

Issues/Programs List

Public Inspection of Local Station File

Commission determined that the issues/programs list, currently required to be placed annually in the public file of a commercial radio broadcast station, should instead be prepared and made available to the public on a quarterly basis. The Commission also concluded that the existing limitation on the number of issues that may be included on the list should be removed.

-Deregulation of Radio

BC Docket No. 79-219

Issues/Programs List

Public Inspection of Local Station File

Commission no longer requires the commercial radio licensee to describe in the issues/programs list how it determined each issue to be one facing its community.

-Deregulation of Radio

BC Docket No. 79-219

FCC 84-67

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
Deregulation of Radio

BC Docket No.
79-219
RM-3099
RM-3273

SECOND REPORT AND ORDER

(PROCEEDING TERMINATED)

(Adopted: March 1, 1984; Released: April 27, 1984)

By THE COMMISSION: Commissioner Rivera issuing a separate statement.

Introduction

1. Now before the Commission for consideration are comments filed in response to the *Further Notice of Proposed Rule Making* ("*Further Notice*") in the above-captioned proceeding.¹ The *Further Notice* was issued in response to the partial remand by the United

¹ *Further Notice of Proposed Rule Making* in BC Docket No. 79-219, 48 Fed. Reg. 33499, published July 22, 1983.

States Court of Appeals for the District of Columbia Circuit of our initial decision in the radio deregulation proceeding and was strictly limited in its scope to the issues raised by the court.² Specifically, the *Further Notice* sought to determine the appropriate nature and extent of information regarding nonentertainment programming that we should require radio broadcasters to keep and to make available to the public and the Commission in view of the new regulatory scheme for commercial radio ushered in by this proceeding.

Background

2. *The Report and Order.* In the *Report and Order* in this proceeding, the Commission deleted its guidelines regarding nonentertainment programming and commercial levels and eliminated both the ascertainment and program log keeping requirements for commercial radio stations.³ In doing so, however, the Commission continued to recognize the obligation of commercial radio broadcasters to provide coverage concerning issues facing their communities. A station still is expected to address those issues that it believes are of importance to its community of license generally or, where programming serving many segments of the community is otherwise available, its own listenership. The method to be utilized in meeting this obligation is largely entrusted to the good faith discretion of each licensee. However, documentation is required as evidence of a licensee's compliance with its duty to provide issue-responsive programming. This takes the form of an issues/programs list that is intended to be exemplary in nature and is to be placed annually in each station's public inspection file. This list is to contain in narrative form a brief description of from five to ten issues to which the licensee gave particular attention with programming, together with a brief description of how the licensee determined each issue to be one facing its community and how each issue was treated. In addition, the list is to include information pertaining to the date and time of broadcast and the duration of listed programming.⁴

3. *The Court Decision.* On appeal, the court generally affirmed the Commission's radio deregulation decision, remanding for our

² *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983).

³ *Report and Order* in BC Docket 79-219, 84 FCC 2d 968 (1981). In eliminating radio program log requirements, the Commission did not, nor does it presently intend to, alter the record-keeping obligations contained in Sections 73.932(d)(1) and (2), 73.961 and 73.962(e)(4) of the Rules. These regulations pertain to entries concerning emergency broadcast procedures required to be made by licensees in their station logs. See *Report and Order* in BC Docket No. 82-537, 48 Fed. Reg. 38473, published August 24, 1983.

⁴ On reconsideration, the *Report and Order* was affirmed and clarified. *Memorandum Opinion and Order*, 87 FCC 2d 797 (1981).

further consideration only that part of our action eliminating the requirement that licensees maintain programming logs and make those logs available to the public. On remand, we were directed to give attention to the possible usefulness of revised programming logs as a valuable source of information in the newly-devised scheme of radio regulation.

4. In reviewing the Commission's rationale for deleting the former program logging requirements, the court concluded that:

The Commission premised its decision . . . upon a straightforward cost-benefit analysis. First, the logs were found to be a "tremendous record-keeping burden." . . . Next, the Commission notes the low remaining marginal utility of these logs in light of its decisions to eliminate the nonentertainment programming and commercialization guidelines and to re-orient its focus to issue-oriented programming. . . . Finally, the Commission emphasized its "continued reliance on the public file as an index to the general programming responsibilities of licensees." . . . In the Commission's view, [the issues/programs list] and other available information will suffice to enable it and the public to oversee the general public interest responsibilities of licensees. 707 F.2d at 1439.

