

F.C.C. 71-176

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of PRIMER ON ASCERTAINMENT OF COMMUNITY PROBLEMS BY BROADCAST APPLICANTS, PART I, SECTIONS IV-A AND IV-B OF FCC FORMS	}	Docket No. 18774
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REPORT AND ORDER

(Adopted February 18, 1971; Released February 23, 1971)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission has before it: (a) a Notice of Inquiry, 20 FCC 2d 880, adopted December 19, 1969, in which a Primer was proposed to clarify and provide guidelines as to the Commission's requirements and policies with respect to the ascertainment of community problems by broadcast applicants; and (b) comments and reply comments filed in response to the Notice.¹ The Primer, as revised upon consideration of those comments, is adopted by this Report and Order as set forth in Appendix B.

2. This proceeding was initiated at the request of the Federal Communications Bar Association. The FCBA was of the view that the Commission's standards with respect to Part I of Sections IV-A and IV-B of the Commission's broadcast application forms had been given different interpretations by applicants, members of the FCBA and the Commission's staff. Clarification was therefore requested. A tentative Primer answering commonly raised questions with respect to those standards was prepared by the staff. Commissioner Robert T. Bartley, who has long been active in the evolution of ascertainment policy, discussed that Primer with representatives of the FCBA on December 2, 1969. The matter was further discussed by the Commission on December 19, 1969. As a result of those meetings, the Primer was modified and issued along with the Notice.

3. Black Efforts for Soul in Television (BEST), had asked for and had been denied access to the meeting of December 2, 1969. BEST contends that its exclusion from a meeting where the legal representatives of the industry were present, denied it (BEST) and similar groups the opportunity to effectively present their views. Therefore, BEST alleges that the origins of the Primer are clouded by *ex parte* processes. BEST seeks access to the "original formulation of a policy."

¹ Appendix A lists the 61 parties filing comments. One party, Pierson, Ball & Dowd, filed a request for declaratory ruling, pursuant to section 1.2 of the Commission's rules. If a party consists of two or more entities commenting jointly, the names of the entities are listed under the name of the lead entity. The short designation of every party in the present document appears in parentheses following the full name in Appendix A.

However, the Primer is a statement intended to clarify and provide guidelines as to Commission policies and requirements. As such, it is neither an adjudicatory proceeding nor a restricted rule-making proceeding under our rules, see sections 1.1201–1.1251. Moreover, BEST subsequently met with Commissioner Bartley, received copies of both stages of the proposed Primer and commented extensively upon both. We have given its comments careful consideration. We conclude, therefore, that the procedure followed has not denied BEST or any other party procedural or substantive due process.

4. The comments filed in this proceeding have been very helpful to us and many changes have been made in the Primer as a result of those comments. However, many comments were adopted only in part or were rejected. For those whose comments fall in the latter category, we have tried to be explicit as to our reasons for rejection, but specific variations of a particular concept may not be separately discussed. One consideration should be kept in mind that is generally applicable. The Primer is applicable to all classes of broadcasters filing specified applications. Thus, it applies to a group of operations that vary widely with respect to the area and population they propose to serve, the number of competing broadcast services, and potential revenues, profits or losses. The Primer must be, of necessity, broad enough to encompass that diversity. We recognize that there are several areas covered in the Primer where more specificity might be viewed by some as desirable. But the diversity is too great, and attempts to establish more precise criteria raise more questions than are answered. Moreover, in times when problems, needs and interests are constantly changing, we believe that we must retain a degree of flexibility. Guidelines that are too specific may result in too rigid an approach. Nonetheless, the amended Primer, in our view, will aid broadcasters in being more responsive to the problems of their communities, add more certainty to their efforts in meeting Commission standards, make available to other interested parties standards by which they can judge applications for stations licensed to their community, and aid our staff in applying our standards uniformly. With these considerations in mind, we turn now to the specific questions.

A. General

5. *Question and Answer 1.* Those applications to which the Primer is applicable are specified in the answers to Question 1.² Answer 1 (a) specifies application for construction permits for new broadcast stations but exempts applications for noncommercial FM and television channels. Several parties have suggested that all new applicants, including educators, should be required to ascertain community problems in the manner described in the Primer. However, it is the purpose of this inquiry to provide clarification and guidelines with respect to commercial applicants. Given the reservation of channels for specialized kinds of programming, educational stations manifestly must be treated differently than commercial stations. Thus, the suggested exten-

² Section IV-A is submitted for AM or FM stations, while Section IV-B is submitted for television stations.

sion of the Primer to include educational stations is beyond the scope of the *Notice* and will not be considered here.³

6. What the Bible Says, Inc. (WTBSI), requests that Answer 1 (a) be amended to exempt from the Primer's requirements applicants that are religious organizations proposing "noncommercial specialized religious programming on a 100% sustaining basis." WTBSI's position is founded in the First Amendment to the Constitution, which provides in part that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." WTBSI concludes, in light of that language, ". . . that the imposition of any rule or issue which seeks to compel 'an establishment of religion' to *ascertain community problems*, . . . is a direct violation of the First Amendment." (Emphasis in original.)⁴ WTBSI also reasons that since the Commission has exempted educational applicants from conducting surveys due to a presumption that there is a need for specialized educational programming, a similar exemption should be available to noncommercial religious applicants based on the need for specialized religious programming.

7. In dealing with the Establishment and Free Exercise Clauses of the First Amendment, the Supreme Court has attempted to steer a neutral course. Due to the difficulty of reconciling those two clauses, a clear standard or formula that is generally applicable has not been evolved, and case-by-case decisions appear to be the rule. Recently, in *Walz v. Tax Commission*, 397 U.S. 664, 90 S. Ct. 1409 (1970), the Court stated:

The general principle deductible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference. (397 U.S. at 669, 90 S.Ct. at 1411-12)

Earlier, in *Everson v. Board of Education*, 330 U.S. 1, 67 S. Ct. 504 (1947), the Court said:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. (330 U.S. at 15, 67 S. Ct. at 511).

In our view, exempting religious organizations that are applicants for broadcast stations from the ascertainment process, while imposing such requirements on other commercial applicants, would serve to aid the religious applicant, an obvious departure from the neutrality required by the Court. As to WTBSI's analogy of religious and educational applicants, the First Amendment does not prohibit government aid to, or interference with, education, so that the analogy must fail. Since there is a rational basis for applying different standards to educational as compared to commercial applicants, the distinction cannot be classed as arbitrary. Accordingly, we must reject WTBSI's sugges-

³ Mr. Davidson has suggested that CATV systems be required to ascertain community problems. That, too, is beyond the scope of this proceeding.

⁴ WTBSI apparently uses the phrase "establishment of religion" in the sense of a place or organization where religion is practiced, rather than in the sense of governmental creation or support of a religious organization.

tion. Of course, consistent with our prior statements on the subject, religious organizations that are applicants for, or holders of, Commission authorizations may present sectarian programs. They can not, however, turn their backs on secular problems. For that reason, they must ascertain community problems and devote portions of their programming toward meeting those problems.

8. The exemption afforded educational organizations filing applications for non-commercial educational stations was stated in proposed Answer 1(a) to apply only to operation on non-commercial educational FM and television channels. As of July, 1970, there were 25 educational stations operating on the AM band. Moreover, educational organizations may apply for non-commercial educational authorizations on non-reserved channels. At present, there are 15 educational FM and eight educational television stations operating on non-reserved channels. We believe, therefore, that the exemption is more appropriately phrased in terms of the nature of the applicant and the proposed service. Finally, educational organizations are not required to file Part I, Section IV, with respect to the other applications specified in the answers to Question 1. Therefore, we will delete the parenthetical insert from Answer 1(a) and the following will be added: "Educational organizations filing applications for non-commercial educational broadcast stations are exempt from the provisions of this Primer."

9. *Answer 1(b): applications for changes in facilities.* This answer reflects our policy that applicants for changes in facilities proposing to increase their area of coverage by more than 50% should ascertain the problems of the gain area. Metromedia states that this involves a change from the present forms which have obtained approval of the Bureau of the Budget. Metromedia refers to instruction two of Section IV. That instruction refers to the sections of the rules that define major changes, sections 1.571(a)(1), 1.572(a)(1), and 1.573(a)(1). Instruction two also states that applicants for major changes are not required to file Section IV "unless there is proposed a substantial change in programming, increased facilities serving a substantial amount of new area or population, or unless the information is requested by the Commission."⁵ It cannot be argued that a 50% increase in area is not "substantial." Therefore, this concept is within the terms of the existing form. We also note that our requirement is well within the discretion afforded by the last clause in the quoted language. Consequently, in our view, Budget Bureau approval is not required. It has also been noted that under the proposed wording of Answer 1(b), a change that would result in coverage of a new area that is 55% greater than that covered by the authorized facilities, but which also resulted in a 10% loss area, would not require the submission of Section IV, since there has been only a 45% increase. Answer 1(b) has been reworded to avoid that construction, as follows:

(b) Construction permit for a change in authorized facilities when the station's proposed field intensity contour (Grade B for television, 1 mv/m for FM,

⁵ See instruction two, Section IV, FCC Form 301 and the cited sections of the rules. The 50% criterion is much the same as that used in sections 1.572 and 1.573. There are, of course, other applications that qualify as major changes under the rules, which do not require the submission of Part I; for example, a change of frequency.

or 0.5 mv/m for AM) encompasses a new area that is equal to or greater than 50% of the area within the authorized field intensity contours.

