on the duplication of commercial FM programming beyond a 25% threshold.

DATES: Effective August 2, 2024.

FOR FURTHER INFORMATION CONTACT: John Bat, Media Bureau, Industry Analysis Division, *John.Bat@fcc.gov,* (202) 418–7921.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration (*Order*), in MB Docket Nos. 19–310, 17–105, FCC 24–66, adopted on June 5, 2024, and released on June 10, 2024. The full text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at *https://docs.fcc.gov/public/attachments/FCC-24-66A1.pdf.* To request materials in accessible formats for people with

disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* (mail to: *fcc504@fcc.gov*) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. By this *Order,* we grant the Petition for Reconsideration of REC Networks, the musicFIRST Coalition, and the Future of Music Coalition (Petitioners) requesting that the Commission reinstate § 73.3556 of the Commission's rules (the radio duplication rule) for commercial FM stations. We find that reinstating the prohibition on the duplication of FM programming beyond a 25% threshold serves the public interest by furthering the goals of competition, programming diversity, localism, and spectrum efficiency. We also find that the existing waiver process should address sufficiently the concerns of specific FM stations in unique circumstances.

Background

2. The Commission's radio duplication rule has evolved over time consistent with changes in the broadcast radio market. The Commission first limited the duplication of programming by commonly owned radio stations serving the same local area in 1964 when it prohibited FM stations in cities with populations over 100,000 from duplicating the programming of a co-owned AM station in the same local area for more than 50% of the FM station's broadcast day. The Commission observed that it had never regarded program duplication as an efficient use of FM frequencies; instead, it had allowed program duplication as, ''at best, . . . a temporary expedient to help establish the FM service.'' Accordingly, the Commission envisioned ''a 'gradual' process to end programming duplication once the number of applicants seeking licenses exceeded the number of vacant FM channels available in large cities.''

3. In 1976, the Commission tightened the radio duplication restriction. It limited FM stations to duplicating only 25% of the average program week of a co-owned AM station in the same local area if either the AM or FM station operated in a community with a population of over 25,000. Based on its 12 years of experience observing the effects of the radio duplication rule, the Commission delayed implementation of the tightened 25% limit on smaller cities for approximately four years, establishing interim limits that prohibited FM stations from duplicating more than 25% of average broadcast week programming of a commonly owned AM station in communities over 100,000 and 50% of programming of a commonly owned AM station in communities over 25,000 but under 100,000. At that time, the Commission observed that ''the public does not have to depend on non-duplication to add diversity'' when new broadcasting frequencies remain available. In 1986, in response to a petition for rulemaking seeking to exempt late-night hours when determining compliance with the radio duplication rule, the Commission eliminated the cross-service radio duplication rule entirely. It found that FM service had developed sufficiently to support the elimination of the rule and that FM stations were fully competitive, obviating the need to foster the development of an independent FM service through a requirement for separate programming.

4. In 1992, as part of a broad proceeding reviewing its national and local radio ownership rules, the Commission adopted a new radio duplication rule limiting the duplication of programming by commonly owned stations or stations commonly operated through a time brokerage agreement in the same service (AM or FM) with substantially overlapping signals to 25% of the average broadcast week. The Commission saw no public benefit to allowing commonly owned same-service stations in the same local market to duplicate more than 25% of their programming, observing that: ''. . . when a channel is licensed to a particular community, others are prevented from using that channel and six adjacent channels at varying distances of up to hundreds of kilometers. The limited amount of available spectrum could be used more efficiently by other parties to serve competition and diversity goals.'' The Commission concluded, however, that limited programming duplication—specifically, below the 25% threshold—had benefits, stating ''we are persuaded that limited simulcasting, particularly where expensive, locally produced programming such as on-the-spot news coverage is involved, could economically benefit stations and does not so erode diversity or undercut efficient spectrum use as to warrant preclusion.''