The court found no difficulty in accepting the Commission's analysis of the costs and benefits of regulating the record-keeping systems of licensees. In fact, it stated that such cost-benefit evaluations epitomize the types of decisions that are most appropriately entrusted to the expertise of an agency. The court also found it reasonable to conclude that a logging requirement designed to make available certain information relevant under one regulatory scheme may be useless if transplanted unchanged to a new regulatory scheme. However, the court questioned whether the Commission had given adequate consideration to the potential benefits of imposing a revised comprehensive logging requirement—one designed, for example, to log information about issues and not categories of programming. While noting that the Communications Act does not compel the Commission to retain the program logging requirements, the court nevertheless expressed concern that a broader base of information than that provided by an annual issues/programs list may be needed to properly evaluate individual licensee performance under the new regulatory approach to commercial radio as well as to judge the success of radio deregulation in general.⁵

5. *The Further Notice of Proposed Rule Making.* The *Further Notice* elicited comments on the appropriate nature of a program

⁵ The court noted that its concern for the adequacy of program-related information was heightened further by the Commission's concurrent rule making action adopting a simplified renewal application for radio and television broadcast licensees. In that action the Commission eliminated programming-related questions from the renewal application. On appeal at the time the court issued its opinion in the radio deregulation proceeding, the "short form" renewal decision was subsequently affirmed. *Renewal of License*, 46 Fed. Reg. 26236 (1981), *aff'd sub nom. Black Citizens for a Fair Media v. FCC*, Nos. 81-1710, 81-2277, Slip Op. (D.C. Cir., decided October 7, 1983).

record-keeping requirement for commercial radio broadcasters that would meet the court's concerns and provide the information necessary to satisfy our regulatory obligations with minimum burden on both the Commission and its licensees. Although we noted that options for fashioning such a requirement seemed to revolve around the placement in each station's public inspection file of a more complete record of a licensee's issue-oriented programming, we did not exclude retaining the issues/programs list as a viable option. In this regard, we did not read the court's decision as requiring the adoption of more detailed logging requirements than those initially adopted by the Commission in its *Report and Order*. Rather, we believed the court intended only that we should reexamine the logging issue with a more focused concern for our information needs and those of the public and provide a more closely reasoned justification for our ultimate choice in this area.⁶ This is not to say, of course, that more comprehensive record-keeping obligations may not be appropriate. Indeed, the approach tentatively proposed in the *Further Notice* was the retention of an annual issues/programs list along with the creation of a new record of all issue-oriented programming.

6. In connection with our proposals, the *Further Notice* invited interested parties to comment on the following questions:

- (1) Should the Commission require a complete listing by time, date and duration of all nonentertainment programming or only of issue-responsive programming?
- (2) Should the Commission require a brief statement regarding the nature of the issue addressed in each program noted on the "log"?
- (3) At what intervals should the "log" have to be placed in the public file—weekly, monthly, quarterly, yearly, etc.?⁷
- (4) Should any new types of "log" be in lieu of, or in addition to, the issues/programs list?
- (5) What would be the estimated costs of keeping a comprehensive listing of issue-responsive programming?
- (6) What benefits would be conferred by our requiring commercial radio licensees to keep such a comprehensive listing?

We did not intend, by posing these questions, to restrict the scope of the comments submitted. As we stated in the *Further Notice* "these questions, of course, are suggestive rather than exhaustive. Com-

⁶ As Judge Bork stated in his concurring opinion: "We remand on the issue of program logs so that the Commission may reexamine the matter and provide a more thoughtful and detailed justification of whatever decision it may reach." 707 F.2d at 1443.

⁷ Comments were solicited on the timing of the issues/programs list, as well as the issue-oriented program "log".

menting parties are invited to address other pertinent aspects of the logging issue as well.”