10. Several parties suggest that population, not area, should be the criterion used for requiring an ascertainment of community problems in gain areas. They argue that it is service to people, not square miles, which should govern. However, that approach is not without its problems. Most importantly, it is administratively impracticable. In processing applications, a determination as to area is relatively easy. Population studies, on the other hand, require time-consuming detailed work, and we do not have the staff to conduct such studies routinely. As a general rule, there is a rough correlation between the area and the population served. Daly & Joyce points to one extreme where the gain area is sparsely populated.⁶ Since a lesser standard is applied to ascertainment of community problems outside the city of license, no unduly burdensome requirement is imposed on the applicant. (See Answer 7). Of course, if there is virtually no population in the gain area, an applicant may submit a showing to that effect, and be relieved of the Primer's requirements. BEST and Georgetown University Law Center Task Force on the Mass Media (Georgetown), on the other hand, point to areas around major cities where slight extensions of the field intensity contours encompass substantial new populations. That problem is not too significant for two reasons. First, the incidence of facility increases by large-city stations is not likely to be great in the near future, with all but a few VHF television, most AM and many FM stations now having maximum or near-maximum facilities. Second, a station's *primary obligation is to its city of license*, with only a secondary obligation to other areas within its field intensity contours. It becomes virtually impossible for a station in a major market to serve every political subdivision that receives its signal if service is defined as being responsive to community problems. Therefore, we have accorded broadcasters considerable discretion as to serving outlying areas. Thus, a New York City broadcaster might broadcast news and public affairs programming concerning major events in outlying cities or areas receiving its signal, but could hardly be expected to give in-depth coverage of local elections from Connecticut to central New Jersey. A Connecticut or New Jersey station might cover such elections, but we would not fault a New York City station that chose, in its discretion, to ignore them. Applicants for major changes should refer to questions 6-8.

11. *Answer 1(c): change in station location.* Under this answer, applicants proposing to change a station's location, in terms of the city of license, are required to submit a new Section IV. Dempsey & Koplovitz proposes exempting from this requirement moves from one city to another of a multiple, hyphenated allocation, or within a metropolitan statistical area. We think the proposed exemption is unwarranted. A station licensed to one community has a primary obligation to that community. If an applicant proposes to shift that obligation to another city, it should do so only after becoming thoroughly aware of the problems of the second community. See too, Question 6, below.

⁶ Broadcasters may propose such changes to improve signal strength over their city of license and adjacent areas. This may result in an extension of the field intensity contours into areas with little population.

12. *Answer 1(d): daytime AM stations seeking fulltime facilities.* The proposed Primer would require daytime AM stations seeking nighttime facilities to file Part I, Section IV-A. However, as noted by the NAB and Daly & Joyce, the problems of the community do not change after sundown. The requirement that Part I should be submitted will, therefore, be deleted. However, the number of problems, and the approach to meeting them, may be substantially different if the station is able to increase its broadcast time. Therefore, we shall require such applicants to submit Part III of Section IV-A.

13. *Answer 1(d): satellite television stations.* Applicants for satellite television stations are required to submit Section IV-B under Answer 1(d). Since a station that is primarily a satellite does originate some local programming, the Primer's requirements obviously applies to it. However, Dempsey & Koplovitz suggest that 100% satellites, that is, stations originating no local programming, should be exempt. Typically, satellites are owned by the parent station. Since the parent should allocate some of their news and public affairs programming to meeting the needs of the area served by the satellite, the applicant must ascertain the problems of that area. Accordingly, we believe that such applicants should submit a complete Section IV-B. There are a few rare cases where a 100% satellite is not owned by the parent corporation. In these cases, a problem is presented since the satellite licensee is not legally in a position to control the programming of the originating station. Nonetheless, we shall not exempt such stations from the Primer's requirements. Because such a satellite must rely on some agreement with the originating station as to both revenues and rebroadcast consent, a working relationship must be established. As part of that relationship, the licensee of a satellite would be able to provide news stringers, notice of significant upcoming events, and other material to the originating station only if he is sufficiently familiar with the community he serves. The Primer forces an awareness of the problems of the community on such a licensee, so that there is good reason for requiring him to ascertain community problems in accordance with the requirements of the Primer.

14. *Answer 1(e): renewal applications.* We have concurrently released today a Notice of Inquiry and Notice of Proposed Rule Making, FCC 71-156, Docket No. 19153 and a Notice of Inquiry, FCC 71-159, Docket No. 19154 in which new standards are to be considered for the licensees of operating stations. Since different standards are under consideration, we have revised the Primer to delete references to renewal applicants, reserving judgment in this regard until we have reviewed the comments filed in those proceedings. We shall not further comment about the revisions caused by the deletion of renewal applications, except to the extent that it may be required for clarity. However, as an interim measure until other standards are adopted, renewal applicants will be required to comply with the Primer.

15. *Question and Answer 2.* In this question and answer we have attempted to consider our need for current information without requiring the broadcaster to unnecessarily duplicate recent efforts in ascertaining community problems. Our conclusion was that if the same applicant had provided a complete Section IV within the previous year, he would not be required to repeat the process. The NAB states

that this is unnecessarily short, and recommends 18 months. We will retain the one-year standard, since, in our view, the information submitted would otherwise not be current enough for us to make an informed judgment. It should be noted in this respect that an applicant can begin preparation of an application up to six months prior to the filing of the application. (See Question 15, below.) If the NAB's proposal were adopted, we could conceivably be granting applications on the basis of information up to two years old at the time of filing, and older at the time of grant. Under the standard we have chosen, that information can be no older than one-half the license period, or 18 months, at the time of filing.

16. Metromedia notes in this connection the instructions in Section IV of the program reporting form in assignment, transfer and renewal applications (FCC Forms 314, 315 and 303 respectively) to the effect that proposed assignors and transferors need not file Section IV, the program reporting form (of which the ascertainment showing is Part I), if they have filed a renewal application within the last 18 months. The significance of Metromedia's reference is not clear. As far as the present matter is concerned, assignors and transferors are not directly involved at all, since they are not required to file the ascertainment showing, Part I of Section IV, even if they have to file other portions of that Section. If Metromedia means that the same 18-month principle should be extended generally so as not to require a new showing if one has been filed within that period, this argument must be rejected, for reasons stated in the preceding paragraph.

17. *Question and Answer 3: the purpose of Section IV.* In the past, we have generally stated that the purpose of Section IV was to show what the applicant had done to ascertain the needs and interests of the community to be served and the broadcast matter he proposed to meet these needs and interests. However, our experience has shown that a large segment of the broadcast industry has steadfastly interpreted community "needs" to mean program preferences. We are shown, for example, communities with "needs" for more country and western music, or for more sports programs, but which apparently are not believed to have needs for improved schools, roads, or welfare programs. Therefore, having failed, in large measure, in our earlier efforts to impress upon applicants that the phrase "community needs" encompasses a much larger area than program preferences, we sought in preparing the Primer to use a new word to emphasize our intent; hence, "problems." A review of new and change applications filed since the proposed Primer was issued indicates that the use of the word is having the desired effect. We were careful to state in Answer 3, that the word "problems" as used in the Primer would be considered by us to be generally synonymous with "community needs and interests." Despite this explicit statement, those filing comments universally interpreted the wording of Answer 3 to be a major shift of Commission policy. For example, one broadcaster states that "the limitation of the term to 'problems' . . . creates doubts as to the needs for instructional, agricultural and other special kinds of programs." Others have charged that the "problem-oriented" approach of the Primer emphasizes matters having utility for limited segments of the community

and that, in effect, the Primer unduly imposes the judgment of the government on broadcasters.

18. In our view, a careful reading of the Primer would not warrant these interpretations. Problems exist with respect to agricultural activities and we fail to understand why the language of the Primer would establish doubts as to the need for broadcast matter to meet those problems. Nor do we understand a charge that community problems affect only limited portions of the community. Most problems directly affect all segments of the community. Those problems that directly affect a lesser population have an indirect impact on the larger community. As to the alleged imposition of the government's judgment on the broadcaster, we note that the choice of broadcast matter, whether it be entertainment programming, public affairs programming, public service announcements, or news, is left to the applicant's discretion. Within broad limits, the percentage of these kinds of programming is also left to the applicant. The judgment "imposed" by the Commission is no more than requiring broadcasters to be responsive to the problems of their communities. That judgment is required under the Communications Act.