5. The Commission issued the *NPRM* initiating this proceeding in November 2019, seeking comment on the radio duplication rule and whether it should be retained, modified, or eliminated. As the Commission noted in the *NPRM,* the broadcast industry has changed significantly since the Commission adopted the latest version of the radio programming duplication rule in 1992. In particular, significant growth in the number of radio broadcasting outlets, the advent of digital HD Radio, and the evolution of new and varied formats in which to disseminate programming (*i.e.,* digital satellite radio, streaming via station websites, and mobile applications) have led to greater competition and programming diversity in radio broadcasting. Accordingly, the Commission asked commenters to address several issues, including the impact of market forces (*i.e.,* new sources of audio programming, increased number of stations, instances of consolidation in any aspect of the media marketplace) and the impact of the radio duplication rule on the Commission's public interest goals of competition, programming diversity, localism, and spectrum efficiency. The *NPRM* also sought comment on whether the Commission's prior rationale (in 1986) for eliminating the cross-service duplication programming rule—that duplication is preferable to curtailing programming or going off the air entirely where separate programming is not economically feasible—applies equally to the same-service duplication rule. The *NPRM* sought input on the benefits of allowing some level of programming duplication, as well as potential modifications to the rule. In addition, the *NPRM* asked whether the rule should treat stations in the AM service and the FM service differently in light of the particular economic and technical challenges facing AM stations. Finally, the *NPRM* asked commenters to discuss potential costs and benefits of modifying or eliminating the rule. Four parties filed comments in response to the *NPRM,* and two parties filed reply comments.

6. Prior to the Commission's elimination of the radio duplication rule for both AM and FM stations in August 2020, Commission staff publicly circulated a draft order that, if adopted, would have retained the rule for the FM band. The draft order concluded that the radio duplication rule for the FM service remained useful in furthering the goals of competition, programming diversity, localism, and spectrum efficiency. Among other things, the draft order concluded that the FM service does not face the same persistent challenges as the AM service, that the rule as applied to FM continued to ''act as a useful guiderail'' to encourage programming diversity and spectrum efficiency, and that the existing waiver

process was sufficient to provide flexibility where needed.

7. Following public release of the draft order, NAB submitted a letter advocating for elimination of the rule for FM service as well as AM. In the letter, NAB asserted that elimination of the rule entirely would provide needed flexibility and benefits to FM licensees and ease the burdens NAB alleged were caused by the rule. For instance, NAB contended that FM station staffs forced to quarantine due to the pandemic could find it difficult to produce original programming. NAB further suggested that were the Commission to eliminate the rule, stations could pool resources to simulcast emergency information without incurring the delay of a waiver or could inform listeners of format changes by simulcasting their new formats on multiple stations. NAB went on to assert that the rule as applied to FM stations produced no public interest benefits, that FM stations face considerable competition, and that market forces would naturally give commonly owned stations an incentive to air distinct programming, all of which warranted eliminating the rule to allow FM stations to repurpose costly programming, quickly and effectively, where appropriate.

8. In contrast to the draft order, the final *Order,* as adopted by the Commission, eliminated the radio duplication rule for both AM and FM services. Explaining its reasoning for the elimination of the rule for AM stations in the final *Order,* the Commission stated that AM stations could better serve the needs of the public if they were afforded greater regulatory flexibility for innovative experimentation with digital radio. The Commission pointed to unique pressures facing the AM service, such as escalated environmental and man-made noise, which has increased levels of harmful interference. The Commission also stressed that unlike with FM service, the AM service faces higher operational costs due to the larger and more complex physical plants that are necessary to maintain the band. In removing the rule for FM stations, the Commission relied primarily on its desire to afford flexibility to respond to the exigencies of the ongoing COVID–19 national emergency. Stating that the elimination of the rule was necessary for stations to inform listeners of emergency information and formatting changes, the Commission also asserted that programming duplication would in most cases not become a ''common practice,'' but rather a short-term response to unique circumstances.

9. On November 20, 2020, REC Networks, the musicFIRST Coalition, and the Future of Music Coalition filed a petition for reconsideration asking that the Commission reinstate the radio duplication rule for FM stations. NAB filed an Opposition to the Petition on January 5, 2021. Common Frequency filed a Reply to the Opposition on January 14, 2021, and REC Networks, the musicFIRST Coalition, and the Future of Music Coalition did the same on January 15, 2021. Petitioners do not request that the Commission reinstate the radio duplication prohibition for AM stations.

