

Issues Programs List

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Many broadcasters are unfamiliar with some of the finer points of FCC regulations regarding the FCC “Issues/Programs List” requirements. This is understandable, since the policies were developed and modified over several decades. In addition, while the skeleton requirements are contained in the Commission’s rules, the policies behind them are buried in denser Commission reports, orders, and decisions. These pronouncements are sometimes confusing and tedious—sometimes they are overlooked. One requirement that is particularly confusing to new broadcasters is the question whether Issues List programs must be produced locally.

A review of the FCC decisions on renewal applications and the fines that have been issued for failure to properly maintain and document the quarterly Issues/Programs Lists reveals that a surprising number of broadcasters are either entirely unaware of the Issues/Programs List requirement or have allowed the exigencies of other business to supersede the efforts required for total compliance.

There is no FCC requirement that Issues List programs be produced locally.

Others, very much aware of the requirement have the mistaken impression that all programming on the list must be locally produced. That is not required. What is required is that the list “. . . includes a brief narrative describing what issues were given significant treatment and the programming that provided this treatment.”¹ The description of the program must include the time, date, duration, and title of each program in which the issue was treated. The burden is on the broadcaster to demonstrate that it has aired programming relevant to the public issues of importance it has identified.² However, nothing in the rule, or any FCC report, order, or decision, speaks to where or how the program must be originated or produced. The Commission’s concern is only in the result and not the process. “We are not concerned with how an applicant or broadcaster becomes aware of community issues so long as such issues are identified and adequate responsive programming is offered or proposed.”³

The history behind the rule supports the view that local origination of programs on the Issues List is not required. Beginning in 1971 and until the FCC adopted its current rules, a licensee was required to conduct formal and very precise surveys of community leaders to identify the community’s specific issues of public importance and to design and propose programs responsive to those specific issues. In 1984, the FCC adopted revised television quantitative programming and commercialization guidelines including revision of the

¹ Section 73.3526 of the Commission’s rules

² Second Report & Order, Deregulation of Radio, 55 RR 2d 1401, 96 FCC 2d 930, 1984 FCC LEXIS 2840 (April 27, 1984), at ¶ 25

³ Id. at ¶ 30.

ascertainment and program log requirements.⁴ Earlier, in its deregulation of radio proceeding, the Commission overhauled its radio content rules.⁵ Collectively, the revisions eliminated the 1971 Ascertainment Primer and the Renewal Primer in favor of an obligation that broadcasters simply determine the issues facing their community by any means reasonably calculated to apprise them of the issues, relying on a broadcaster's discretion and knowledge of its own community. Specifically, the Commission said "the broadcaster will have to place a listing of five to ten issues that it addressed with programming, together with a listing of examples of that programming, in its public file..."⁶ On reconsideration, this requirement was changed for both radio and television to leave the number of issues in the list to the broadcaster's discretion as well. It is generally felt that a licensee whose lists include at least five issues each quarter would likely be able to demonstrate compliance with the issue-responsive programming obligation.

Contrary to popular misconceptions, nothing in the rules or FCC orders require that the programming be locally produced. In fact, the station may use *any* programming, wherever acquired, so long as the program addresses the local issue it has ascertained. For example, the issue may be domestic abuse. The station could air a *Radio Health Journal* program addressing the issue of domestic abuse, how communities can deal with the issues, and where abused spouses can go for counseling and shelter. That program would provide important information to the community responsive to the community issue.

The Commission's goal is that issues of importance to the community be discovered by the broadcaster and addressed in programming so that the "... informed public opinion, necessary to the functioning of a democracy, will be possible."⁷ When it adopted the Issues/Programs List requirement and discontinued formal ascertainment, the Commission gave great latitude to broadcasters on programming, saying the "...bedrock obligation contemplated by "public interest" will be fulfilled with the least government intrusion and the most licensee flexibility."⁸ This flexibility will allow broadcasters to address issues by virtually any means and can include for example, public affairs, public service announcements, editorials, free speech messages, community bulletin boards, and religious programming."⁹ The Commission declined to specify precise quantities of the types of programming that should be presented. Instead, it expressly deferred to broadcasters' own judgment of the local needs and conditions and what reasonable amount of programming relevant to issues facing the community should be presented.

The standard for license renewal, therefore, is to be guided by a retrospective showing for the prior license term that the licensee addressed community issues with programming of *whatever type or origin* that, "... in its discretion and guided by the wants of its listenership, [the licensee] determined were appropriate to those issues."¹⁰ Perhaps the thought that locally produced programming is required stems from the Commission's much older, but now

⁴*The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 56 RR 2d 1005, 98 FCC 2d 1076, 1984 FCC LEXIS 2105 (August 21, 1984)

⁵ *Deregulation of Radio*, 49 RR 2d 1, 84 FCC 2d 968, 1981 FCC LEXIS 628 (February 24, 1981)

⁶ *Id.* at ¶ 32

⁷ *Id.* at ¶ 34

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

superseded, 1960 Programming Statement. In it the Commission had listed 14 programming elements necessary to service in the public interest. The elements included “opportunity for local self-expression” and “the development and use of local talent.” These concepts continued in the ascertainment and renewal primers but gave way in practice to ascertaining all significant segments of the community rather than a concern for well-balanced programming elements. What was important under the ascertainment—and is important today for an Issues/Programs list, is that broadcasters present programming relevant to public issues either in the community at large or, “in appropriate circumstances, relevant primarily to more specialized interests of its own listenership.”¹¹ But, local relevance is not equivalent to local origin.

As a last point, it bears emphasis that stations subject to local marketing, or time brokerage agreements are nonetheless required still to conduct their issues assessment and assure that programs responsive to them are broadcast. This is a nondelegable licensee duty. Of course, the time broker can be the party that actually delivers the programming over the station, and appropriate provision for this compliance should be made a part of every local marketing or time brokerage agreement.

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¹¹ Id. at ¶ 66