

Program Logs, Public Inspection of
Public Inspection of Local Station File

The Commission required that a commercial radio licensee, each quarter, list those programs aired during the proceeding quarter which provided the station's most significant treatment of issues of concern to the broadcaster's community.

—*Deregulation of Radio*

BC Docket No. 79-219

FCC 86-222

**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

MEMORANDUM OPINION AND ORDER

(Proceeding Terminated)

Adopted: May 1, 1986; Released: May 28, 1986

BY THE COMMISSION:

1. The matter before us is the action of the United States Court of Appeals vacating the Commission's *Second Report and Order*¹ in this proceeding and the court's remand of the case for further proceedings.² Specifically, the court found that an illustrative issues/programs list does not further the Commission's stated regulatory goal of relying on effective public participating in the license renewal process. Moreover, the court concluded that the Commission has failed to provide an adequate explanation for its rejection of an alternative proposal, submitted during the notice

¹ 96 FCC 2d 930 (1984).

² *Office of Communication of the United Church of Christ v. FCC* ("UCC IV"), No. 84-1239, Slip Op. (D.C. Cir. December 20, 1985).

and comment proceedings, that would advance its stated goal.

2. In the first *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 of importance facing their communities. To document compliance with this duty, licensees were required to prepare an issues/programs list, exemplary in nature, to be placed annually in each station's public inspection file. The list was to contain in narrative form a brief description of from five to ten issues to which the licensee gave particular attention with programming and the date, time and duration of the broadcasts.

3. In response to the court's partial remand of the first *Report and Order*⁴ the Commission, in the *Second Report and Order*, expanded the issues/programs list to provide a broader base of information to the public and the Commission than was previously available. Specifically, we eliminated the limitation that no more than ten issues be listed and required that the issues/programs list be prepared and placed in licensees' public files on a quarterly basis. On appeal, the court found that this rule would make a "non-trivial quantity of data" available over the period of a license renewal term, but determined that it was nonetheless inadequate under the regulatory approach adopted by the Commission in the radio deregulation proceeding. The court was still concerned that an issues/programs list which purports to be "merely illustrative" does not allow for effective public participation in the license renewal process.⁵ The court suggested that the goal of making adequate issue responsive programming information available to potential petitioners to deny could be achieved by requiring public file records reflecting a licensee's most significant programming treatment of community issues.⁶

4. We believe that this type of record keeping requirement can give the public substantial and sufficient information about a station's issue responsive programming to determine whether a station has fulfilled its programming obligation, without, on the

³ *Report and Order*, 84 FCC 2d 968 (1981), recon. granted in part, *Memorandum Opinion and Order*, 87 FCC 2d 797 (1981).

⁴ *Office of Communication of the United Church of Christ v. FCC* ("UCC III"), 707 F.2d 1413 (D.C. Cir. 1983).

⁵ *UCC IV* at 17-18.

⁶ *UCC IV* at 20-21.

other hand, unduly burdening the licensee. Thus, a radio licensee will be required to maintain in its public files quarterly lists of programs which, in the exercise of the broadcaster's good faith judgment, represent the most significant treatment by the station of the issues that the licensee believed to be of community concern.

5. The court in *UCC IV* upheld the Commissions' judgment that a licensee should not be compelled by rule to list *all* of its issue responsive programming, and, it should be stressed that the rule we adopt herein does not impose a requirement to maintain comprehensive public file lists.⁷ We continue to believe that a comprehensive requirement would place an inordinate record keeping burden on many licensees.⁸

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

7. Accordingly, IT IS ORDERED, That the Commission's Rules ARE AMENDED, effective June 27, 1986, as described above and set forth in the attached Appendix.⁹

8. IT IS FURTHER ORDERED, That the Secretary SHALL CAUSE this *Memorandum Opinion and Order* to be printed in the FCC Reports.

⁷ For example, a licensee that presented numerous program responses to an issue need not list all such programming. Rather, it should list only the most significant programs which dealt with the matter, omitting responses which may not have dealt with the issue in the same depth or at the same length as the listed programs. Similarly, a licensee's list need not include program responses to all issues of concern in the community.

⁸ We find it appropriate to delete from the rules the 5 to 10 issue minimum listing provision. However, without impinging on the flexibility afforded licensees under radio deregulation, we believe it appropriate to indicate that, as a general matter, a licensee whose issue responsive programming lists document significant programming directed to 5 to 10 community issues during each quarter would likely be able to demonstrate compliance with the issue responsive programming obligation set forth in our radio deregulation *Report and Order*. 84 FCC 2d at 990-91. We note that this standard does allow for variance depending on the programming decisions of the licensee. A licensee might, for example, choose to concentrate on fewer than five issues and cover those in considerable depth over a quarter. Other licensees may cover more than 10 issues due to the format and program length assigned to issue responsive programming.

⁹ The revision to Section 73.3526(e) of the rules contained in the attached Appendix encompasses both television and radio station licensees in order to reflect in a single amendment the concurrent record keeping changes implemented by our decision in this proceeding and, by separate opinion adopted today, in the television deregulation proceeding. See *Memorandum Opinion and Order* in MM Docket No. 83-670, FCC 86-223 (adopted May 1, 1986).

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

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

FEDERAL COMMUNICATIONS COMMISSION

WILLIAM J. TRICARICO, *Secretary*

APPENDIX

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read as follows: Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.3526 is amended by revising paragraphs (a)(9) and (e) to read as follows:

Section 73.3526 Local public inspection file of commercial stations.

(a) * * *

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(9) For commercial AM and FM broadcast stations, every three months a list of programs that have provided the stations's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October-December, April 10 for the quarter January-March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs should include, but is not limited to, the time, date, duration and title of each program in which the issue was treated.

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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 "significant treatment of community issues" list specified in paragraphs (a)(8) and (9) of this section shall be retained for the term of license (5 and 7 years for TV and radio, respectively). The certification specified in paragraph (a)(10) of this section shall be retained for the period specified in Section 73.3580 (for as long as the application to which it refers). The records specified in paragraphs (a)(1), (2), (3), and (5) of this section shall be retained, as follows:

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