

Memorandum

Re: Quarterly Issues/Programs Lists

The Federal Communications Commission requires radio and television licensees to prepare and make publicly-available on a quarterly basis lists of the programs which have provided the most significant treatment of community issues during the preceding three-month period. These quarterly issues/programs lists provide the primary initial source of information available to the public and to the Commission concerning stations' program service. A citizens' group exploring the possibility of a petition to deny a renewal application or an advocacy group interested in filing a complaint against a station, for example, would likely review a station's quarterly lists to ascertain whether the program service they reflect complies with Commission requirements.

Because of the lists' potentially critical significance in the event of challenges to licensees' past program service, it is important that they be prepared in the most accurate, comprehensive manner possible. The lists for a station's license term should demonstrate broadcast of reasonable amounts of programming responsive to significant issues facing the community served, scheduled at times when the programming could reasonably have been expected to be effective.

This memorandum discusses fundamental considerations for preparation of the lists.

I. Procedural Requirements

A. Due Dates. Issues/programs lists are to be prepared for each quarter, and must be placed in stations' public inspection files no later than the 10th day following the end of the quarter:

<u>Reporting Period</u>	<u>Due in Public Files</u>
January 1 - March 31	April 10
April 1 - June 30	July 10
July 1 - September 30	October 10
October 1 - December 31	January 10

Compliance with these deadlines is particularly important since renewal applications require a certification under penalty of perjury that the quarterly issues/programs lists were placed in public files "at the appropriate times." Failure to prepare the lists, or to place them in the file at the required times, may result in the imposition of an FCC monetary fine or forfeiture.

Lists which have been placed in public files may subsequently be supplemented to provide additional information. The date of filing of any such supplement should be noted on the supplement.

B. Filing with FCC. Quarterly issues/programs lists are not filed with the Commission, even at renewal time. However, as noted, they may prove extremely useful in responding to charges concerning a licensee's past program service which may be filed in connection with petition to deny or other adjudicatory proceedings.

C. Retention. Lists are to be retained for the entire license period (currently eight years for television and radio). That means, at renewal time, there should be 32 lists in the public inspection file.

II. Issues

A. Information Concerning Issues. Quarterly lists are to include a brief narrative description of what the licensee considers to have been the most significant issues facing its community during the period covered by the list. Licensees may use any method or combination of methods they find reasonable and effective to determine community issues.

Licensees should seek to avoid characterizing issues in ways which are overly narrow, excessively broad or vaguely defined. Excessively narrow issues may be only temporary concerns and the station, as a result, may have no programming during a quarter which rationally relates to the issue. Overly broad or vaguely defined issues (e.g. “Media,” “Community Awareness”) may become catch-all categories which could open the station to a charge that it really has not defined any community issues to serve.

The lists need not contain any statement concerning the ascertainment efforts which led to the selection of these issues. Since descriptions of ascertainment which are volunteered might be subject to gratuitous challenge or criticism, it is recommended that the lists make no reference to ascertainment. (Of course, internal, non-public records concerning ascertainment should continue to be maintained as part of routine station procedure.)

B. Number of Issues. The Commission no longer requires lists to include a minimum of five issues, and there is no maximum number of permissible issues. A decision to list only five or six issues could be subject to criticism, particularly if the station is licensed to a

large metropolitan community in which issues can be expected to be numerous and complex. Since most stations generally provide programming which responds to a broad spectrum of community issues, it should be feasible to list more than six. Seven to ten issues may be a reasonable number for most lists, depending on factors such as actual station programming practices; the licensee's evaluation of issues' relative importance; and the scope of the issue (government, for example, covers a number of smaller sub-issues, while alcoholism is a more narrow issue). Whatever the number of issues selected, however, the goal should be to demonstrate that the station's programming responded to the most significant issues facing the community so that it is not open to a charge that it unreasonably ignored a particular community issue.

C. Programming of Other Stations. The Commission has indicated that a station's failure to program in response to a particular community issue may be excused if another station in the market has broadcast programming in response to it. Although this might afford some theoretical protection if a station's programming should be challenged, the preferred course is to ensure that each station's programming record can stand on its own, without being forced to rely on the service presented by other stations.¹ If a station should choose to rely on another station's programming on a particular issue, the matter should be discussed with counsel at the time such a decision is made.

¹ In its order deregulating radio, the FCC indicated that licensees relying on another station to address a particular issue would be expected to show by contemporaneous records that the other station addressed the issue in question so that the reliance was reasonable. In short, a licensee cannot depend upon a showing after the fact that other stations adequately addressed issues which the licensee did not. With co-owned AM/FM stations, of course, reasonable reliance upon the sister station's programming would be far easier to demonstrate.