Discussion

10. As discussed further below, we reinstate § 73.3556 of our rules as to FM stations in order to further the goals of competition, programming diversity, localism, and spectrum efficiency. We find that Petitioners provide valid reasons to reconsider eliminating the radio duplication rule as applied to FM stations, and we conclude that the record supports reinstating the rule for FM service. Specifically, we find that the record does not provide sufficient evidence that the rule, as applied to FM service, has caused or will cause harm to FM licensees, that market forces alone would be sufficient to preserve the rule's benefits, or that the 25% duplication allowance set forth in the former rule and the potential to seek a waiver to exceed that allowance in the event of special circumstances is insufficient to provide FM licensees with flexibility where needed. Furthermore, contrary to NAB's assertion that unique economic pressures facing radio stations justified rescinding the rule for FM service, we find that the record lacks sufficient evidence to demonstrate that the rule actually contributes to such economic pressures or that eliminating the rule would reduce those pressures in any meaningful way. As a result, we believe that elimination of the rule for FM service in the final *Order* was, at best, premature given the absence of such evidence, and particularly as balanced against the countervailing public interest objectives the rule serves. Accordingly, we find that reinstating the radio duplication rule for FM service strikes the right balance between affording FM stations the ability to repurpose some amount of programming on commonly owned stations while continuing to further the public interest goals of competition, programming diversity, localism, and spectrum efficiency.

11. As an initial matter, we find that granting the Petition is within the Commission's discretion. Contrary to NAB's assertion that the Petition should be denied because it does not raise new issues that were not already addressed by the Commission in the *Order,* we reiterate that ''Commission precedent establishes that reconsideration is generally appropriate where the petitioner shows either a material error or omission in the original order.'' In this instance, we are persuaded that the Commission's prior decision erred in eliminating the radio duplication rule for FM stations. We note that Petitioners have questioned whether the process by which the Commission eliminated the rule with respect to FM service complied with the Administrative Procedure Act. Because we conclude that Petitioners make convincing arguments on the merits about the need to reinstate the rule for FM service to further the public interest goals of competition, programming diversity, localism, and spectrum efficiency, we need not reach Petitioners' separate arguments about whether to reinstate the rule based on alleged inadequacies in the process by which it was eliminated.

12. We conclude that the record does not demonstrate that eliminating the radio duplication rule as applied to the FM service serves the public interest, and we are persuaded that the Commission's earlier conclusion that it did so was in error. Although the Commission stated in the *Order* that ''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,'' we find that contrary conclusions used to justify eliminating the rule for FM service in fact rest on ''bare assertions'' derived from an exceedingly thin record proffered in support of that decision. Specifically, only a single commenter—NAB—advocated for elimination of the rule with regard to FM service. In so doing, NAB offered only general assertions regarding arguments supporting elimination of the rule for AM that it contended could also apply to FM and anecdotal suggestions that there could be select circumstances in which duplication would be ''helpful'' to FM stations. On reconsideration, we find NAB's claims about the harms the rule causes to be lacking in concrete or credible support. By contrast, we find comments describing the benefits the rule is intended to foster and the harms that would accrue in its absence support retaining the rule. Moreover, we find that, in the absence of more convincing

evidence to assure us that elimination is wise at this time, there are various countervailing objectives that support reinstatement of the rule in the service of competition, programming diversity, localism, and spectrum efficiency, objectives that we find compelling for the reasons described herein.

13. Indeed, we find that the radio duplication rule acts as a useful guiderail in the FM service—where spectrum is in higher demand (than AM service) by consumers, advertisers, and owners—to encourage the diversification of programming on commonly owned FM stations, which then compete in the marketplace for listeners and advertisers. As Petitioners note, allowing duplication of FM programming beyond the 25% threshold can harm competition in the radio marketplace because, ''[t]o the extent that larger clusters are allowed to slash programming costs by eliminating programming on one or more FM stations within a given single market, yet continue to sell advertising on such warehoused spectrum, it follows that competing independent radio stations in that shared market cannot take advantage of similarly drastic economies of scale.'' We conclude that a quantifiable cap on duplication for FM stations properly balances stations' economic and practical needs to offer some duplication with consumers' needs for diverse and local programming, and addresses competition concerns as well. Given the potential economic incentives to duplicate programming (*e.g.,* cost cutting), we share Petitioners' concerns regarding the attendant harms to the public interest goals of diversity and localism—due to potential reduction of ''local voices on local airwaves'' providing ''locally-relevant programming''—should we not reinstate the rule.