19. The above serve only as examples of the statements submitted. While we believe that most of the interpretations given to Question and Answer 3 are not warranted, it is obvious that the proposed language has provided confusion among the commenting parties, rather than the clarification we hoped to bring about by issuing a Primer. Accordingly, some revision is in order. Westinghouse recommends the phrase "problems and issues," as a broader substitute, and the Mexican-American Committee suggests "needs, interests and problems." As between the two, we believe that the latter is more in keeping with our policies. Again, to emphasize that we are not primarily concerned with program preferences, we think it appropriate to use the phrase "problems, needs and interests." For the reasons set forth in paragraph 50, we will also indicate at this point that the phrase "to meet community problems" will be used to include the obligation to meet, aid in meeting, be responsive to, or stimulate the solution for community problems. Accordingly, Answer 3 will be changed to read as follows:

Answer: To show what the applicant has done to ascertain the problems, needs and interests of the people of his community of license and other areas he undertakes to serve (See Question 6, below), and what broadcast matter he proposes to meet those problems, needs and interests, as evaluated. The word "problems" will be used subsequently in this Primer as a short form of the phrase "problems, needs and interests." The phrase "to meet community problems" will be used to include the obligation to meet, aid in meeting, be responsive to, or stimulate the solution for community problems.

20. *Question and Answer 4: how the ascertainment of problems is to be made.* Several parties noted that parts of Answer 4 are repeated in subsequent questions and answers. They recommend, therefore, that revisions be made to avoid those repetitions. We concur in that view and believe that it would be appropriate to make the answer a general statement, leaving the details of how the applicant goes about ascertaining community problems to subsequent questions and answers. Several broadcasters commented that consultations with the general public were, in their view, unnecessary, confusing, or served no purpose. We have imposed this requirement on the assumption that members of the

general public may perceive community problems differently than community leaders. Mr. Baldwin, in his comments, submitted a study of Columbia, Maryland, that supports that assumption. Therefore, the requirement of consultations with members of the general public will be retained. We will also add language to Answer 4 to make clear that the word "group" is not restricted to groups with formal organizations. Accordingly, Answer 4 is revised to read as follows:

Answer: By consultations with leaders of the significant groups in the community to be served and surrounding areas the applicant has undertaken to serve, and by consultations with members of the general public. In order to know what significant groups comprise the community, its composition must be determined, see Question and Answer 9. The word "group", as used here, is broad enough to include population segments, such as racial and ethnic groups, and informal groups, as well as groups with formal organization.

21. *Question and Answer 5: reliance on area familiarity.* CBS recommends that Answer 5 be changed to make "clear that long-time familiarity by a licensee of the area he serves is a significant plus factor." However, a long period of residency does not compel familiarity with the entire range of problems facing a community. Indeed, the claimed familiarity may be restricted to the problems of a rather narrow range of persons or groups. Therefore, an applicant's familiarity with the community he serves will be judged upon the showing he submits in response to Section IV of the application form, and not upon the length of time the applicant has resided in or served the particular community. Accordingly, Answer 5, which makes a specific ascertainment effort mandatory, will be retained without change.

22. *Question and Answer 6: the applicant's obligation to ascertain community problems outside his city of license.* Since an applicant's primary obligation is to his city of license, his obligation to other areas is, of course, secondary. Instead of trying to set out a formula or standard differentiating those terms that would be applicable to all stations in cities of widely varying population and composition, the Primer permits an applicant, in his discretion, to choose those outlying areas or communities he will serve on a secondary basis. (In this context, we mean "serve" in the sense of programming that is responsive to specific community problems, not in the broader sense of providing programming to any person who receives the station's signal.) Thus, the Primer referred to Question 1 (A) (2) of Section IV (A and B) where the applicant is requested to set forth the other areas or communities he undertakes to serve. Several other formulas have been suggested by those submitting comments. The variety of those suggestions emphasizes the difficulty in establishing a standard that differentiates an applicant's primary and secondary obligations with respect to stations in such diverse cities as Chicago and Miles City, Montana.

23. There are, of course, limits on the applicant's discretion. AM stations that are licensed to two or more communities must, of course serve all those communities. FM or television stations that operate on channels allocated to two cities, Minneapolis-St. Paul television channels, for example, are licensed to one community but must also ascertain community problems in the second city. We also believe that applicants for assignment or transfer of stations which are licensed

to one city but which have obtained waiver of the station identification rules to permit a secondary identification with one or more other cities must ascertain community problems in the additional cities. Although this was not specified in the proposed Primer, we believe that obtaining such a waiver is tantamount to an undertaking to serve the other city or cities. The proposed Primer would also require an applicant for a station licensed to a city within a standard metropolitan statistical area (SMSA) as defined by the United States Census Bureau, to ascertain community problems in each of the cities within that area. We will remove that requirement for two reasons. First, many metropolitan areas have numerous political subdivisions. For example, there are more than 100 communities within the SMSA of New York City and Chicago. We do not, and can not, require a station licensed to Chicago to present broadcast matter that is specifically responsive to the problems of each of those subdivisions. Second, as presently stated, an applicant for a station licensed to Joliet, Illinois, part of Chicago's SMSA, would be required to ascertain community problems in all the political subdivisions surrounding and including Chicago, if its signal actually encompassed that area. That, too, is an unnecessary result, since it would apply a more stringent requirement as to applicants for stations licensed to suburban communities than to those in the central city.

24. We are adopting, instead, a somewhat different limitation on the discretion of all applicants, as to the communities in which an ascertainment of community problems must be made. That is that an applicant will be required to submit a showing as to why he does not undertake to serve a particular major city that falls within his service contours, up to a maximum of a 75-mile radius from the transmitter site.⁷ The word "major", as we use it here is relative. Thus, a city of 25,000 residents might be considered minor for a station licensed to Los Angeles, but a city of 10,000 may be considered major for a station licensed to a city of 25,000. An applicant's showing in this regard might be that the major city in the outlying area has several broadcast stations in the same service licensed to it, or that the residents of that major city turn to the stations of another closer city for their broadcast service. Accordingly, Answer 6 will be amended as follows:

Yes. Of course, an applicant's principal obligation is to ascertain the problems of his city of license. But he should also ascertain the problems of the other communities that he undertakes to serve, as set forth in his response to Question 1(A) (2) of Section IV-A or IV-B. Applicants for stations licensed to more than one city, or for channels assigned to two or more cities, or proposed transferees or assignees of stations which have obtain waiver of the station identification rules to permit secondary identification with additional cities, are expected to ascertain problems in each of the cities. If an applicant chooses not to serve a major community that falls within his service contours, a showing must be submitted explaining why. No major city more than 75 miles from the transmitter site need be included in the applicant's ascertainment, even if the station's service contours exceed that distance.

⁷ The 75-mile limitation is in deference to the extensive areas of Class I AM stations. This proceeding does not primarily relate to the obligation which such stations have by reason of the nature of their authorized facilities, designed to provide primary and secondary service to very large areas. This matter relates, rather, to the ascertainment of and efforts to meet problems more particularly associated with a particular community or area, those which can be ascertained by the process involved here and with which stations generally must be concerned.

25. *Question and Answer 7: ascertainment in outlying areas.* Since we have determined that applicant's obligation to ascertain community problems outside his city of license is secondary, it follows that he would be expected to be responsive to only major problems in that area. An ascertainment of major problems need not be as inclusive or exhaustive as that required for a city of license. Thus, Answer 7 indicates that an applicant has wide latitude as to how he ascertains community problems. Georgetown states that "cursory ascertainment of outlying areas is unlikely to provide sufficient responsiveness." However, we must again recognize that broadcast stations are primarily licensed to serve one city, and that the time allotted to meeting a secondary obligation to other areas must be distributed to numerous political subdivisions. We will, however, revise Answer 7 to indicate that in areas other than the city of license, consultations with community leaders who can be expected to have a broad overview of community problems would be sufficient. We believe this will provide more guidance to applicants than the initially proposed language. In view of the above, Answer 7 is revised as follows:

Answer: No. Normally, consultations with community leaders who can be expected to have a broad overview of community problems would be sufficient to ascertain community problems.

26. *Question and Answer 8: ascertainment in "gain" areas.* Because the first sentence of Answer 8 repeats the criteria discussed in Answer 1 (b), our comments with respect to that answer (paragraphs 9 and 10, above) will not be repeated here. As to the extensiveness of the ascertainment in the gain area, upon which several parties commented, the answer is revised to refer the applicant to Answer 7.