III. Programs

A. Program Information. Programs which are listed in response to the issues should be identified by title, date of broadcast, time of broadcast and duration. If only a segment of a listed program responded to a particular issue, the duration of the segment should be listed. Both individual programs and entire program series may be listed as responsive to an issue. Lists do not need to include programs' source or type as reflected on previously-required program logs.

It may be convenient for stations, particularly television stations, to use a cover page for each list which includes a brief description of regularly-scheduled programs' general formats and scheduling. This cover sheet can be associated with each quarterly list and changed only when stations' program schedules change.

B. Program Descriptions. The listing for each program must also include a brief description which demonstrates how the program responded to the listed issue. In many cases, the title of the program and/or the name and position of guests will demonstrate the relationship between the program and the issue. In some cases, however, some explanation may be necessary to make the connection clear. Licensees have broad discretion in characterizing issues and selecting responsive programming; they should not, however, exaggerate the connection between an issue and a program. For example, a news report on a traffic accident should not be listed as programming responsive to an issue of traffic safety, unless the news story tied in public reaction or governmental responses to a continuing problem.

C. Amount of Programming. Although licensees clearly are required to present some issue-responsive programming, there is no "set" required minimum amount of programming which must be presented in response to each issue. Licensees have discretion to

determine what represents a reasonable amount of responsive programming. However, if an issue is significant enough to be included among the most important in the community, it may be considered unreasonable to devote only five or ten minutes of programming to it during an entire broadcast quarter. As a general guideline, each issue should be addressed by at least some programming which permits an aspect of the issue to be treated in greater depth than would be possible in news segments or PSA's.

Because these lists are of primary importance in establishing stations' compliance with their programming obligations, they should be as inclusive as possible. Potential petitioners to deny or complainants will have a difficult task to challenge a station whose past programming is documented by extensive issues/programs lists. Moreover, extensive issues/programs lists will provide a substantial contemporaneous record of station programming which could be of significant benefit in view of longer license terms and the absence of program log requirements. In consequence, stations should list all of their substantial local programming (including drive time or prime time programming) which responded to listed issues, as well as significant syndicated and network issue-responsive programming. As discussed below, the programming to be listed need not be limited to traditional public affairs programming, but can also include religious, educational, agricultural, and entertainment programs which dealt with community issues. Traditional public affairs programs or program segments, however, remain the most solid indication of a licensee's program performance.

D. Program Scheduling. Lists should reflect broadcast of some programs at times when they could reasonably be expected to be effective. Although licensees have broad discretion with respect to the scheduling of programs, they could be subject to charges that they

have abused that discretion if all of the programs on several lists were broadcast during graveyard hours.

E. Local or Network Programs. Quarterly lists should be designed to highlight stations' local program service. However, particularly if a list or lists cannot include substantial amounts of local programming in response to certain issues, the local programming showing should be supplemented by examples of responsive network or syndicated programming. Indeed, inclusion of appropriate network and other non-local programs on the list will strengthen the showing of program service.

If individual network or syndicated programs are not listed, licensees should include on their lists the following types of statements:

Station WXXX also carries regularly scheduled programming of the YYY Network, which includes programs which respond to issues of importance to the community.

Station WXXX also carries [name of syndicated program], which has dealt with issues of importance to the community.

Records from syndicators which describe program content should be retained in order to provide additional documentation should a station's program record be challenged. Information from networks can be placed in the public inspection file in association with issues/programs lists.

F. PSA's. PSA's may be listed in response to community issues. However, PSA's should not be the sole listed means of responding to a particular issue. Instead, they should simply supplement a programming listing. For example, stations may want to list PSA's run for station non-broadcast public service activities (e.g., participation of station talent in a celebrity bowling tournament for an organization serving a community need that the station has elected to address in its programming). Ideally, lists should include the time, date and duration of all

PSA's which are listed. However, in situations where PSA's do not represent a significant means of responding to community issues, only summary information (e.g., number of PSA's and general scheduling) need be provided.

G. News Inserts. Like PSA's, segments of regularly-scheduled news programs should not represent the sole means of responding to a particular issue, but should instead supplement showings of the broadcast of regularly-scheduled and special issue-responsive programs. "Hard news" stories are not generally considered issue-responsive programming.

H. Commonly-Owned Co-Located Stations. Commonly-owned, co-located stations do not need to list the same issues, particularly if their news and programming staffs are separate. However, the decision to list different issues should be a conscious one, based on considerations such as differences in format, audience, etc. A station should expressly decide not to treat a particular issue based on the fact that its sister station is treating it, and should document this decision.