

“Local assessment vs. Local coverage of issues”

By Gregg Skall

An FCC regulation that is particularly confusing to new broadcasters is the “Issues/Programs List.” Questions abound, such as: How many issues must I cover and how often?; Where do I put it?; Must the programs be locally produced?

Every broadcaster, must assess the issues of public importance in their community and design programs to be broadcast over their station that are responsive to those ascertained issues and community needs each calendar quarter. Each list requires a brief narrative describing the issue given significant treatment and a description of the responsive programming, including the time, date, duration and title. These lists must be placed in the local public file on January 10, April 10, July 10 and October 10, reflecting the issue responsive programming broadcast the preceding quarter. All lists must be retained in the local public file until the grant of the next license renewal becomes final. Therefore, by renewal time, each station will have 32 Issues/Programs lists in its public file. Section 73.3526 of the FCC Rules.

Unfortunately, FCC renewals applications reveal that a surprising number of broadcasters are either unaware of the issues/programs list requirement or have allowed other business to supersede the painstaking efforts required for total compliance. Some have the mistaken impression the all listed programming must be locally produced.

The rule requires that the list “... include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment.” The description of the program must include at least the time, date, duration, and title of each program in which the issue was treated. Nothing in the rule, or the Commission’s Report and Order that adopted it, speaks to where or how the program must be originated or produced.

Senior broadcasters will remember that broadcasters were once required to conduct detailed surveys of community leaders to identify specific issues of public importance and to design and propose responsive programs. In its 1960 Programming Statement the Commission had

listed 14 programming elements necessary to service in the public interest, including an “opportunity for local self-expression” and “the development and use of local talent.” In 1983, the FCC eliminated these elements and the Ascertainment Primer and Renewal Primers in favor of an obligation that broadcasters simply determine the issues facing their community by any reasonable means, relying on a broadcaster’s discretion and knowledge of their own local communities. The Commission said “broadcasters will have to place a listing of 5 to 10 issues that it addressed with programming, together with a listing of examples of that programming, in its public file...” 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.

Nothing in the rules or FCC orders requires that the programming be locally produced. The station may use any programming, wherever acquired, that addresses the ascertained local issue. For example, the issue may be river flooding. The station could air a program from a syndicator on river levies that contains important information responsive to the flooding issue.

The goal is simply that the “... informed public opinion, necessary to the functioning of a democracy, will be possible.” In achieving it, the Commission gave great latitude to broadcasters, saying the “...bedrock obligation contemplated by “public interest” will be fulfilled with the least government intrusion and the most licensee flexibility. 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.” It declined to specify precise quantities, types or sources of programming, deferring to broadcasters’ own judgment.

FCC license renewal, therefore, is guided by a retrospective showing for the prior license term that the licensee addressed community issues, “... in its discretion and guided by the wants of its listenership, [as the licensee] determined were appropriate to those issues.”

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 licensee nondelegable duty, although the time broker can be the party to present the programming. Appropriate provision for this compliance should be made a part of every LMA or TBA agreement.

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