27. *Question and Answer 9: determining the composition of the city of license.* As previously noted, there are two broad parts to ascertaining community problems; consultations with community leaders and consultations with members of the general public. The applicant is expected to choose members from each of those broad groups that reflect the composition of the city of license. Obviously, an applicant does not rely on a random sample to choose community leaders. Rather, he is expected to contact leaders of each significant group within the community.⁸ Thus, in reference to community leaders, we were speaking of a "statistically reliable sampling" in the proposed Primer, only in the sense that it denoted one means of determining what significant groups are found in the community; that is, its composition. Answer 9 also gives examples of other means of determining the composition of the community, including data from the U.S. Census Bureau, which, of course, bases its information on statistically reliable surveys. Data from the Chamber of Commerce or other reliable reports or studies may also be used to assist in determining the composition of the community. Two criticisms have been leveled at these sources. Bay Area TV comments that Chamber of Commerce data is business oriented, so that the Commission is "saying that the composition of the community shall be determined by the

⁸ It should be made clear that the significance of a group is not determined solely by its size. Whether a group is to be considered "significant" may rest on several criteria, including its size, its influence or its lack of influence in the community.

business Establishment." However, listing the Chamber of Commerce as one source of data does not lead to the conclusion that it should be considered the sole source of information. Moreover, those studies submitted by applicants as to the composition of their respective communities indicate that Chamber of Commerce profiles and city directories provide much useful information. Granted, much of that information duplicates that found in Census Bureau publications and much of it is business oriented. Nonetheless, many provide outlines of local government, lists of schools, and lists and total membership of benevolent, fraternal, religious, business, civic, professional, labor and miscellaneous organizations. The second criticism was made by several parties who claim that information from the Census Bureau is too general and not sufficiently current at the end of the decade to be of use. This is not, in fact, the case.⁹ The Census Bureau periodically publishes updated information and, far from being too general, provides extensive detail. While the Primer permits the use of an outside organization to compile this information as to a community's composition, in our view, the ready availability of the sources of that information make such studies easily within the resources of all broadcast applicants.

28. Another problem that we have with these criticisms is that we do not require minutely or detailed information as to a community's composition. As discussed in conjunction with Question and Answer 13(a), those community leaders who are consulted should be chosen on the basis of the composition of the community. For example, we would expect consultations with labor leaders in cities with industries that are typically unionized. On the other hand, labor leaders would not necessarily be a part of the ascertainment process of a station licensed to a suburban "bedroom" community or a retirement community. Thus, for our purposes, it is sufficient to provide data indicating the minority, racial or ethnic breakdown of the community, its economic organizations, and any other factors that make the particular community distinctive. A retirement or university

⁹ As an example, the Census Bureau periodically issues the *County and City Data Book—A Statistical Abstract Supplement*. This publication does not contain the most detailed information published by the Census Bureau. However, the following partial listing of data set forth there as to cities is indicative of the extensive information that is readily available: total population; land area; population density; percent nonwhite; percent Negro; percent foreign born; total foreign born; country of origin as a percent of total foreign stock; median age; percent under 18 years of age; percent 65 years of age and over; population per household; as to persons 25 years old and over, the median number of school years completed, the percent completing less than 5 years of school; as to persons 5 to 34 years old, the percent enrolled in all schools and in private schools; percent of work force employed in manufacturing, retail, wholesale and white collar occupations; total income; median family income; percent families earning less than \$3,000; percent of families earning \$10,000 or more; total number of housing units; number of manufacturing establishments; number of employees; number of production workers; total payroll and wages; number of man hours; value added by manufacture; total and per capita retail sales; number or retail establishments; number of retail employees and payroll; number of establishments and sales of nine types of selected businesses (data similar to those set forth for retail trade are also given for wholesale trade and selected services); hospitals; total general city revenues and breakdown as to source; total city expenditures and a breakdown as to disposition, including public welfare, education, highways, health and hospitals, police protection, fire protection, sewerage, other sanitation, parks and recreation, interest on general debt, outstanding debt, and city payroll. This information is given for every city with a population over 25,000. Similar information is given for each county, with more agricultural data, so that cities less than 25,000 would be included in the county portion of the publication. More detailed information or source of information as to other areas may be found in the following government publications which may be available in local libraries or can be purchased from the Government Printing Office: *Statistical Abstract of the United States*; *Directory of Federal Statistics for Local Areas, A Guide to Sources*; *Directory of Federal Statistics for States, A Guide to Sources*.

community would be examples of the latter. We are not concerned with minutia, and those challenging an applicant's showing must demonstrate that the applicant has failed to recognize a significant group. It should be noted that if an applicant finds that there are ten labor unions in the community, the "group" we consider significant is that of unions generally, and each union is not considered a separate group. However, we would expect that if there are a substantial number of unions in a community, the applicant's ascertainment process would include more than one union or a group consisting of more than one union, such as a Labor Council, if there is one.

29. Georgetown suggests that we should indicate that the data used should be as current as possible. We will so indicate in Answer 9. Apparently as a means to an end, Georgetown and other parties also suggest that language be inserted to the effect that submission of a "strong showing" as to the composition of the community will be a significant factor in considering performance when applicants are involved in comparative proceedings. We do not believe that these suggestions are appropriate. An applicant has either shown consultations with leaders of significant groups within a community and with the general public or he has not. Moreover, the performance that concerns us is not the degree of sophistication used by the applicant in obtaining data. Rather, it is his proposed programming. To make more clear the kinds of data we require in the applicant's study of the composition of his community, we have added the following sentence to Answer 9: "The applicant must submit such data as is necessary to indicate the minority, racial, or ethnic breakdown of the community, its economic activities, governmental activities, public service organizations, and any other factors or activities that make the particular community distinctive with respect to its composition."

30. *Question and Answer 10: must a compositional showing always be submitted.* This question and answer have been the subject of several comments which we believe are valid. In sum, these comments argue that the burden of determining the composition of a particular community is not great; that such a determination is beneficial in that it apprises both the applicant and the Commission of the significant groups within a community; that no community can be described as "average" in composition; and, therefore, that each applicant should be required to submit a showing as to the composition of his community, rather than assume a *prima facie* showing if leaders of certain groups are consulted. The merits of this position are obvious. Suppose, for example, an applicant showed consultations with leaders of the Black community. The applicant would have made a *prima facie* showing that he had, under the present wording of Question and Answer 10, contacted leaders of racial and/or ethnic groups. Nevertheless, there may be, for example, significant American Indian or Spanish-speaking groups within the community. We would have no way of ascertaining the presence of such groups without information as to the community's composition. Since the burden of providing that information is not great, we will require each applicant to submit such a study.

31. The Citizens Committee suggests that an applicant's obliga-

tion does not end with “establishment” leaders, and includes “voluntary associations and agencies dealing with the needs of the elderly, the indigent and the handicapped, with welfare associations, tenant groups, youth and student groups and civic improvement organizations, taxpayer groups, property owners associations and other groups organized for the express purpose of protecting particular needs and interests.” The question is whether those groups comprise a significant segment of the community, not whether they fall within or without the “establishment”, however that word is defined. Leaders of the listed organizations should be consulted, if they represent a significant group within the particular community. Since all these groups or organizations listed by the Citizens Committee will not necessarily appear in all communities, it would be inappropriate to set them forth in a Primer that is generally applicable.

32. In referring to challenges to an applicant’s determination, many parties commented that more than an allegation should be required, and suggested that either the applicant should be assumed to be correct, or that a challenger should be required to make a showing with supporting data. If we are to assume the applicant to be correct, we assume away all challenges, and, therefore, we reject that position. However, we believe that it is appropriate to change the word from “allegation” to “showing”. This change emphasizes that those challenging do more than state that the applicant has omitted a significant group. Rather, they must show that a significant group has been omitted, by means of supporting data. Bay Area TV criticizes this approach, stating that this places the burden on the public to come forward with evidence that the composition of the community is not what the applicant states it to be. However, the applicant has already submitted a showing in good faith, based on reliable data. If a significant group has been omitted, a challenger should be able to easily show it. Our approach is quite consistent with the statutory scheme. For example, those filing petitions to deny are required to make specific allegations of fact sufficient to show that a grant of an application would be *prima facie* inconsistent with the public interest; see Section 309 (d) of the Communications Act. We are only asking a similar showing for those challenging an applicant’s determination of the composition of the particular community. The last sentence of the initially proposed answer 10 will be deleted, since, as noted by several parties, the thought expressed is self-evident. Answer 10 is, therefore, revised as follows:

Answer: Yes. The purpose of requiring a determination of the community is to inform the applicant and the Commission what groups comprise the community. The applicant must use that information to select those who are to be consulted as representatives of those groups. That determination may be challenged on a showing, including supporting data, that a significant group has been omitted. The “significance” of a group may rest on several criteria including its size, its influence or lack of influence in the community.

B. Consultations With Community Leaders and Members of the General Public

33. *Question and Answer 11(a): consultation with community leaders.* It is our view that the principals and the management of an

applicant should consult with community leaders. If nondecision-making personnel, or some organization or person other than the applicant were used, the information that would be gathered would go through a filtering process that might exclude much valuable information. It is doubtful that a written report can fully convey the nuances of any extensive conversation, or the extent of the sincerity, frustration or anger that may be associated with some community problems. Moreover, the person-to-person interview with the management of the station is more likely to establish a contact with the station in the interviewee's mind. Thus, a community leader knows someone to call if he believes there are matters that warrant further discussion. In this manner we believe that a dialogue can be established and maintained between the community and the decision-making personnel of the applicant. This would be largely lacking if we permitted an outside organization to conduct the consultations. We recognize that principals or management-level personnel may not be as expert in conducting consultations as some lower-level members of their staffs, or as those associated with a professional research organization. On balance, however, we believe that the lack of expertise is outweighed by the factors discussed above.

