

Broadcast Station Reminder: Quarterly Issues Program Lists Due April 10

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By *April 10, 2011*, all radio and television broadcast stations, both commercial and noncommercial, must prepare and place in their public inspection files a list of important issues facing their communities, and the programs aired in the months of January, February, and March dealing with those issues.

Currently, these reports comprise the only legally required documents that demonstrate how a station has met its public service obligations to its community of license and service area. However, the FCC has adopted new rules for television stations that, among other things, will require the use of a standardized form (Form 355) for reporting quarterly issues programs lists and significantly increase the recordkeeping and reporting requirements facing television stations, as noted in this advisory.

The failure to have a complete set of Quarterly Issues Programs lists that were prepared and placed in the station's public file at the proper time can lead to significant fines at license renewal time. Moreover, the failure to produce and document programs responsive to community needs could cause even greater problems for a broadcast licensee.

Please note: New FCC Form 355

Form 355 would require detailed reporting of Quarterly Issues Programs lists by TV stations.

On Jan. 24, 2008, the FCC released a Report and Order adopting a number of enhanced disclosure requirements for broadcast television stations. The Order adopted rules requiring that television stations: 1) post their public inspection files on their Web sites (if they have one), and 2) file a new form, FCC Form 355, on a quarterly basis detailing their programming in minute detail. The implementation of this new form has been delayed thus far; however, stations should be aware of this possible change in the FCC's rules.

Form 355 would require TV stations to break their programming down by specific program categories, as well as certify that the station has complied with a number of FCC programming rules. The new form would require a significant effort by broadcasters to document their programming. The degree of detail that would be required is more substantial than that ever required of broadcasters—far more detailed than the information broadcasters were required to gather prior to the deregulation of the 1980s—though, at least for the time being, much (though not all) of the information is not tied to any specific programming obligations set by the FCC. For details on the requirements, see our earlier [Enhanced TV Disclosure Requirements advisory](#).

As the new Form 355 has not yet been approved, the current rules remain in effect, and television stations will continue to follow the procedures outlined in this advisory. It is possible that the Office of Management and Budget will not approve the use of Form 355; however, broadcasters should be alert for further guidance, as the new form would require licensees to track and provide much more detailed information about the programming aired on their stations.

Who must prepare Quarterly Issues Programs lists?

All radio and television broadcast stations, commercial and noncommercial, must prepare these lists and place them in their public files within 10 days of the end of each quarter. Unlike Equal Employment Opportunity (EEO) reports, which are prepared on behalf of the local station group, the Quarterly Issues Programs list is station specific. Each station should have its own Quarterly Issues Programs list, reporting on programming broadcast on that station, which addresses issues of importance to the viewers or listeners of that particular station.

Why are Quarterly Issues Programs lists significant?

In the 1980s, the FCC “deregulated” radio and television. However, deregulation did not mean that broadcast stations were free to ignore their public interest obligations. Instead, the FCC determined that there did not need to be one set

of rules for all stations mandating how stations should determine what issues were of importance to their communities, or a single set of rules mandating how much time each station had to devote to issue-responsive programming. The FCC also did away with the requirement that program logs be retained as official records by broadcast stations.

However, the FCC did not eliminate the requirement that stations produce programs that serve the public interest. Nor did the FCC do away with the underlying requirements that stations determine what issues are important to their community and produce programming responsive to those issues. And, most importantly, the FCC required that broadcasters document those efforts through Quarterly Issues Programs lists.

Thus, the Quarterly Issues Programs list embodies the underlying requirement of the ascertainment of community needs and the demonstration that a station has met those needs. These lists are the only legally mandated documents demonstrating how the station served the public interest by serving the needs of the audience within its service area. If a station's service to its community is ever challenged, the station will have to rely on the information contained in its issues-programs lists to prove the extent of its service to the public.

As mentioned above, the Commission has enacted rules for television stations that will significantly increase the reporting requirements they face with respect to their programming. The Commission is also conducting a rulemaking proceeding on Localism, which seeks input on a number of far-reaching questions, such as whether formal ascertainment procedures need to be reinstated and whether standards or guidelines for certain types or amounts of programming should be imposed at renewal time. Depending on the outcome of that proceeding, local issue-responsive programming could become much more important. With the renewed emphasis on, and scrutiny of, issue-responsive programming, stations should insure that they carefully complete the currently required paperwork to demonstrate how they are serving their communities.

What happens if stations don't have Quarterly Issues Programs lists?

In the recent renewal cycle, broadcasters were fined between \$4,000 and \$10,000 for not having a complete set of timely Quarterly Issues Programs lists in their public file. While the Commission was less severe for stations missing only an isolated quarter—or if there were isolated instances where the reports were prepared late—the fines were imposed in cases in which there were multiple missing or late-filed reports. This was the case even if the missing lists were from the early part of the eight-year license cycle. Six years of perfect reports will not absolve a station from a year or two when the station was not diligent.

More importantly, though isolated, there have been a few cases in which stations have had license renewal issues, going to the very issue of whether a licensee deserved to have its license renewed, if the lists were non-existent, or if the lists did not demonstrate that the licensee had taken the time to determine the issues of importance to its community, and to air programs responsive to those issues. In these days of increased concern on the part of the FCC about consolidation and the supposed lack of public-interest programming by broadcasters, there is always the fear that more scrutiny may be given to a broadcaster's public-interest programming in the future. These Quarterly Issues Programs lists are very important documents to establish a station's service to the public.

What should be contained in the Quarterly Issues Programs lists?

In the FCC's words, the Quarterly Issues Programs list should reflect the "station's most significant programming treatment of community issues." Thus, a station needs to identify issues of importance to its community that it has in its good faith determined to be of significance to its audience in that quarter, and the programming it has broadcast responsive to those issues. In the past, the FCC had mandated that 5 to 10 issues should be identified each quarter. While the FCC has backed away from any specified number of issues, the 5 to 10 range remains a good target for stations to meet.