*Comments*⁸

7. *Need for a Program Log.* Less than half of the commenting parties favor imposition of a supplementary logging requirement. Among commenters supporting an additional record-keeping obligation, the United States Catholic Conference (“USCC”) argues that a broadcaster’s self-selected “issues/programs” list is no substitute for a complete log of all material which it represents to be its response to community issues. Absent the availability of comprehensive program logs, asserts USCC, it is likely that most of the public will be discouraged from discharging or will be unable to discharge their watchdog role.

8. On the other hand, opponents are of the view that the appropriate response to the court’s remand is for the Commission to reexamine the logging issue and provide a more complete and coherent rationale for its initial action in this matter. CBS Inc., argues that retention of the “issues/programs” list is entirely compatible with the thrust of the court’s concerns. While a revised logging requirement would be burdensome and of little utility, it submits, retention of the existing list requirement places a reasonably limited burden and cost on both the Commission and its licensees. Further, that list provides the information necessary both for the Commission to satisfy its regulatory oversight obligations and for the public to participate in the regulatory process. Retention of the system as it exists now, opponents contend, enables the Commission to continue its movement towards meaningful deregulation and not merely to exchange one set of regulations for another. Some commenters, such as the National Broadcasting Company, Inc. (“NBC”), also base their opposition to a new logging requirement on the tendency it would have to militate against adoption or continuation of formats that rely heavily on discussion of major local and national issues such as “all-news”, “call-in” or “talk” formats.⁹

9. Rather than imposing a new logging requirement, American Broadcasting Companies, Inc. (“ABC”), as well as other commenters, recommend a modification of the present “issues/programs” list. They argue that while the court appears to view the 5–10 issue limit as too restrictive, the other extreme of requiring identification of all issues treated is neither necessary nor plausible. Accordingly, these

⁸ A list of the parties filing comments and/or reply comments is contained in Appendix B.

⁹ Although NBC argues that the Commission should reject the idea of requiring a “log,” it submits that to the extent a contemporaneous record of issue-responsive programming may be necessary, we should allow radio licensees to substitute an audio type log in lieu of a written record.

commenters suggests that the Commission drop the current 5-10 issue limit and emphasize instead that licensees will be expected to list the *significant* issue-responsive programming that they provided over the course of the past year or six months.

10. *Scope of Logging Requirement.* The majority of commenters, whether in favor of or opposed to a new "log" requirement, recommend that any additional logging obligation be restricted to issue-responsive programming and exclude other nonentertainment broadcasts. These parties contend that a comprehensive listing of all nonentertainment programming goes far beyond the informational needs of the Commission's reduced regulatory program. USCC, the National Association for the Advancement of Colored People ("NAACP") and Henry Geller and Donna Lampert ("Geller"), however, suggest a "log" that would include all issue-responsive and other nonentertainment programs as well as public service announcements broadcast by the licensee to meet its public interest responsibilities.

11. As to what identifying information concerning a logged program should be required, most commenters agree that the date, time, and duration of the broadcast involved should be provided. However, there was some disagreement as to whether the issue or issues addressed by a listed program should be specified on the log. Some parties believe a brief statement of the issue covered, such as "local taxation", should be included. Others submit that licensees should not be put to task of identifying the exact nature of the issue or issues treated by a particular program, but should be obliged only to indicate the general subject matter involved. On this point, Broad Street Communications Corporation ("Broad Street") asserts that designating which issues are treated in programming is normally a responsibility of management level employees. By contrast, log preparation is normally a clerical task. If logs must list the issues which programs treat rather than simply record titles, topics or guests, management level employees could be drawn into log preparation, an allegedly inefficient use of personnel and resources.¹⁰

12. *Frequency of Filing.* Broadcasters generally suggest that any new "log" be placed in a radio station's public file on a semi-annual basis. NBC submits that with licensee renewal applications now being filed every seven years, the public has no earlier need for this information for renewal purposes. A few commenters, such as Broad Street, note that their prior experience with requests for inspection

¹⁰ USCC would require that a "log" list not only the date, time, duration and issue or issues covered, which are the elements most commenters suggest, but also a description of the program format and the participants in the broadcast. The New Jersey Coalition for Fair Broadcasting even recommends that a "log" contain, among other things, the name of the program's producer and/or executive producer and a short summary of the program's content.