34. Welch & Morgan noted that the phrase "top-level employees" was not defined. It is difficult to be precise since there are innumerable ways of organizing a licensee. We are seeking those whose position is high enough in the organization to be an effective voice in the decision-making process. We believe that the phrase "management-level employees" is as precise as we can get, and we will use that phrase.

35. NBC requests the addition of the following language, "Consultations may be joint consultations, as with community leaders luncheons." We are seeking the individual views of each community leader, from the standpoint of the particular group represented, in an interview with one of the principals or management-level employees of the applicant. If this can be done, consistent with our goal, by community leader meetings or luncheons, the applicant is free to use this method. We do not, however, believe the matter to be so significant as to warrant separate comment in the revised Primer. Georgetown requests that Answer 11(a) be revised to make clear that the phrase "prospective employees" applies only to applicants for new stations. Our intention is to limit the use of prospective employees to those situations where an applicant is newly formed and has not yet hired a full staff. Answer 11(a) will be revised to indicate that limitation, as follows:

Answer: Principals or management-level employees. In the case of newly formed applicants who have not yet hired a full staff, principals, management-level employees, or prospective management-level employees, must be used to consult with community leaders.

36. *Question and Answer 11(b): consultations with members of the general public.* The applicant has a wider choice as to who can conduct consultations with members of the general public. The answer will be revised to make clear that employees of the applicant that are not management-level may conduct consultations with the general public. In addition, Answer 11(b) would permit the use of a professional research or survey service. The Mexican-American Committee has expressed its concern with Answer 11(b) in that it might permit an

applicant to use a professional service to avoid or minimize person-to-person contacts with members of the less organized segments of the community. The concern is heightened by a fear that an applicant may not classify Mexican-American leaders as community leaders, thus leaving the Mexican-American community without any direct dialogue with the applicant. We appreciate this concern, which, of course, might have been raised by other minority groups. If, however, such a group constitutes a significant group within the community, and an applicant fails to consult leaders of that group, his showing will be questioned by the Commission and is potentially subject to petitions or informal objections from others. In addition, our concern with this problem is in part reflected in our discussion of what constitutes a "significant" group in footnote 9, above, and in Answer 10. Furthermore, changes will be made in Answer 13(a) as to the identification of leaders of less formally organized groups. Answer 11(b) is, therefore, revised as follows:

Answer: Principals or employees. In the case of newly formed applicants who have not hired a full staff, principals, employees, or prospective employees may conduct the consultations. If the consultations are conducted by employees who are below the management-level, the consultation process must be supervised by principals, management-level employees or prospective management-level employees. Also, the applicant may choose to use a professional research or survey service to consult with members of the general public.

37. *Question and Answer 12: use of professional research organizations.* Most of the professional research organizations that filed comments take the position that we should adopt rigorous standards in order to assure that the sampling techniques are scientifically conducted and result in statistically reliable findings. Because no broadcaster has as much expertise in sampling techniques as the professional research organization, they urge for themselves a much larger, if not primary, role in the ascertainment of community problems. We have rejected the necessity of using such organizations, although they will be permitted to assist in parts of the process. We have taken this position for several reasons, including our interest in establishing a direct dialogue between decision-making personnel in the applicant and the community. Moreover, the ascertainment of problems is the goal, and there comes a point of diminishing returns as to the sophistication of the procedures used to reach that goal. We believe that any problem of significance will be uncovered by the procedures described in the Primer. While recognizing that those procedures may not approach standards acceptable to a statistician, they will, for our purposes, provide the necessary information. Thus, imposing requirements that will assure statistical reliability serve little purpose. The costs of obtaining such information, therefore, do not warrant the imposition of higher standards than those we have adopted.¹⁰ Question and Answer 12 have been modified to more clearly indicate the areas where a professional research or survey service are permitted, but not required, to enter the ascertainment process, as follows:

Question: To what extent may a professional research or survey service be used in the ascertainment process?

¹⁰ For example, CBS states that a professional research organization estimated that a survey of the Chicago area market could be done for \$79,500.00.

Answer: A professional service would not establish a dialogue between decision-making personnel in the applicant and community leaders. Therefore, such a service may not be used to consult community leaders. However, a professional service as indicated in Answer 11(b), may be used to conduct consultations with the general public. A professional service may also be used to provide the applicant with background data, including information as to the composition of the city of license. The use of a professional research or survey service is not required to meet Commission standards as to ascertaining community problems. The applicant will be responsible for the reliability of such a service if it is utilized.

38. *Question and Answer 13(a): which community leaders should be consulted.* The answer will be changed to make clear that the selection of community leaders for consultation flows from the applicant's determination of the composition of the community. In addition to those leaders, Bay Area TV suggests that Answer 13(a) should be amended to indicate that applicants should also consult with four or five members of the rank and file of each group, as well as its leaders. This position is based on the belief that the leaders may view community problems differently from the members of those groups. However, to the extent that their views may differ, the differences should show up in the consultations with the general public. There is, therefore, no reason for imposing the suggested requirement, since it is essentially duplicative.

39. In our discussion of Question and Answer 11, we noted that it was permissible for consultations with the general public to be conducted by those who were not decision-making personnel of the applicant, including outside professional services. The Mexican-American Committee, as a spokesman for a minority group that may lack formal organization in some communities, was concerned that a lack of easily identifiable leaders might relegate the ascertainment of that group's problems to nondecision-making personnel or an outside professional service. In this way, the applicant could avoid personal consultations with such groups, thereby avoiding the establishment of the desired dialogue between the applicant and the group. We would hope that applicants would not take such a course of action. However, to allay the concern of the Mexican-American Committee and of other similarly situated groups, and to make clear that an applicant may not arbitrarily avoid personal consultations with significant groups because the group lacks a highly developed formal structure, we believe that it is appropriate to revise the answer to indicate that additional efforts may be needed to identify leaders of less organized groups. This may require, as suggested by some parties, asking members of the particular group to identify those who they consider to be their local leaders. Accordingly, the answer is revised as follows:

Answer: The applicant has already determined the composition of the community, and should select for consultations, those community leaders that reflect the community's composition. Groups with the greatest problems may be the least organized and have the fewest recognized spokesmen. Therefore, additional efforts may be necessary to identify their leaders so as to establish a dialogue with such groups and better ascertain their problems.

40. *Question and Answer 13(b): which members of the general public should be consulted.* In view of our discussion with respect to professional research or survey services, we will specify that a "random sample" of the general public must be consulted. References to a

“representative range” or to a “statistically reliable sampling” will be omitted. For our purposes a random selection may be taken from a city directory, or may be done on a geographical distribution basis. Moreover, given the pervasiveness of the telephone in this country, a random selection of names from a telephone directory is sufficient for our purposes. Since the last sentence of the answer in the initial Primer has essentially been included in Answer 13(a), it will not be repeated here. However, language has been added to indicate that an applicant may, in addition to a random sample, consult with additional members of a particular group to obtain better insights into their particular problems. The language is precatory in nature, and serves only to encourage applicants to take whatever steps he thinks is reasonably necessary to make him better informed.

41. *Question and Answer 14: number of persons to be consulted.* The question of how many to consult is a difficult one. Many of those filing comments requested that specific figures be given. However, we believe that the question is not one of numbers, but whether the applicant has consulted leaders of the significant groups found in the community. Since consultations with members of the general public will be by a roughly random sample, that sample will generally reflect the community's composition, although, as previously noted, statistical accuracy is not required. In this regard, numerical superiority, by itself, does not automatically indicate a more representative selection of community leaders or of the general public. The questions that will be raised in this regard are: Have community leaders from each significant group been consulted? As to members of the general public, has the applicant used a method that will result in a generally random selection? Has the applicant elicited sufficient information as to community problems in those consultations? Accordingly, Answer 14 will be revised as follows:

Answer: No set number or formula has been adopted. Community leaders from each significant group must be consulted. A sufficient number of members of the general public to assure a generally random sample must also be consulted. The number of consultations will vary, of course, with the size of the city in question and the number of distinct groups or organizations. No formula has been adopted as to the number of consultations in the city of license compared to other communities falling within the station's coverage contours. Applicants for stations in relatively small communities that are near larger communities are reminded that an ascertainment of community problems primarily in the larger community raises a question as to whether the station will realistically serve the smaller city, or intends to abandon its obligation to the smaller city.

42. Dempsey & Koplovitz suggests that some formula be adopted as to the number of consultations in outlying communities. In view of the considerable discretion afforded applicants in ascertaining problems in areas outside the city of license, see questions and answers 6 and 7, above, we see no need for a formula.