14. Regardless of any perceived benefits, we note that duplication of programming is an inherently inefficient use of spectrum. As recognized before by the Commission, where there is limited quantity of spectrum, duplication beyond a 25% allowance can be considered inefficient. While the Commission previously took the position that market forces give station owners an incentive to avoid duplicating programming that renders a prohibition on duplication unnecessary, on reconsideration we do not find sufficient evidence in the record to demonstrate that market forces would dictate against duplication above the rule's threshold in all, or even most, instances. Conversely, we find that the record provides at least some evidence of an incentive to duplicate programming where market forces apparently failed to prevent it. Notably, Kern Community Radio (Kern), a prospective non-commercial community broadcaster, stated that, in addition to the rebroadcast of programming being imported from outside the market, duplication also is occurring in its local market of Bakersfield, California. Given that other commenters failed to cite evidence either refuting or countering the market information provided by Kern, we are not convinced that the duplication in the Bakersfield-area market is somehow unique or isolated. While NAB notes that the radio duplication rule was eliminated three years ago, thus providing an opportunity to assess whether stations increased duplication after elimination of the rule, NAB provides no evidence on this point or otherwise refutes or counters the information in the record. Thus, we find that it was erroneous for the Commission to have ignored such evidence when it agreed with NAB in 2020 that stations obviously are incentivized by market forces not to duplicate, and relied on this reasoning to rescind the rule. While NAB contends that duplication could reduce the revenues that a station owner could otherwise earn by offering non-duplicative programming, duplication also allows a station owner to reduce costs substantially. Additionally, the ability to operate a station inexpensively using duplicative programming may, in fact, give a group station owner a disincentive to invest in new programming, or an incentive to occupy the frequency simply to avoid the potential introduction of a competitor. We find NAB's theoretical arguments are insufficient to support the conclusion that market forces alone would be adequate to protect against duplication in the FM band. While experience with the AM band may, over time, provide some evidence relevant to such theoretical questions, without more or better evidence in the record of this proceeding, we find that it was premature to extend elimination of the rule to FM in the *Order.*

15. We further find that the Commission erred in abolishing the duplication rule in the context of the pandemic ongoing at the time. On reconsideration, we find that the record fails to demonstrate that the 25% duplication allowance set forth in the former rule and the potential to seek a waiver to exceed that allowance would not sufficiently address exigent circumstances. When eliminating the radio duplication rule, the Commission stated that the COVID–19 national emergency ''highlight[ed] the need to provide broadcasters increased flexibility to react nimbly to local needs, as circumstances have changed rapidly in different jurisdictions across the country since the beginning of the outbreak.'' We acknowledge that there may be particular value in ''allowing FM broadcasters to duplicate programming on a commonly owned station . . . in times of crisis, including the one our nation is currently undergoing'' because ''small broadcasters with fewer resources are especially vulnerable if one of their studio employees contracts the virus.'' However, upon review we find that the record lacks sufficient evidence or examples of inefficiencies tied to the pandemic or other exigent circumstances that would justify permanent industrywide relief. In addition, the record lacks evidence that the existing 25% duplication allowance has proven to be insufficient for FM stations to respond to emergencies. Given what we believe to be the minimal burden of addressing by waiver what NAB terms, somewhat imprecisely, as ''times of crisis,'' and what we assume to be the relative infrequency of such occasions, we do not believe that burden outweighs the risks associated with essentially exempting FM stations from the nonduplication limitations on such a vague basis. However, we would expect to look favorably upon waivers premised on adequately documented weather or similarly unforeseen emergencies, sought promptly at the time of such emergencies.

16. As the Petitioners note, the COVID–19 national emergency is ''a temporary event.'' During this time, the Commission has taken a number of steps to accommodate Commission licensees and regulatees in light of disruptions to their businesses. As Petitioners state, ''radio station owners whose financial struggles force a choice between duplicating programming or allowing one or more of their FM stations to go 'dark' '' may seek a waiver to exceed the 25% duplication allowance. Overall, we find that the clear potential harms arising from the Commission's elimination of the rule—harms to competition, diversity, localism, and spectrum efficiency—when weighed against speculative potential benefits, if any, merit reinstating the rule for FM service. Benefits of rescinding the rule cited by NAB, including efficiencies in responding to emergencies, are inherently speculative. The record

contains no evidence demonstrating that such efficiencies could not be achieved with the 25% duplication allowance and existing waiver options. Further, we reject NAB's suggestion that potential efficiency-related benefits can only be achieved through revocation of the rule entirely when adequate regulatory relief was previously provided for in the rule with the 25% duplication allowance.