of program logs indicates that few, if any, requests will be made for inspection of modified logs. That being the case, it asserts, there is no need to burden licensees with requirements for more frequent placement of logs in public files. However, USCC and the New Jersey Coalition for Fair Broadcasting suggest that any new "log" be placed in a radio licensee's public file on a quarterly basis. In this regard, USCC contends that the best means of ensuring adequate responsive programming is to encourage an ongoing dialogue between a station and the public which it serves. This dialogue must be based, in USCC's view, upon factual information made frequently available to a station's listenership. USCC suggests that quarterly placement of a comprehensive nonentertainment programming log in the public file would meet this need. Geller, on the other hand, submits that the program "log" should be placed in the public file on an annual basis and that it should be given to the Commission at renewal time.

13. By contrast, WROK, Inc., argues that while "local public files" may seem desirable in a theoretical sense, such files in truth have not been relied upon by the public for informational purposes. Therefore, it sees no reason why issue-oriented programming records must be kept as part of a station's local public file. In lieu of such a requirement, WROK, the National Radio Broadcasters Association and others suggest that radio stations only be required to keep such records and to produce them upon reasonable request by a member of the public or by the Commission.

14. *Program Logs vs. Issues/Programs Lists.* USCC recommends that if comprehensive nonentertainment programming logs are to be made available every three months, licensees should not be obliged to prepare an "illustrative issues/programs list" as well. Geller agrees with USCC that issues/programs lists would not add materially to the information on the logs, but instead would merely repeat it. Broad Street also concurs, asserting that such lists would constitute duplicative and unnecessary paperwork and, therefore, should not be required. On the other hand, the National Association of Broadcasters ("NAB") suggests that the new "log" be maintained in addition to an "issues/programs" list, but a modified one. NAB would eliminate the "programs" portion of the list to avoid the duplication which would result were the new record of issue-responsive programming simply added to the existing "issues/programs" requirement. Finally, some commenters would require the new "log" in addition to the "issues/programs" list, while other parties once again argue against any new "log" whatsoever.

15. *Costs of Logging.* As to the costs of requiring radio stations to keep a comprehensive listing of issue-responsive programming, most broadcasters find them significant. Even though commercials would not have to be listed on the logs, asserts Broad Street, substantially all of the program information previously required would be included, as well as additional information necessary to identify

issues treated. Furthermore, CBS, Inc., argues that the compilation of such a list would involve many subjective and skilled judgments that could only be made by trained personnel. For example, CBS notes that to the extent issues were covered in news broadcasts, where stories were not preselected with a view toward meeting Commission requirements, time-consuming decisions would have to be made as to the nature of the issues addressed, as well as to whether the news story was sufficiently in-depth to qualify for inclusion. WROK, Inc., estimates that one additional staff member would be needed to maintain issue-based logs and that the salary and other costs associated with this personnel requirement would be substantial. CBS and NBC also believe that for stations with "all-news" or "all-talk" formats, the costs of preparing and maintaining a comprehensive "log" would be enormous. According to these parties, one of the significant costs of requiring maintenance of issue-oriented logs is the discouragement of the "all-news" or "all-talk" format.

16. However, Geller argues that the cost of program logging is a non-issue. Aside from the fact that the requirement can and should be restricted to public service programming, thus reducing the costs of compliance, he submits, as does NAACP, that radio licensees will continue to log their programming and incur the associated costs regardless of Commission requirements. The motivation to do so, Geller contends, is licensees' ongoing need to demonstrate that they have been operating in the public interest and to meet their commercial obligations.

17. *Benefits of Programming Logs.* With respect to the benefits of requiring a "log", some commenters assert that a comprehensive listing is the only sure way to predict the effect of the Commission's deregulatory actions and whether they will be of positive benefit to the public. USCC submits that this option would ensure that sufficient record-keeping is required of licensees to allow the Commission and the public to assemble data on which to base a valid analysis of individual station and industry wide performance. On the other hand, WROK, Inc., argues that the "comprehensive listing" proposed by the Commission would represent no value at all to either the radio station or to the Commission. It believes that a practical report on subject matter alone should satisfy both parties.¹¹

¹¹ In its reply comments, NAB opines that most broadcast parties had advanced proposals similar to its own. Regardless of the characterizations used—"expanded annual issues/programs" list or an annual "issues list" supplemented by "issue-responsive programming information"—NAB submits that the gist of these comments is that the Commission should adopt a record keeping system which avoids redundancies, imposes only minimal paperwork burdens and affords substantial discretion to radio licensees.