43. *Question and Answer 15: time of consultations.* The proposed Primer specified that consultations must be made within the six months before the filing of the application involved. In our view, this requirement is an appropriate one, with respect to the types of applications which are covered by the Primer adopted herein (for new facilities and some major changes, and the assignee/transferee portion of assignment and transfer applications). This should give the applicant ample

time to make the consultations, evaluate the information gathered, and propose broadcast matter based on that information. Language has been included in the Answer to make it clear that it applies to licensees or permittees of operating stations applying for increases in facilities. As revised, Answer 15 will read as follows:

Answer: Applicants, including licensees or permittees of operating stations filing for major changes, are required to conduct consultations within six (6) months prior to filing the application.

44. *Question and Answer 16: failure to consult with representatives of a significant group.* Question and Answer 16 were included to counter the impression of some applicants that because they did not believe a certain group would be a part of their normal listening or viewing audience, the problems of that group need not be ascertained. This does not follow, however, since the solution to those problems may lie, in part, within the control of the group or groups that do constitute the station's audience. The necessary conclusion, if leaders of a significant group are not consulted, is that the ascertainment process is defective. Thus, as recommended by Georgetown and BEST, the answer will be revised to indicate that the ascertainment process is not just "subject to question," as stated in the proposed Primer, but is defective. BEST also suggests that not only omission, but "low representation," would make a showing defective. Again, we believe the question should be generally one of representativeness, not one of specific numbers. However, it should be noted that it is impossible to require a one-to-one ratio in terms of number because most people belong to several groups, and because groups vary widely as to their membership. Thus, an applicant who consults two leaders of a small but significant group, and four leaders of a group that is twenty times as large, has a low representation of leaders of the larger group. We would not normally, however, fault such a distribution of consultations.

45. Question and Answer 17 of the proposed Primer are directed toward renewal applicants. They have been, therefore, deleted from the revised Primer.

46. *Question and Answer 17 (18): use of questionnaires.* (Our subsequent discussion will be correlated to the numbers of the revised Primer. For clarity's sake, however, the number of the question of the Primer proposed in the Notice of Inquiry will be indicated in parentheses.) Professional research organizations indicate that a sampling technique wherein the person whose views are sought is to voluntarily return a questionnaire by mail produces a strong "cooperation bias" that renders almost meaningless the information gathered by this method. Thus, we shall place no reliance on such a method. That does not negate the usefulness of questionnaires as a guide for consultations with community leaders or where the method of collection from members of the general public does not require the interviewee's voluntary return of the questionnaire by mail. We have also revised the answer to indicate that questionnaires are not a substitute for consultations with community leaders. It should be obvious that the questions used in the questionnaire must meet our requirements. For example, questionnaires primarily seeking program suggestions or

approval of a preplanned program schedule are of little or no value. In view of these comments, Answer 17 will be revised as follows:

Answer: Yes. A questionnaire may serve as a useful guide for consultations with community leaders, but cannot be used in lieu of personal consultations. Members of the general public may be asked to fill out a questionnaire to be collected by the applicant. If the applicant uses a form or questionnaire, a copy should be submitted with the application.

47. *Question and Answer 18 (19): solicitation of program suggestions.* Several broadcasters commented that program suggestions should be elicited from community leaders. In view of our experience that many applicants have translated "community problems" into "community program preferences", we approach those comments with circumspection. Badger Broadcasting has perceptively understood our concern, but believes "that the goal of programming responsive to community problems would be better served by realistic acknowledgment of the relationship between problems and programming." We recognize that relationship, but believe our encouragement of such comments may tend to make consultations primarily a discussion of programming and programming preferences, rather than a discussion to ascertain community problems. Obviously, we do not expect an applicant to ignore comments from the general public or community leaders as to the kinds of programming that they believe should be presented. We expect, however, that the applicant will guide the consultations so as to elicit community problems. In this regard, if a person offers program suggestions, further questioning by the applicant may elicit a more detailed picture of community problems. Suppose, for example, a community leader states, "We need more programs dealing with the activities of city government." Further questioning might reveal such problems as poor community-police relations, under-utilization of certain welfare agencies while other similar agencies were overcrowded, or low utilization of a city adult vocational training program despite a high unemployment rate and a need for the skills offered by the training program.

48. Other parties suggest that community leaders should be consulted as to the kinds of programs best suited to meeting community problems. Since an applicant will have a broader overview of community problems due to the ascertainment process, is more aware of the kinds of broadcast matter available from others, is more aware of his own resources for producing programs and announcements, we see little need to consult community leaders as to the kinds of broadcast matter presented to meet community problems. Accordingly, the first three sentences of Answer 18 will remain as proposed.

49. Several parties commented that Answer 18 was unduly restrictive in that it seems to indicate that comments by a particular community leader as to areas not related to his particular field were not acceptable. To clarify this point, Westinghouse, for example, suggests that the answer should be revised to indicate that "individual leaders may have significant comments well beyond their particular field." We believe the point is well taken. While a leader in the educational field is a useful source of information on educational matters, and while he should be encouraged to comment about problems related to

education, we did not intend to indicate that his comments as to areas outside the educational field should be discouraged or were not an appropriate part of the ascertainment process. Therefore, we have inserted the following sentence after the third sentence in the present answer:

However, it is also recognized that individual leaders may have significant comments outside their particular field, and the applicant should consider their comments with respect to all community problems.

50. The last sentence of the answer now states that the applicant has the responsibility to present broadcast matter "to provide information on community problems." As correctly noted by several parties, the broadcaster's responsibility encompasses more than providing information, although providing information may be a large part of that responsibility. Thus, it is appropriate to change the language to indicate that his responsibility is to present broadcast matter to "meet community problems." We use the word "meet" to include a responsibility to meet, aid in meeting, be responsive to, or stimulate the solution for community problems.

51. *Question and Answer 19 (20): the applicant who finds few community problems.* Several parties noted the omission of "members of the general public" from Question 19. The question will be revised to include that phrase. Since Question and Answer 19 are directed to the applicant in the process of preparing his application, and who has had limited success in eliciting information, Answer 19 will be expanded to point out some of the more common practices that result in inadequate responses. Accordingly, Question and Answer 19 will be revised as follows:

Question: If, in consulting with community leaders and members of the general public, an applicant receives little information as to the existence of community problems, can he safely assume that only a few problems exist?

Answer: No. The assumption is not safe. The applicant should re-examine his efforts to determine whether his consultations have been designed to elicit sufficient information. Obviously, a brief or chance encounter will not provide adequate results. The person interviewed should be specifically advised of the purpose of the consultation. The applicant should note that many individuals, when consulting with broadcast applicants, either jump to the conclusion that the applicant is seeking programming preferences, or express community problems in terms of exposure or publicity for the particular group or groups with which they are affiliated. The applicant may properly note these comments, but should ask further questions designed to elicit more extensive responses as to community problems.

52. *Question and Answer 20 (21): identification of community leaders consulted.* The purpose of the information required in Answer 20 is to enable us and others inspecting applications to be able to determine whether those community leaders consulted are representative, and to provide a means of verification if questions should arise. Thus, additional information as to the age of the community leader and the address of his particular organization are not required. In some circumstances, his home address may be necessary to clearly identify the leader, especially where the group he represents lacks a formal organization. Since we have recognized that there may be community leaders of groups that are not organizations in the sense that they have a formal structure, see Question and Answer 13(a), we will require identification by name, position and/or organization.

Thus, John Jones, Executive Vice-President, XYZ Corporation, would be an appropriate identification for a business leader. John Jones, 123 First Street, spokesman for welfare recipients, would be an appropriate identification for a leader of a group lacking a high degree of formal organization. His address is required because, in the city in question, the group he represents has no office as such, and there are several people with the same name living in the city. Therefore, Answer 20 is revised as follows:

Answer: By name, position, and/or organization of each. If further information is required to clearly identify a specific leader, it should be submitted.

53. *Question and Answer 21 (22): attribution of comments to particular community leaders.* Several parties suggest that the comments as to community problems elicited from community leaders should be attributed to that leader. However, we believe that there are many instances where those consulted will speak more candidly if their comments are not attributed to them in a document open to public inspection. We therefore, reject the suggested revision. The applicant is, of course, free to make such an attribution, as recognized by the first sentence of Answer 21. The choice of attributing specific comments to community leaders is a matter left to the applicant and the particular leader.

C. Information Received

54. *Question and Answer 22 (23): listing of all ascertained community problems required.* Several parties inquired as to what constituted a "significant" problem, or suggested definitions for the word. However, other parties noted that the significance of a problem is really part of the applicant's evaluation, and should not be included in questions and answers dealing with the applicant's information-gathering process. Thus, we will revise Answer 22 to require that all community problems the applicant has ascertained be listed, with the exception of those that are clearly frivolous. Therefore, Answer 22, will be revised as follows:

Answer: All ascertained community problems should be listed, whether or not he proposes to treat them through his broadcast matter. An applicant need not, however, list comments as to community problems that are clearly frivolous.