While broadcast stations are given a great deal of discretion in deciding what programming to air to address the identified issues, all stations must broadcast some programming that does so. While the FCC does not mandate minimum amounts of issue-responsive programming, the programming must be sufficient, in the station's judgment, to address the issues of importance to its audience in a meaningful way. We would suggest that the station document several different programs that are responsive to each identified issue. Since these Quarterly Issues Programs lists are the only legal proof of what a station has done to meet the needs and interests of the community, we would urge stations to be over-inclusive when deciding the programs to list in the quarterly report. It is always better to have too many programs responsive to the community's needs than too few.

While there is no mandated form for the Quarterly Issues Programs lists, the FCC has said that a station must identify the specific issue that each identified program addresses. Thus, it is not sufficient to simply put into your file a list of issues, and a separate list of your issue-responsive programming. Each program must be identified by the issue it

addresses. In one case, the FCC faulted a station for relying exclusively on a network-generated list of issue-responsive programming. The Commission said that, while network programming can be responsive to local issues, a station must specify the local issue each identified network program addressed. Unless the network program addresses some identified local issue, it should not be listed on the Quarterly Issues Programs list.

Each program must also be identified with the title of the program. For each program the station must list the time and date on which it was broadcast, and its duration. A brief description of the contents of the program, sufficient to demonstrate how the program addresses the identified issue, should also be included. An excerpt from a sample Quarterly Issues Programs list is included as [Attachment A](#). This format can be adopted by stations to report on issues of importance to your community and programming you have broadcast to meet those issues.

What programs are issue-responsive?

It is not just the traditional long-form public affairs discussions that many stations run on Sunday morning that are sufficient to address community needs. Instead, a station may determine that any of its programming that seriously addresses an identified issue is responsive to that issue. Thus, a report on a news program about an issue would be responsive to that issue. Short segments, like PSAs, can be issue-responsive, but should never alone be relied on to address an issue. Some other longer programming should also respond to the issue.

Even entertainment programming can be issue-responsive, if it addresses the identified issues in a serious manner. Thus, a segment on a morning radio show, in which the DJs discuss an important local issue in a substantive or meaningful way, can be claimed as issue-responsive. Similarly, a segment of an entertainment television program can be identified as issue-responsive if it contains such a serious discussion of a local issue.

It is best to include a mix of program types to address every issue. While network programming can be issue-responsive, it is suggested that stations also make every attempt to include locally produced programs to meet each issue, as clearly a locally produced program is more likely to adequately address a local issue. Similarly, not all issue-responsive programming should be buried in the early hours of Sunday morning. Diverse broadcast times reaching a station's entire audience are best to demonstrate that the public was truly served by a station's programming.

How does a station identify issues to include on the Quarterly Issues Programs list?

More than 20 years ago, the FCC abolished the formal ascertainment process that mandated interviews with a pre-established list of community leaders and a general public survey. However, the FCC did not abolish the requirement that stations ascertain the issues of importance to the community. Instead, only the rigid methodology was abandoned.

Stations should have replaced the Commission-mandated program with their own program designed to determine the needs of their communities. For instance, the employees of most stations are involved in a wide array of civic and community activities, e.g., political, social, religious and educational groups and activities. Stations should have their employees regularly report back to the responsible station management about issues raised at the meetings and activities of such organizations, or in formal or informal discussions with organization members.

Station management may also want to formally engage in talks with community officials and members of significant community organizations either in meetings or calls designed specifically to identify issues, or when other opportunities arise (for instance, if such officials are at the station for on-air appearances or other events). General community sentiments on the issues of importance to the community can be gleaned by calls, letters or e-mails from the public.

Most importantly, a station should maintain documentation of the feedback that it gets from these sources and the process it goes through to sift through the information to determine which issues it will address in its programming. This documentation should not be placed in the public file, but should instead be maintained in internal station records that can be produced as evidence of the station's efforts should these efforts ever be challenged during license renewal or at some other time.

The station should gather this information throughout the quarter, and should plan the issue-responsive programming around the issues it is determining are important to the community. The station is supposed to design programming to address community needs that it has identified, and not address issues based solely on programming that has already aired.

Stations should also assure that they are serving the needs of their community of license. While stations have service obligations to their entire service areas, their primary public service obligation is to their city of license. Thus, stations that may be licensed to outlying suburban communities, while competing for listeners and advertisers in a major

metropolitan area, should remember their city of license when compiling the list of issues and programs responsive to those issues. Make sure that issues relevant to your city of license have been identified, and that specific programs address issues and events in that city.

How long should the documentation be retained?

The Commission requires that all Quarterly Issues Programs lists be maintained for the entire renewal period, and until the license renewal application based on those reports is granted. Internal documentation on the steps taken by the station to identify local issues should be retained for the same period.

What happens if a report is not completed on time?

If a report is not completed on time, the station should reconstruct the information and place it into the public file, dated as of the date on which it was actually completed. Since the document is a legally required public document, the public file should be clear that the late-filing took place so that no one can accuse the station of fabricating or back-dating these legal documents.

Special rules for Class A TV stations

In addition to the Quarterly Issues Programs lists discussed above, the FCC requires that Class A TV stations maintain in their public files sufficient information to demonstrate their continuing eligibility for Class A status, e.g., that they have broadcast three hours per week of local programming, broadcast 18-hours a day, and otherwise observed the rules that apply to full-power TV stations. While the FCC has not mandated that this report be done quarterly, the preparation of the Quarterly Issues Programs lists would seem to provide a good opportunity to prepare such documentation.

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