17. Although the Commission previously expressed concerns regarding costs and delay associated with waiver requests to exceed the 25% duplication allowance based on special circumstances, we find on reconsideration that in fact there is no information in the record demonstrating that the waiver process has proven unreasonably burdensome. We acknowledge that any waiver process inherently entails some level of cost and delay, but those costs must be balanced against the harms, noted above, that could ensue were the rule eliminated entirely. On balance, we do not find evidence that the waiver process entails costs or delay so unreasonable as to outweigh the legitimate safeguards the rule provides. Indeed, NAB has failed to provide concrete evidence demonstrating that FM stations have struggled to respond to weather and other emergency events because of the need to seek a waiver, despite raising such a concern. We find that the rule provides stations a sufficient buffer under the 25% duplication allowance so that stations may react responsively and nimbly to emergencies, format changes, and other special circumstances that might warrant a temporary level of duplication. We agree with Petitioners that the wholesale elimination of the radio duplication rule for FM stations across the industry ''shortchange[d] the careful tailoring and analysis available through the waiver process,'' through which stations can seek relief. A waiver process exists precisely to account for temporary or unique circumstances that warrant a limited departure from the overall rule.

18. Finally, whatever the alleged or perceived economic challenges facing the FM service may be, we conclude that the record does not establish that elimination of the prohibition on duplication as it pertains to FM service is an appropriate, or likely to be an effective, means to address those challenges. In its support of the elimination of the duplication rule, NAB has repeatedly emphasized how FM stations have encountered significant financial stress—in part due to listener demands for higher fidelity in an ''expanding universe'' of platforms and economic shocks from COVID–19. However, as stated above, the rule was created in service of other objectives, which would be jeopardized in its absence. Moreover, we cannot conclude that the duplication rule's impacts are sufficiently tied to FM stations' economic and listenership challenges such that revocation of the rule entirely would meaningfully address these larger concerns. We find that the rule already provides adequate flexibility for those FM stations that choose partial or short-term duplication of programming in response to either economic challenges or other temporary emergency or reformatting needs.

19. We are not persuaded by NAB's *ex parte* request to pause this *Order* until the Commission first collects and analyzes new data on the nature and prevalence of programming duplication, and/or information regarding recent changes to stations' operations, since the Commission's elimination of the duplication rule. We note that NAB has not submitted such data. In any event, regardless of whether and to what extent duplication has begun to take place, it does not follow that the Commission should delay further the restoration of a useful guiderail. As noted above, in those instances where duplication is occurring or will occur in the future, and where there is a legitimate need for it, the 25% duplication allowance and waiver process will remain available to stations.

20. Although we reject calls to wait further to act, we provide a six-month grace period to the extent that some FM stations are currently employing duplication that exceeds the limits of the reinstated rule. In order to minimize possible service disruptions and burdens for these stations, and to provide them with an ample runway back to compliance with the reinstated rule, we will provide a six-month grace period after the rule's effective date to come into compliance. The six-month grace period will begin when the reinstated rule becomes effective thirty days after publication in the **Federal Register**. Consistent with this grace period, we strongly encourage any FM station that currently exceeds the duplication allowance, and that intends to seek a waiver, to submit its request for a waiver within the first ninety days after the new rule becomes effective. We believe that adherence to this timeframe will benefit such stations by permitting them to take advantage of the grace period and continue their current practices while any waiver request is under review. Nevertheless, we will permit FM stations currently employing duplication that exceeds the 25% duplication allowance 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 a waiver request is denied, we direct the Media Bureau to provide the licensee with additional time to come into compliance, not to exceed six months from wavier denial. In addition, we emphasize that the grace period and our guidance on waivers for those FM stations currently duplicating in excess of the 25% duplication allowance, as described directly above, does not preclude an FM station that later finds itself interested in pursuing a waiver from seeking one. The general process for seeking a waiver of the reinstated rule will continue to remain available beyond, and apart from, the grace period and ninety-day recommendation for requesting a waiver described in this paragraph.