D. The Applicant's Evaluation

55. *Question and Answer 23 (24): the applicant's evaluation.* The process of evaluation of community problems is the basis for the applicant's choice of broadcast matter to meet those problems. As such, the process is left to the licensee's discretion, with certain general exceptions, see questions and answers 24, 26, and 31. That discretion is implicit in questions and answers 23, 25 and 27. Answer 23 will be revised to incorporate the somewhat broader definition of "evaluation" that constitutes the first full sentence of Answer 23 of the proposed Primer as follows:

Answer: The applicant's evaluation is the process by which he determines the relative importance of the community problems he has ascertained, the timeliness of the various comments, and the extent to which he can present broadcast matter to meet the problems.

56. *Question and Answer 24 (25): inclusion of the evaluation in the application.* Answer 24 states that the applicant need not submit his evaluation with the application. The Mexican-American Committee and Bay Area TV opposed that position on the grounds that such information is, in their view, essential to an accurate evaluation of the application. However, it is not our desire to intrude upon the applicant's thought process, *Sioux Empire Broadcasting Co.*, 16 FCC 2d 995, 5 RR 2d 961 (1969). Our review of his evaluation will be indirect; that is, by a review of the broadcast matter proposed. Dempsey & Koplovitz suggests that if a question exists as to the applicant's responsiveness to community problems, a letter of inquiry *will* be sent to the applicant as a matter of course to allow him an opportunity to respond. In processing applications we normally try to make one such inquiry prior to designation, if a hearing is required by other circumstances. But the exigencies of the processing lines are such that we do not guarantee such a letter. Therefore, Answer 24 will remain as it is, in that an applicant *may* be asked for an explanation where his broadcast matter does not appear sufficiently responsive to the community problems disclosed in his consultations. Of course, in applications where a hearing is not otherwise required, the applicant must make the required showing and he will be asked for an explanation if he fails to do so.

57. *Question and Answer 25 (26): what problems should be treated by the applicant.* The FCBA, the NAB and BEST all urge that Answer 25 be revised to indicate that in making an evaluation, the applicant may take into consideration the nature of its program format and composition of its audience. There was similar language in a prior draft of the Primer. That may well be a consideration, but our reason for deleting the language of the prior draft, and for rejecting the suggested language, is that it is too restrictive. It indicates to us and, apparently, to broadcasters, as evidenced by the comments that have been submitted, that a station need only meet problems directly related to the group or groups that comprise a large segment of its audience. The NAB suggests, for example, that a "rock" station, which has a predominantly young audience, "would be most effective in treating problems which are germane to that age group." In our view, the station's obligation is clearly greater than to that group. By way of illustration, suppose there is a city with three radio stations, each of which has determined the composition of its listening audience through market studies. One, a Spanish-language station, finds that a large part of its audience is relatively poor. The second is a "rock" station with a youthful audience. The last presents "middle-of-the-road" popular music and has a generally middle class audience. In consultations with community leaders and the general public, these stations have found that one of the city's welfare programs is grossly inadequate; that there is an eleemosynary organization that supplements the city's program, but which would not totally alleviate the problem even if it were working at full capacity; that neither the city program or the eleemosynary organization's program are at full capacity because many of those eligible for the services offered are either misinformed about, or unaware of, the programs; and that the eleemosynary organization would

be better able to implement its program if it had more money and volunteer workers.

58. Under the rationale of the NAB, since welfare programs are "germane" to the poor, two of the stations in the city might ignore or only minimally treat these problems for the reason that their audiences have relatively few poor people. That is an undesirable result. We do not accept the thesis that all those who might be eligible for the welfare programs do not listen to popular, "rock" or classical music. Moreover, the inadequacy of the city's welfare program might well be a topic of news, discussion, and editorials on all three stations. However, we believe the applicant's knowledge of his audience may properly be used in the following manner. The station with an audience that has a large proportion of poor people might emphasize the services available, the criteria for eligibility, and locations where those who are eligible should call or go to avail themselves of the services. The "rock" station might emphasize the need for volunteers while the popular station might emphasize the need for volunteers and for contributions to the program sponsored by the eleemosynary organization. These are offered only as possible ways of meeting a community problem. Innovative broadcasters would, no doubt, have different points of emphasis or other means of meeting the problems. While we believe that this use of the applicant's knowledge of the characteristics of his audience is implicit in Answer 25, the matter is of sufficient importance to be made explicit by appropriate revisions in the answer.

59. Answer 25 does rest on the applicant's good faith determination, which, of course, gives him considerable discretion. Thus, he may choose to meet as many problems as he believes he can. He may be selective, giving more extensive treatment to those problems he believes most important or to nascent problems, which if not met now are likely to become critical. Or he may recognize that another station in the community traditionally presents extensive broadcast matter to meet a particular problem. If it is an important problem, and if the stations' respective audiences differ only slightly in their composition, the broadcaster may decide to present some broadcast matter to meet that problem, but less than he would ordinarily due to the efforts of the other station. In view of this discretion, we believe unwarranted the implication read into answers 25 through 27 by some broadcasters, that a station *must* program to meet most or all community problems. He may do so if he wishes. Other programming policies are within his discretion. There are, of course, broad limitations, so that his discretion may be subject to review and inquiries may be made by the Commission, see answers 24 and 26. To be consistent, the phrase "to deal with all community problems" appearing in Question 25 will be changed to "to meet all community problems." Therefore, Question and Answer 25 will be changed to read:

Question: Must an applicant plan broadcast matter to meet all community problems disclosed by his consultations?

Answer: Not necessarily. However, he is expected to determine in good faith which of such problems merit treatment by the station. In determining what kind of broadcast matter should be presented meet those problems, the applicant may consider his program format and the composition of his audience, but bearing in mind that many problems affect and are pertinent to diverse groups of people.

60. *Question and Answer 26 (27): questions raised as to the applicant proposing to treat only one or two problems.* Several parties commenting on Question 26 believed that "several" community problems indicated too restricted a range and that "many", "numerous", or "a number of" community problems reflect more accurately the condition of our communities today. We do not believe the distinctions to be that important, but will use the latter phrase. What is important, no matter how one describes the number of problems extant in the particular community, is that there comes a point where the applicant proposes to meet so few community problems that his proposal is *prima facie* inconsistent with the public interest. At that point, the Commission and, perhaps, other parties will raise questions about the applicant's proposal. Most comments raised in conjunction with Answer 26 have been disposed of in our discussion of prior questions. Question and Answer 26 will be revised, primarily editorially, to conform to that prior discussion, as follows:

Question: If an applicant lists a number of community problems but in his evaluation determines that he will present broadcast matter to meet only one or two of them, would the proposal be defective?

Answer: A *prima facie* question would arise as to how the proposal would serve the public interest, and the applicant would have the burden of establishing the validity of his proposal.

61. *Question and Answer 27 (28): proportioning broadcast matter in relation to the number of people affected not required.* NBC comments that the proposed wording of the last sentence of Answer 27 indicates that "life or death" is an absolute criterion so that the applicant has no discretion. NBC's concern is that a licensee who gives a higher priority to the problem of pollution, which affects all people, than to a traffic light problem, which affects a very small number of people, but conceivably in a life-or-death manner, might be subject to challenge. In our view, an applicant who followed the priority suggested by NBC would be well within his discretion. However, we believe the situation referred to in Answer 27 provides useful guidance to applicants and should be retained. We have revised the answer to indicate that it is only an example and is not a limit on the licensee's discretion. Since the first sentence of Answer 27 repeats the definition of the "applicant's evaluation" that now appears in Answer 23, it will not be repeated here. Therefore, Answer 27 will be revised as follows:

Answer: No. For example, the applicant, in his evaluation, (see Question and Answer 23) might determine that a problem concerning a beautification program affecting all the people would not have the relative importance and immediacy of a problem relating to inadequate hospital facilities affecting only a small percentage of the community, but in a life-or-death way.

E. Broadcast Matter Proposed To Meet the Problems as Evaluated

62. *Question and Answer 28 (29).* "Broadcast matter" was defined in Answer 28 as programs and public service announcements. The FCBA notes that public service announcements, by definition, are announcements for which no charge is made.¹¹ The FCBA further notes that a sponsored program is a recognized vehicle for meeting community problems. The FCBA and others suggest that a sponsored

¹¹ See definition 13, Section IV-A and IV-B of the application forms.

and unsponsored announcement can meet community problems with equal efficacy. The NAB states that, "Commercial sponsors are responsible for airing of a variety of spot announcements covering such subjects as employment of the handicapped, safe driving, fire prevention, minority job training, air and water pollution, narcotics information, etc." We believe that the point is well taken, and Answer 28 will be revised to read, "Programs and announcements." Our experience indicates, however, that most "spots" that are designed to meet community problems are public service announcements. Sponsored announcements that meet community problems are relatively rare,¹² and applicants proposing to meet community problems through extensive sponsored announcements are reminded that the standard by which they are judged is the public interest, not their private economic interests.

