



Virginia Association of Broadcasters Legal Review



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FCC LAUNCHES PROCEEDING TO REPLACE TV ISSUES/PROGRAMS LISTS WITH NEW STANDARDIZED ONLINE DISCLOSURE FORM

As expected, the FCC has released a *Notice of Inquiry* (the “*Notice*”) seeking comment on proposals to replace TV stations’ quarterly Issues/Programs Lists with a new standardized disclosure form. The *Notice* launches a companion proceeding to the Commission’s overarching proposal to require an online public file, which we reported to you last week. For now, the proposals are limited to television broadcasters, but the FCC is expected to launch separate proceedings at a later time regarding radio.

The FCC’s goal in the proceeding as announced in the *Notice* is to develop a standardized reporting form for programming information to be included in the proposed online public file. As stations will recall, the Commission proposed a standardized form (Form 355) back in 2007 that was widely criticized by broadcasters as overly burdensome. The 2007 rules and Form 355 were recently scrapped by the FCC. The *Notice* now seeks to improve the standardized form by simplifying it and reducing the burden on broadcasters. This time around, the Commission proposes to require broadcasters to report on their programming using a sample-based methodology and a limited number of categories.

However, the proposals outlined in the *Notice* may raise many of the same concerns broadcasters had with Form 355. As discussed below, the proposals maintain the use of programming categories (raising concerns about content regulation), and are likely to increase the reporting burdens broadcasters currently face.

The following is a discussion of the proposals in the *Notice* and questions posed by the Commission for comment.

I. Sampling Approach/Composite Week Reporting

As an alternative to requiring stations to disclose a full list of programming each quarter, the *Notice* proposes instead to use a “sampling” approach to reporting. In other words, stations would be required to send the FCC a snapshot of programming for each quarter instead of an exhaustive list.

Under the proposed “sampling” approach, the FCC would require reporting for a composite week made up of days randomly selected from different weeks of the quarter. For example, a Sunday would be randomly selected from all the Sundays in the quarter, then a Monday selected the same way, and so on. Stations would list programs in relevant categories for each of the days to give a snapshot view of their programming that quarter. The FCC seeks comment on whether the composite approach would be unduly burdensome to stations, whether it would provide sufficient information, and how it should be tailored to be most effective. Should sweeps weeks be excluded from the pool of days for a composite week? Would it be easier for stations to compile information for one or more full weeks instead of the composite approach? The *Notice* also asks if a one- or two-week sample is enough information.

Importantly, the *Notice* also asks how broadcasters should be notified of the days that will be included in the composite week, *i.e.*, whether the FCC should tell stations in advance which dates are selected, or after the fact. The *Notice* asks if the FCC should wait until the end of the quarter to announce the dates. As alternatives, the *Notice* asks if the FCC should announce the dates a few days ahead of time to give stations notice, or a few days afterwards for a (supposedly) more accurate sample.

Additionally, the FCC invites comment on whether a composite week approach will capture meaningful information for all categories of programming, or whether *certain* categories should be subject to a more comprehensive reporting requirement. For example, programming on local electoral affairs would arise most during the election season. The FCC contemplates that it may be more useful for stations to give a full report of electoral affairs programming during election season in order to capture programming that might be lost in a piecemeal composite week. The *Notice* seeks comment on whether enhanced reporting requirements for certain categories of programming—like election programming—would be overly burdensome to broadcasters. If so, the *Notice* asks for alternative approaches to adequately reflect the full extent of these types of programming. Should there be any other exceptions to a composite week reporting schedule? The *Notice* invites comment on what other categories, if any, should be subject to an “enhanced” reporting requirement.

II. Reporting Categories and Detail

The Commission has previously concluded that a standardized form should organize programming into specific categories. In the standardized Form 355 (recently abandoned by the FCC), the form included the following categories: local civic programming, local electoral affairs programming, public service announcements, independently produced programming, local programming, underserved communities, and religious programming. The *Notice* now promises to “simplify” reporting by limiting the number of reporting categories.

The FCC is beginning its new proposal with a sample form provided by a third party—known as the Public Interest, Public Airwaves Coalition (PIPAC)—on its website, available at <http://www.savethenews.org/sample-form>. The proposed form is organized by overall categories of “Composite Week”; “Election Period”; “Optional”; and “Closed Captioning Exempted Programming.” Within each of those, there are several sub-categories. The *Notice* seeks comment specifically on the core sub-categories that fall under “Composite Week” on the PIPAC sample form: (1) Local News, (2) Local Civic/Governmental Affairs, and (3) Local Electoral Affairs. Missing is any reference to national programming. Stations should review this proposed form online and consider whether the categories are burdensome or useful, as well as whether the organizational structure of the form is relevant and meaningful. In particular, the *Notice* seeks specific suggestions regarding the definitions of each category, additions or deletions of categories, or other reorganization of the new form.

The FCC does not fully explain how it would deal with reporting under PIPAC’s “Optional” category versus the “Composite Week” category, but the *Notice* proposes that stations could provide optional, additional information on a voluntary basis in the following sub-categories: national news, international news, public service announcements (paid and unpaid), religious programming, emergency programming, or any other public interest category. The *Notice* asks if these optional categories would be useful for broadcasters, or if the list should be supplemented or reduced.

The *Notice* also seeks comment on whether reporting should be done on a “per program” basis or on a “program segment” basis. The Commission asks whether broadcasters would have to use new retention techniques to report detailed information about program segments. For example, do broadcasters retain information about the length of each program segment within each news program (*i.e.*, the length of each story)? How should “program segment” be defined? The FCC seeks comment on whether detailed reporting is necessary to provide meaningful information to the public and the research community.

The *Notice* emphasizes that by including specific categories on the new form, the FCC would not be imposing a new requirement on stations to air any particular category

of programming. As a corollary, however, the FCC proposes to require that a program or segment would only be listed for one category. In other words, the same program or segment could not be listed on the form more than once, even where it might fall into multiple categories.

III. Closed Captioning and Video Description

The FCC also seeks comment on reporting requirements regarding services for accessibility. Form 355 required reporting of the number of hours of programming provided with closed captioning and video description. The FCC now, again, proposes to require reporting of both closed captioned and video described programming.

The *Notice* proposes to require stations to disclose whether programming otherwise reported on the form is closed captioned and, if so, the type of captioning, and the details of all programming exempt from closed captioning. The Commission assumes that this reporting requirement would not be unduly burdensome because nearly all programming is already required to be captioned, but it would, nonetheless, impose paperwork burdens on broadcasters.

The *Notice* also proposes reporting requirements for video described programming once the video description rules go into effect in 2012. The Commission seeks comment on whether and to what extent broadcasters should be required to report their video described program offerings on the new disclosure form. The *Notice* asks, in particular, whether stations should be required to report all of their video described programming.

IV. No Exemption for Noncommercial Stations

Finally, the Commission tentatively concludes that noncommercial TV stations should not be exempt from the programming disclosure requirements. The reporting requirements would, therefore, apply to both commercial and noncommercial broadcasters. The *Notice* seeks comment on whether the standardized form and sampling approach will be sufficient to address noncommercial stations' concerns about spending limited resources on reporting rather than on public service activities.

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Comments in this proceeding will be due 30 days after the *Notice* is published in the Federal Register, and reply comments will be due 45 days after publication. As of November 21, 2011, publication has not yet occurred.

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If you should have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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