21. In conclusion, we agree with Petitioners that the Commission erred by enacting a permanent rule change for the FM service when the existing duplication allowance and waiver option, adequately address issues that may arise. The reinstated rule will function as a useful guiderail promoting the public interest and will provide sufficient flexibility to serve the particularized needs of FM stations. For the reasons stated above, we find that any costs associated with reinstating the rule for FM service are outweighed by the benefits associated with the rule in furthering the public interest objectives of competition, programming diversity, localism, and spectrum efficiency. Accordingly, we grant the Petition and reinstate the radio duplication rule as to FM stations.

Procedural Matters

22. *Supplemental Final Regulatory Flexibility Act Analysis.* In compliance with the Regulatory Flexibility Act (RFA), this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Order,* to the extent that changes adopted on reconsideration require changes to the information included and conclusions reached in the FRFA. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* that initiated this proceeding. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The Commission received no comments in response to the IRFA. This present Supplemental FRFA conforms to the RFA.

23. *Paperwork Reduction Analysis.* This document does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. 3501 through 3520). In addition, therefore, it does not contain any new or modified ''information burden for small business concerns with fewer than 25 employees'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4).

24. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Order on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Supplemental Final Regulatory Flexibility Act Analysis

25. *Supplemental Final Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* that initiated this proceeding. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The Commission received no comments in response to the IRFA. This present Supplemental FRFA conforms to the RFA.

A. Need For, and Objectives of, the Order on Reconsideration

26. The radio duplication rule prohibited any commercial AM or FM radio station from devoting ''more than 25% of the total hours in its average broadcast week to programs that duplicate those of any other station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours . . . of the stations overlap and the overlap constitutes more than 50% of the total principal community contour service area of either station.'' In this Order on Reconsideration, we restore the radio duplication rule as applied to FM stations in order to better serve the public interest.

27. We find that the record does not demonstrate that eliminating the radio duplication rule as applied to the FM service serves the public interest, as the FM service does not face the same persistent challenges as the AM service that eliminating the rule for AM stations was intended to mitigate. We find that there are likely benefits to restoring the radio duplication rule for FM stations. The radio duplication rule will act as a useful guiderail in the FM service—where spectrum is especially scarce—to encourage the diversification of programming on commonly owned FM stations. Accordingly, we restore the radio duplication rule for FM stations, while recognizing the 25% duplication allowance and the potential to seek a waiver to exceed that allowance in the event of special circumstances will provide FM licensees with flexibility where needed.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

28. There were no comments to the IRFA or FRFA filed.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

29. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Apply

30. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The rule changes adopted herein will directly affect certain small radio broadcast stations, specifically commercial FM radio stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

31. *Radio Stations.* This industry is comprised of ''establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than $25 million per year. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

32. The Commission estimates that as of March 31, 2024, there were 4,427 licensed commercial AM radio stations and 6,663 licensed commercial FM radio stations, for a combined total of 11,090 commercial radio stations. Of this total, 11,088 stations (or 99.98%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on April 4, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of March 31, 2024, there were 4,320 licensed noncommercial (NCE) FM radio stations, 1,960 low power FM (LPFM) stations, and 8,913 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

33. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to

which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

E. Description of Projected Reporting, Record Keeping and Other Compliance Requirements

34. The Order on Reconsideration restores the radio duplication rule as applied to FM stations. Accordingly, the Order on Reconsideration reinstates prior reporting, recordkeeping, and compliance requirements for small entities. Therefore, the Order on Reconsideration will not impose additional obligations or expenditure of resources on small businesses.

F. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

35. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

36. In this proceeding, we reinstate the radio duplication rule for FM stations. This action reinstates prior reporting, recordkeeping, and compliance requirements for all commercial FM radio stations, including small entities. We determined in this Order on Reconsideration that reinstating the radio duplication rule for FM stations would better serve the public interest and anticipate that reinstatement of the rule will positively impact broadcasters, including small entities, and avoid the potential harms described by Petitioners. We believe that the reinstated rule for FM broadcasters affords small businesses sufficient flexibility under the 25% duplication allowance. Because we do not anticipate that a large number of broadcasters will exceed the allowance, we find that the allowance by itself provides adequate accommodation for small businesses. For those few cases in which FM stations would surpass the duplication allowance, we permit stations to submit waiver requests which specify the need for and special circumstances justifying duplication beyond the allowance. For those FM stations that duplicate programming in excess of the 25% duplication allowance, we will provide a six-month grace period to come into compliance with the reinstated rule. The period will begin when the reinstated rule becomes effective thirty days after publication in the **Federal Register**. In addition, we direct the Media Bureau to provide the licensee with additional time to come into compliance, not to exceed six months if a duplication waiver request is denied. We conclude that extending such flexibility to FM stations, especially for small entities, will mitigate some of the compliance burdens associated with the rule change. Taken together, these provisions allow for all stations, no matter their size and resources, to comply with the rule without being unduly burdened.