Discussion

18. The Court of Appeals said in remanding our decision to eliminate programming logs that it did so in order that we might "revisit the entire question of what information regarding radio nonentertainment programming must be made available to the public and to the Commission for the proper functioning of the new regulatory scheme." (707 F.2d 1442) The court specifically questioned how, in the absence of programming logs, the Commission would "obtain information to confirm its prediction that adequate amounts of nonentertainment programming will continue on radio." (*Id.*) It also questioned our reliance on the issues/programs list requirement as a source of such information, opining that "petitioners have presented a strong case that both the concerned citizen and the concerned Commissioner will find the issues/programs list to be woefully insufficient substitute for program logs." (*Id.*, at 1440-41) The court conceded that logging requirements irrelevant to the new regulatory scheme need not be retained, but insisted that "[t]he relevant question thus should be whether a *revised* comprehensive logging requirement—one designed, for example, to log information about *issues* and not *categories* of programming—might not produce benefits that would outweigh the recordkeeping costs." (*Id.*, at 1440).

19. As a threshold matter, we assume that the court did not intend to express a preference for logging as opposed to some other method of documentation suitable and adequate to our new regulatory scheme for radio broadcasting. The court clearly recognized and approved our decision to limit our regulatory concern under the new scheme to the "bedrock" obligation of radio broadcasters to cover public issues (707 F.2d 1430). To require licensees to log or otherwise document other nonentertainment programming, such as commercials, public affairs, or news, whose nature and quantity we have said will no longer concern us, would, in our judgment, serve no valid regulatory purpose. We therefore see no need to require documentation of nonentertainment programming other than issue responsive programming.

20. In the *Report and Order*, we found after an exhaustive analysis that marketplace forces at work today will elicit adequate amounts of non-issue responsive programming without regulatory intervention. If, in the future, there is significant market failure with respect to such programming, we are confident this will be brought to our attention by listener complaints or otherwise. Having been alerted to any problem which arises, we can document its scope by any of several means, such as special studies, investigations and temporary logging requirements, etc., and take whatever regulatory action is needed. We do not believe that to guard against such *possible*, almost certainly *limited* problems, we should now impose a *costly* general logging requirement on our licensees.

21. We have therefore again given careful thought, as the court suggested we should, to the probable costs and benefits of various means by which radio licensees might adequately document their issue-responsive programming. While we have again decided not to impose a general logging requirement for this purpose at this time, in response to the court's concerns we have decided to expand the issues/programs list, as explained below. Under our *Report and Order* the proper inquiry into a broadcaster's performance will be centered on its efforts to program in response to those issues it deems important, rather than on *all issues* included in the broadcast schedule. Consequently, we do not find USCC's suggestion that we require only a comprehensive "log" or NAB's recommendation that we adopt a "log and issues-only list" approach persuasive or necessary to ensure compliance with our *Report and Order*. Rather, we continue to believe that the "issues/programs" list technique is best equipped to elicit the kind of purposeful programming information relevant to our current regulatory concerns. Nonetheless, we are persuaded that the quantity of information produced by the existing requirement—treatment of 5 to 10 issues annually—may be inadequate, particularly in these early stages of radio deregulation. With appropriate modification, however, we believe the "issues/programs" list approach to be entirely capable of providing the data needed both to evaluate licensees' individual performance and to monitor the effect of our action deregulating the commercial radio service.

22. As to costs of logging, commenters in this proceeding have asserted that logs containing information relevant to the new regulatory scheme would require involvement of management level staff and therefore be substantially more costly and burdensome than the simple traditional logs, which can be maintained by clerical staff. We have no reason to question these assertions, and they seem reasonable. The issue, therefore, is whether there is clear need under our new regulatory scheme for logging which is substantially more costly and burdensome than that required heretofore.¹²

23. As to benefits, we agree with the court that a logging requirement might be devised which could be useful to monitoring of licensees' fulfillment of their service obligation.¹³ We are unable,

¹² We say "clear need" because, as we noted in our *First Report and Order*, even simple, traditional logs constitute a tremendous recordkeeping burden. In view of such recent legislation as the Regulatory Flexibility Act (5 U.S.C. § 601, *et seq.*) and the Paperwork Reduction Act (44 U.S.C. Chapter 35), we think we would flout the will of Congress if we imposed such a recordkeeping burden on radio broadcasters without clear evidence that it is needed under our new regulatory scheme, and no such evidence has been adduced in this proceeding or is otherwise known to us.

