
2008 Third Quarter Issues/Programs List Advisory for Broadcast Stations

by Lauren Lynch Flick and Paul A. Cicelski

The next Quarterly Issues/Programs List ("Quarterly List") must be placed in stations' local public inspection files by October 10, 2008, reflecting information for the months of July, August and September. The FCC's action adopting the new program report Form 355, which is intended to replace the Quarterly Issues/Programs Lists for full-power and Class A television stations, will not have any effect on this third quarter public file requirement.

Content of the Quarterly List

The FCC requires each broadcast station to air a reasonable amount of programming responsive to significant community needs, issues, and problems as determined by the station. The FCC gives each station the discretion to determine which issues facing the community served by the station are the most significant and how best to respond to them in the station's overall programming.

To demonstrate a station's compliance with this public interest obligation, the FCC requires a station to maintain, and place in the public inspection file, a Quarterly List reflecting the "licensee's most significant programming treatment of community issues." By its use of the term "most significant," the FCC has noted that stations are not required to list all responsive programming, but only that programming which provided the most significant treatment of the issues identified.

Given the fact that program logs are no longer officially mandated by the Commission, the Quarterly Lists may be the most important evidence of a station's compliance with its public service obligations. The lists also provide important support for the certification of Class A compliance that is discussed below and which must be produced by Class A applicants and licensees.

We therefore urge stations not to "skimp" on the Quarterly Lists, and to err on the side of over-inclusiveness. Otherwise, stations risk a determination by the FCC that they did not adequately serve the public interest during the license term. Stations should include in the Quarterly Lists as much issue responsive programming as they feel is necessary to demonstrate fully their responsiveness to community needs.

Taking extra time now to provide a fully complete Quarterly List will help to reduce risk at license renewal time.

It should be noted that the FCC has emphasized the importance of the Quarterly Lists. For example, the FCC concluded a hearing concerning the license renewal of a noncommercial educational station that, among other things, misrepresented that its public inspection file contained Quarterly Lists when in fact the public inspection file contained only lists of programming aired on the station without reference to any issues to which the programming was responsive. The FCC granted a short-term renewal of the station's license and also assessed a \$10,000 fine for the violations in total. The case emphasizes the importance of maintaining complete public inspection files, including timely filing all Quarterly Lists.

Preparation of the Quarterly List

The Quarterly Lists are required to be placed in the public inspection file by January 10, April 10, July 10, and October 10 each year. The next Quarterly List is required to be in the station public inspection file by October 10, 2008.

In preparing this Quarterly List, stations should keep the following in mind:

The Quarterly List will be very important "evidence" in the station's defense if the station's license renewal is ever contested, so each station should approach the preparation process very carefully.

- Stations should maintain some type of routine outreach practice for getting out into the community to talk with various community segments and groups to learn their perceptions of community issues, problems, and needs. The fact that such contacts were made and the information learned from them should be documented and saved. Letters to the station about community issues should be made a part of the station's database.
- There should be some station procedure to organize the information that is gathered and bring it to the attention of program production staff with a view toward producing and airing programming dealing with the significant community issues. This procedure and its results should be documented and saved.
- Stations should ensure that there is some correlation between the contacts the station has had in the community and the letters received from the public, on the one hand, and the issues they have identified in their Quarterly Lists on the other. A station should not overlook significant issues. While the station may take into consideration what other stations in the market are doing, each station will have the burden of persuading the Commission, in a contested license renewal proceeding, that it has acted "reasonably."
- Stations should not specify an issue for which no programming is identified. Conversely, stations should not list programs for which no issue is specified.
- Under its former rules in this area, the FCC required a station to list five to ten issues per Quarterly List. While that rule has been eliminated, the FCC has noted that such an amount will likely demonstrate compliance with the station's issue responsive programming obligation. However, the Commission has also noted that some licensees may choose to concentrate on fewer than five issues if they cover them in considerable depth in any given quarter. Conversely, the FCC has noted that still other broadcasters may address more than ten issues in a given quarter, due perhaps to program length, format, etc.