G. Report to Congress

37. The Commission will send a copy of this Order on Reconsideration, including this Supplemental FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order on Reconsideration, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

H. Federal Rules That May Duplicate, Overlap, or Conflict With the Rule

38. None.

Ordering Clauses

39. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1, 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 303(r), this Order on Reconsideration *is adopted* and *will become effective* thirty days after publication in the **Federal Register**.

40. *It is further ordered* that the Petition for Reconsideration filed by REC Networks, the musicFIRST Coalition, and the Future of Music Coalition *is granted.*

41. *It is further ordered* that, pursuant to the authority found in sections 1, 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 303(r), the Commission's rules *are amended* as set forth in Appendix A and such rule amendment will become effective thirty days after publication in the **Federal Register**.

42. *It is further ordered* that the Commission's Office of the Secretary, *shall send* a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

43. *It is further ordered* that, pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission's Office of the Managing Director, Performance Program Management *shall send* a copy of the Order on Reconsideration to Congress and to the Government Accountability Office.

44. *It is further ordered* that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19–310 *shall be terminated* and its docket closed.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Add § 73.3556 to read as follows:

§ 73.3556 Sponsorship identification; list retention; related requirements.

(a) No commercial FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted 3.16 mV/m) of the

stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station.

(b) For purposes of this section, duplication means the broadcasting of identical programs within any 24-hour period.

[FR Doc. 2024–14496 Filed 7–2–24; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 512, 527, 532, 536, 541, and 552

[GSAR Case 2022–G506; Docket No. 2022–0020; Sequence No. 1]

RIN 3090–AK57

General Services Administration Acquisition Regulation; Standardizing the Identification of Deviations in the General Services Administration Acquisition Regulation

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing this final rule amending the General Services Administration Acquisition Regulation (GSAR) to standardize the language used to identify and communicate when there has been an approved FAR deviation within the GSAR. This action is necessary in order to provide consistency for readers of the GSA regulations. The intended effects of this rule are: first, the standardized text will allow readers consulting the table of contents of a given GSAR subpart to easily locate sections containing FAR deviations; and second, standardized language at the beginning of individual GSAR subdivisions containing FAR deviations will both identify the use of and specify the actions authorized by the deviation.

DATES: Effective August 2, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Daniel Frias or Mr. Bryon Boyer, GSA Acquisition Policy Division, at *gsarpolicy@gsa.gov* or 817–850–5580. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755 or *GSARegsec@gsa.gov.* Please cite GSAR Case 2022–G506.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the General Services Administration Acquisition Regulation (GSAR) to standardize the language used to identify and communicate FAR deviations within the GSAR. FAR deviations are currently identified using inconsistent language, and the location of deviations is not readily apparent to readers. In light of this issue, GSA is publishing this amendment with the aim of enhancing the visibility of FAR deviations within the GSAR by ensuring their visibility in the table of contents for each relevant subpart, as well as within specific subdivisions. Additionally, GSA seeks to standardize language used to introduce the impact of individual FAR deviations within the text.

II. Discussion and Analysis

The naming convention for GSAR sections containing FAR deviations will be revised to incorporate the label ''(FAR DEVIATION)'' at the end of the section title. This change aims to enhance the visibility of the deviation when referencing the table of contents of the respective subpart.

Within sections containing FAR deviations, the deviating subdivision will begin ''GSA has a deviation from FAR (section number) that allows . . .'' This standardized language ensures easy identification and understanding of the implications of the deviation.

III. Publication of This Final Rule for Public Comment Is Not Required

The statute that applies to the publication of the GSAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This rule is not required to be published for public comment, because it is merely conforming the references to FAR deviations throughout the text of the GSAR and does not have a significant effect or impose any new requirements on contractors or offerors.

III. Executive Order 12866, 13563, and 14094

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. OIRA has determined this rule not to be a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866 (Regulatory Planning and Review).

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a ''major rule'' may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. OIRA has determined this rule is not a ''major rule'' under 5 U.S.C. 804(2).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VI. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*