¹³ We note, of course, that to the extent the system of record-keeping herein adopted also requires management involvement, it is more burdensome than a rote logging requirement. The burden appears consistent with the benefits. By

however, to reach the conclusion that there is no acceptable or better alternative source of information for this purpose. The new regulatory scheme imposes a basic issue-responsive programming responsibility on commercial radio licensees. An issues/programs list is a most useful vehicle to record a licensee's effort in this regard. An exhaustive log, perhaps necessary under the old regulatory requirements, is not needed to document the current program obligation which is directed to issues of concern to the community rather than to categories of programs.

24. The most significant source of issue-responsive information under the new regulatory scheme will be the issues/programs list. These lists will certainly contain more relevant information than traditional logs, which usually do not identify issues and issue-responsive programming. Since, as noted below, we are rescinding the 10-issue limit on these lists, we anticipate that broadcasters will probably use them to adequately document their significant issue-responsive programming, because doing so will serve their own self interest.

25. In the context of a routine license renewal, the existence of the issues/programs list in the station's public file and the absence of any contradictory evidence will give the Commission sufficient assurance that the station has met its issue responsive programming responsibility during the past licensee term to grant license renewal on that issue. In other contexts, such as when a programming issue is raised in a petition to deny or in a comparative renewal, these lists will serve as a significant source of information for any initial investigation by a member of the public or by the Commission. If in a particular case, a station's issues/programs lists do not provide sufficient information to resolve a substantial question of fact, the Commission may ask, as it has in the past, for more information from the licensee. The burden of proving that programming relevant to public issues has been provided is on the licensee. A broadcaster must demonstrate, if called on to do so, in a hearing or otherwise, that it has met its responsibility in this regard.

26. Another source of information regarding the performance of our radio licensees is the listening public. Complaints from listeners dissatisfied with radio service available to them have long aided our regulatory efforts, and we assume they will continue to do so. As to such complaints, we note the court's observation that programming logs have in the past been heavily relied on by petitioners to deny renewal of existing licenses. (707 F.2d 1441) We also note, however, that petitions to deny are rare and can be documented by other means. As the court itself noted, petitioners to deny could provide

requiring that the licensee sift through and refine raw programming material, we can reduce the paperwork burden, as compared to a comprehensive issue logging obligation, yet also provide more accessible and relevant documentation for the public.

their own documentation by monitoring the service of the station. (*Id.*) Any need for such monitoring would of course impose some burden on petitioners, but it would only be that of supplementing in a particular case the documentation available in the issues/programs lists of the station in question and others in its market. When such supplemental documentation is needed and supplied, it should be a helpful indicator of any need for reassessment of our new regulatory scheme. However, if experience in the future indicates that the public interest would be served by easing the documentation burdens of petitioners to deny at the cost of imposing logging requirements on radio licensees, we can revisit this issue.

27. In our view, any decision as to what documentation requirements will prove necessary under the new regulatory scheme is inherently a matter of judgment. After careful thought, we have again decided that no logging requirement is justified at this time, but this does not mean we are indifferent to the concern expressed by the Court of Appeals that the issues/programs list requirement imposed by the *Report and Order* may prove inadequate. To try to allay that concern, we have decided to modify this requirement in two respects.

28. The first modification we shall make is to eliminate the limitation that no more than ten issues be listed. After further reflection, we perceive no good reason why licensees who provide programming responsive to more than ten issues should be precluded from documenting this service in their issue/program lists.

29. The second modification we shall make is to require that these lists be prepared and made available quarterly, rather than annually. In our view there is no scientific way to determine how frequently these lists should be prepared and disclosed, and, as noted above, commenters varied considerably on this issue. We have decided in favor of quarterly reports because such more frequent reports will probably provide more, and will certainly provide fresher, information than annual reports, without fundamentally altering the reporting burden or increasing its cost. On balance, we believe the slight additional cost of this more frequent reporting will prove justified.