- The Quarterly List should reflect a wide variety of subject matters. For example, five issues affecting the Washington, DC community where this firm is located might be: (1) the fight over statehood for the District of Columbia; (2) fire code violations in DC school buildings; (3) clean-up of the Anacostia River; (4) reforms in the DC Police Department; and (5) debate over needle exchange programs for IV drug users. The issues should vary over time, reflecting the station's ongoing ascertainment of community needs and concerns.
- Accurate and complete records of which programs were used to discuss or treat which issues should be preserved so that the job of constructing the Quarterly List is made easier. The data retained should help the station identify the programs that represented the "most significant treatment" of issues, e.g., duration, depth of presentation, frequency of broadcast, etc.
- The listing of "most significant programming treatment" should demonstrate a wide variety in terms of format, duration, source (local is presumptively the best), time of day (times of day when the programming is likely to be effective), and days of the week. Stations should not overlook syndicated and network programming as ways to treat issues.
- Stations should prepare each Quarterly List in time for it to be placed in their public inspection file on or before the due date. If the deadline is not met, stations should give the true date when the document was placed in the public inspection file and explain its lateness. Stations should avoid creating the appearance that it was timely filed when it was not.
- Stations should show that their programming commitment covers all three months within each quarter.

These are just some of the more significant suggestions that can assist stations in meeting their obligations under the Commission's rules. It may be that the requirement to list programs providing the most significant treatment of issues will have the effect of persuading a station to review the adequacy of its programming overall to see whether it treats issues of community concern in a way that truly informs and educates the public.

Attached is a sample format for a "Quarterly Issues/Programs List" to assist stations in filling out the Quarterly List. Please do not hesitate to contact any of the lawyers in the Communications Practice Section for specific advice on determining precisely how to ensure the adequacy of your efforts in this area.

Class A Television Stations Only

Class A television stations should also note that they are required to certify that they continue to meet the FCC's eligibility and service requirements for Class A television status under Section 73.6001 of the Commission's rules. While the subsection of the public inspection file rule, Section 73.3526(e)(17), does not specifically state when this certification should be prepared and placed in the public inspection file, we believe that since Section 73.6001 assesses compliance on a quarterly basis, the prudent course for Class A television stations is to place the certification in the public inspection file on a quarterly basis as well.

Accordingly, we recommend that the certification be prepared and placed in the public inspection file at the same time that the Quarterly Issues/Programs List is due to be placed in the public inspection file.

New Filing Requirement

On January 24, the FCC released a Report and Order stating that a new standardized form of programming report will replace the Quarterly Issues/Programs List for full-power and Class A television stations.

As of this writing, OMB has not approved the new Form 355. In any event, that FCC action is not likely to eliminate the requirement that the Quarterly Issues/Programs List be placed in the public file by October 10, 2008. If approved by OMB, and not stayed and overturned by the Court, FCC Form 355 will have to be completed, filed with the FCC, and placed in the station's public file and posted on its website, on a quarterly basis. The form will require television stations to list information such as local civic programming, local electoral affairs programming, public service announcements, and independently produced programming. The form will also require television stations to include information about closed captioning, video described content, the provision of emergency information for the disabled, and about the station's efforts to ascertain the programming needs of various segments of the local community.

Periodically, we will provide an update about the status of FCC Form 355.

For assistance in preparing and completing the documentation required by Section 73.6001, please contact any of the lawyers in the Communications Practice Section.

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Sample Quarterly Issues/Programs List¹

There follows a listing of some of the significant issues responded to by Station [call sign], [community of license], [state of license], along with the most significant programming treatment of those issues for the period [date] to [date]. The listing is by no means exhaustive. The order in which the issues appear does not reflect any priority or significance.

Description of Issue	Program/Segment	Date	Time	Duration	Narration of Type and Description of Program/Segment
(1) The fight over statehood for the District of Columbia	"D.C. This Week"	July 7	12:00 pm	30 min.	Roundtable discussion with Derek Maginty, DC commentator for WAMU(FM), Mark Plotkin, host of "DC Politics Hour," WAMU(FM), Eleanor Holmes Norton, DC Delegate to Congress and Mayor Anthony Williams on various proposals rumored to exist to grant statehood to the District of Columbia.
(2) The fight over statehood for the District of Columbia	Special News Coverage of Press Conference	July 8	10:00 am	15 min.	Station interrupted its regularly scheduled programming to cover the press conference called by Representative Tom Davis, Chair of the Subcommittee on the District of Columbia, on his proposal to grant statehood to the District of Columbia.
(3) The fight over statehood for the District of Columbia	11 O'Clock News	July 8	11:00 pm	2 min.	Interview with D.C. City Council members and members of the business community regarding reaction to Davis proposal for statehood.
(4) The fight over statehood for the District of Columbia	News feature following noon and 6:00 pm News	July 8 to July 12	12:25 pm and 6:25 pm	5 min. each part	Examination of the history of the creation of the District of Columbia as the seat of the federal government; comparison of the District's services provided to residents versus services provided to residents of states by state governments; examination of issues arising under the United States Constitution relating to taxation without representation; survey of reaction of several governors in the mid-Atlantic region to the proposal and a wrap-up.

¹ The above sample illustrates the treatment of one particular issue only.