30. As a final matter, we note that licensees currently are expected not only to describe selected issues to which they gave particular attention with programming, how each issue was treated and the date, time and duration of the listed programming, but also to briefly describe how the licensee determined each issue to be one facing its community. In once again reviewing the adequacy of the issues/programs list, we have come to believe that this particular aspect of the obligation does indeed conflict with our decision that

the methodology utilized by licensees to become aware of the issues facing their community is not of concern to us.¹⁴ It is the result and not the process that is of interest to us. 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. Given this focus and the significant steps we are taking today to enhance the availability of program-related data, we no longer believe that requiring a description and explanation of the means by which a licensee determines any given issue to be one facing its community is necessary, nor the burden incident to such a requirement warranted. Accordingly, we will no longer require that this information be included on the issues/programs list prepared quarterly by commercial radio licensees.

Regulatory Flexibility Analysis

I. Need for and Purpose of Rule

31. The Commission finds that strengthening the issues/programs list requirement will better enable the Commission and the public to evaluate a commercial radio broadcaster's public service record.

32. The additional burden imposed by an expanded issues/programs list requirement is limited in scope and warranted in view of the court's concerns that adequate information be available to the public and the Commission for review of a radio licensee's issue-responsive programming.

II. Summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result.

A. Issues raised:

33. A few parties favored the creation of a new record of all issue-oriented programming. They argued that such a "log" was necessary for the Commission to satisfy its regulatory oversight obligations and for the public to participate in the regulatory process. Some suggested retention of the "issues/programs" list in addition to this "log", while others believed the log would be adequate in and of itself as a programming record.

34. There were a number of parties who recommended retaining the present record-keeping requirement or a modification of it. They

¹⁴ In the *Report and Order* we held that the public interest no longer required adherence to detailed ascertainment procedures. Rather, radio licensees were to be free to determine the issues facing their community that warranted programming consideration and could do so by any reasonable means.

submit that a revised logging requirement would be burdensome and of little utility.

B. Assessment:

35. The Commission concludes that the arguments favoring a strengthening of the annual "issues/programs" list as a record of a broadcaster's public service performance have merit as do those that find a "log" a too burdensome and unwarranted requirement.

36. We conclude that annual issues/programs lists may be an inadequate record of a broadcaster's programming responsive to community issues. Therefore, we modify the present requirement and mandate a quarterly preparation of the issues/programs list in its stead. We also remove the limitation on how many issues may be listed.

C. Changes made as a result of such comment:

37. Responding to comments, we have increased the record keeping obligation of commercial radio licensees, but not unduly burdened them.

38. In reply to commenters' requests, we eliminated the requirement to describe how the licensee determined each issue on the list to be one facing the community. We found that this duty conflicted with our resolve earlier in this proceeding that the methodology utilized by licensees to become aware of the issues facing their community is not of concern to us.

39. We adopted a suggestion that we eliminate the existing 10 issue limit on issues/programs lists to permit, though not require, licensees to document whatever significant issue-responsive programming they provide.

III. Significant alternatives considered and rejected.

40. The *Further Notice* tentatively proposed retaining the annual "issues/programs" list along with the creation of a new record of all issue-oriented programming. We rejected this alternative as being unduly burdensome and an inadequate source of information on which the Commission and the public could base an evaluation of a broadcaster's public service record.

41. Commenters' suggestions that only a "log" be retained or a "log" along with an issues-only list were also found to be inadequate tools for use by the public and the Commission in reviewing broadcast programming addressing community issues.

42. Authority for the action taken herein is contained in Sections 4(i) and (j) and 303 of the Communications Act of 1934, as amended.

43. Accordingly, IT IS ORDERED, that the Commission's Rules ARE AMENDED, effective ___ June 4, 1984, as described above and set forth in the attached Appendix A.

44. IT IS FURTHER ORDERED, that the Secretary of the Commission will publish this *Second Report and Order* in the FCC Reports.

45. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

46. For further information concerning this proceeding contact Freda Lippert Thyden, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION
WILLIAM J. TRICARICO, *Secretary*

*Appendix B--may be seen in FCC Dockets' Branch, 1919 M Street, N.W. Wash., D.C..

Appendix A

Section 73.3526 is amended by revising subparagraph (a)(14) and paragraph (e) and adding a Note to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) * * *

* * * * *

(14) For AM and FM broadcast stations every three months a list of at least 5 to 10 community issues addressed by the station's programming during the preceding 3 month period. The list is to be filed the first day of each calendar quarter (e.g., July 1, October 1, January 1 and April 1). The list shall include a brief narrative describing how each issue was treated, i.e., public service announcements or programs, giving a description of the programs including time, date and duration of each program. These lists are to be retained for the entire license renewal period.

Note: The first quarterly filing is to include at least the past 3 months of a station's programming performance. If the last annual issues/programs list was filed more than 3 months prior to July 1, 1984, the licensee must place in its public inspection file an issues/programs list encompassing the period of time between its last annual filing and July 1, 1984.

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(e) *Period of retention.* The records specified in paragraph (a)(4) of this Section shall be retained for periods specified in § 73.1940 (2 years). The manual specified in paragraph (a)(6) of this Section shall be retained indefinitely. The letters specified in paragraph (a)(7) of this Section shall be retained for the period specified in § 73.1202 (3 years). The "issues/programs" list specified in paragraph (a)(14) of this Section shall be retained for the term of license (7 years). The records specified in paragraphs (a)(1), (2), (3), (5), (8), (9), (11) and (12) of this Section shall be retained as follows:

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SEPARATE STATEMENT
OF
COMMISSIONER HENRY M. RIVERA

RE: Modification of the Rule Requiring the Filing of the Issues/Programs List on an Annual Basis to Require the Placement of the List in a Commercial Radio Broadcaster's Public File on a Quarterly Basis.

I am satisfied that this *Memorandum Opinion and Order* adequately responds to the letter of the Court's remand order.¹ However, I would have been happier if our decision had been more responsive to the spirit of that order by providing clearer guidance about the license renewal process—both for citizens seeking to participate in the renewal process and for licensees seeking to comply with our rules. A number of pertinent questions remain unanswered. For instance, on what basis may a member of the public challenge the adequacy of a licensee's performance given the information specified in the licensee's issues/programs list?² How will a licensee show that its issue-responsive programming is sufficient to withstand a challenge?³ I agree that these questions can be answered on an ad hoc basis as renewal challenges are filed and resolved but, until this body of case law has developed, our failure to detail the mechanics of the process will disadvantage both the public and licensees. Nevertheless, I am pleased that we have at least given the public and licensees the following guidance:

- 1) the issues/programs list will be the most significant vehicle for recording efforts to fulfill issue-responsive programming responsibilities;
- 2) licensees must adequately document their issue-responsive programming;
- 3) the programming list will serve as an initial frame of reference by the Commission to evaluate programming issues raised in a petition to deny or comparative renewal;
- 4) if listed programming is insufficient to address the issues listed, the Commission, can ask the licensee for more information;⁴ and (most importantly),

¹ See *Office of Communications of the United Church of Christ v. Federal Communications Commission*, 707 F. 2d 1414 (D.C. Cir. 1983).

² For example, the Commission has not described the standard to be used to evaluate the relationship between the issues the licensee singles out and the programs listed as responsive to those issues. See *U.C.C. v. F.C.C.*, 707 F.2d at 1437 (1983). Obviously, there must be a demonstrable relationship if the issues/programs list is to serve any function.

³ The Commission has not defined the role of the issues/programs list in gauging a renewal applicant's public interest performance when that performance has been challenged, or specified a "safe harbor" for licensees.

⁴ *Memorandum Opinion and Order* paras. 23-25.

5) the burden of proving that the "bedrock" duty to air issue-responsive programming has been fulfilled is on the licensee.⁵

This guidance will, I believe, sufficiently illuminate the radio license renewal process for all concerned.⁶

⁵ *Deregulation of Radio*, 49 R.R. 2d 1, 13, paragraph 34 (1981).

⁶ See *Office of Communications of the United Church of Christ v. Federal Communications Commission*, 359 F. 2d 992 (D.C. Cir. 1966).