63. *Question and Answer 29 (30): linking broadcast matter with problems.* Paragraph 1(c) of Section IV-A and IV-B asks for "typical and illustrative programs or program series" the applicant plans to broadcast to meet community problems. Appendix B to the application forms indicates that the applicant's program service (broadcast matter) is to be related to the community problems. Thus, Question and Answer 29 indicate that the applicant must show what broadcast matter is proposed to meet what problems. In order to determine the relationship between broadcast matter and problems, as required by Appendix B of the application forms, we must have more than general statements. Therefore, Answer 30 requires the applicant to state the title, time segment, duration, and frequency of broadcast of the proposed broadcast matter. Several broadcasters commented that the required information was too inflexible, and encouraged adherence to schedules and formats which became outdated due to changes in the community and its problems. When speaking of proposed programming, the requirements of Answer 29 appear too precise, especially in view of the length of the license period. We believe it appropriate, therefore, to indicate that changes in broadcast matter throughout the license period may be warranted.

64. The comments on Question and Answer 29 were usually combined with proposed Question and Answer 33. The latter discusses specific examples of overly broad descriptions which sometimes appear in applications, that are inadequate. We believe it is appropriate to combine those examples as a part of Answer 29, and eliminate proposed Question and Answer 33. Accordingly, Question and Answer 29 will be revised as follows:

Question: In the application, must there be a showing as to *what* broadcast matter the applicant is proposing to meet *what* problem?

Answer: Yes. See Public Notice of August 22, 1968, FCC 68-847, 13 RR 2d 1303. The applicant should give the description, and anticipated time segment, duration and frequency of broadcast of the program or program series, and the community problem or problems that are to be treated by it. One appropriate way would be to list the broadcast matter and, after it, the community

¹² Public safety announcements sponsored by insurance companies provide one of the more common examples.

problem or problems the broadcast matter is designed to meet. Statements such as "programs will be broadcast from time to time to meet community problems," or "news, talk and discussion programs will be used to meet community problems," are clearly insufficient. Applicants should note that they are expected to make a positive, diligent and continuing effort to meet community problems. Therefore, they are expected to modify their broadcast matter if warranted in light of changed community problems. If announcements are proposed, they should be identified with the community problem or problems they are designed to meet.

65. *Question and Answer 30 (31): questions raised as to applicants proposing to meet community problems exclusively through announcements.* It has been previously noted that a licensee may meet community problems by announcements as well as programs. However, Answer 30 indicates that, in our judgment, sole reliance on announcements raises a question as to the adequacy of the proposal. Our judgment is founded on the recognition that our society is confronted with many complex problems that can not be met by the brief comment afforded by announcements. Therefore, the broadcaster's stewardship of the frequency includes programs, as a general rule. Accordingly, we stated in Answer 30 that before we make a public interest finding, we will place on the applicant proposing only announcements the burden of establishing the adequacy of his proposal. Bonneville is concerned that Answer 30 may raise First Amendment questions since it "directs the licensee how to program his station." We disagree because the Commission's policies do not dictate the content of programs or announcements. The courts have upheld our right to look at program proposals and to make determinations as to how those proposals serve the public interest, *Henry et al. (Suburban Broadcasters) v. FCC*, 302 F. 2d 191, 23 RR 2016 (1962), cert. denied, 371 U.S. 821, 83 S.Ct. 37 (1962). See too, *National Broadcasting Company v. United States*, 319 U.S. 190, 63 S.Ct. 997 (1943). We believe the policy expressed in Answer 30 is well within constitutional limitations, as defined by those cases.

66. NBC comments that Answer 30 does not make it clear that some community problems may be best handled by announcements only. Since the answer only refers to those who place sole reliance on announcements, considerable discretion is implicit, and we believe no revisions are required. Rev. Stockford suggests that a separate policy statement should be submitted with the application as to the applicant's policies on the selection, placement and utilization of announcements, and that these policies should be made part of the license. However, we are concerned here with the use of announcements as they are used as a part of the applicant's general policies on presenting broadcast matter to meet community problems. We do not believe that it is necessary to provide separate policy statements on programs and announcements, since they are closely related. These policies are part of the application, which is available for inspection at each station, so there is no need to state those policies on the actual license. To keep the wording consistent, minor editorial changes will be made in Question and Answer 30.

67. *Question and Answer 31 (32): amount of time allotted to meeting community problems.* We are concerned here with the proportion of time that must be devoted to meeting community problems. The

very general guidelines provided by Answer 31 are indicative of the difficulties in defining the applicant's obligation in this area. However, we are now considering some more definite guidelines. For the present, general guidelines must suffice. We will afford applicants considerable discretion. That discretion is, of course, subject to review if it appears to be inconsistent with the public interest. A previous draft of the Primer made such review explicit. Since we have indicated elsewhere that the applicant's discretion can be reviewed (see questions and answers 24, 26 and 31) in situations where the proposals do not appear consistent with the public interest, we did not believe it necessary to restate that point in Answer 31. However, BEST believes that the point should be made explicit to make clear the Commission's concern that an applicant provide a "substantial proportion" of broadcast time toward meeting community problems. We will, therefore, revise Answer 31 to emphasize that the applicant's judgment, while afforded considerable latitude, may be subject to Commission review, if appropriate. NBC suggests that the standard should be "the good faith judgment of the applicant," and that the only questions that can be raised should go to the applicant's good faith, not his judgment. Such a course of action leads us to an untenable result. It is quite conceivable that a programming proposal appears on its face to be inconsistent with the public interest. We do not believe it appropriate to drop any inquiry as to that proposal on the showing that it was reached in good faith. The public interest demands more. Answer 31 will be revised to read as follows:

Answer: There is no single answer for all stations. The time required to deal with community problems can vary from community to community and from time to time within a community. Initially, this is a matter that falls within the discretion of the applicant. However, where the amount of broadcast matter proposed appears patently insufficient to meet significantly the community problems disclosed by the applicant's consultations, he will be asked for an explanation by letter of inquiry by the Commission.

68. *Question and Answer 32 (34): use of station editorials.* We have previously indicated that the applicant's obligation is greater than providing information on community problems. Therefore, in accord with the wording of previous questions and answers, Question 32 will be reworded to use the phrase "to meet community problems," rather than "discuss and present information on community problems." BEST and Georgetown both request that it be made clear that editorials cannot be used exclusively to meet community problems. In view of our position, set forth in paragraph 65, that, absent a special showing, an applicant's obligation includes programs to meet community problems, it is clear that sole reliance on editorials, which are typically brief, would be unacceptable. Therefore, Question 32 will be revised as follows:

Question: Can station editorials be used as a part of a licensee's efforts to meet community problems?

69. Question and Answer 33 of the Proposed Primer have been incorporated and discussed in Answer 29 of the revised Primer.

70. *Question and Answer 33 (35): use of news programs.* Answer 33 makes explicit that news programs may, in part, be used to meet

community problems. This position follows from the definition of a news program: "News programs (N) include reports dealing with current, local, national, and international events, including weather and stock market reports; and when an integral part of a news program, commentary, analysis and sports." (Emphasis supplied).¹³ A report of facts, in a general way, aids in understanding problems, but it is clear that news programs encompass more than reporting facts. Westinghouse believes that this raises problems for stations proposing an all-news format, apparently on the basis that "commentary (and) analysis," as "an integral part of a news" would all be logged as news. Such a station would show, it is claimed, no public affairs programming. This appears to be more a question of logging criteria than of the validity of Answer 33. Discernable segments of an all-news format that qualify as public affairs programming¹⁴ may be so logged. Other than minor editorial changes, we believe Answer 33 should stand as it is.

71. *Question and Answer 34 (36): specialized format stations.* Here it is made clear that the applicant's choice of format does not change his obligation to meet community problems. Our discussion in paragraphs 57 and 58, in conjunction with Question and Answer 25, as to how an applicant may wish to emphasize certain aspects of a particular problem, is equally pertinent here. The Question and Answer will be revised to reflect wording previously discussed, as follows:

Question: If an applicant proposes a specialized format (all news, rock and roll, religious, etc.), must it present broadcast matter to meet community problems?

Answer: Yes. The broadcast matter can be fitted into the format of the station.

72. *Question and Answer 35 (37): relevance of non-broadcast activities.* Westinghouse believes that Answer 35 discourages licensees from taking steps in response to community problems, other than presenting broadcast matter. In our view, the answer does not have this implication. Certainly, it is encouraging to see broadcasters engaged in such activities, both for the benefits to the community which result and for the insight gained as to community problems by the broadcaster. Nevertheless, we believe that however commendable a licensee's non-broadcast activities may be, our public interest finding with respect to the use of the frequency must rest upon how the broadcast matter presented meets community problems. We believe this is axiomatic. The matter is raised to counter a contrary impression on the part of a few broadcasters. To bring Question 35 into conformity with the wording of previous material, the phrase "to meet" will be substituted for "in dealing with."

73. *Question and Answer 36 (38): time of presentation of broadcast matter.* Answer 36 reflects our belief that given the diversity of stations, markets, and problems, the time that announcements and programs are to be presented is best left to the applicant with general limitation that it should be presented at a time when it could reasonably be expected to be effective. That limitation precludes the possibility,

¹³ Instruction 11 (c) of Section IV-A and IV-B of the application forms.

¹⁴ See instruction 11 (d) of Section IV-A and IV-B of the application forms.

suggested by some parties, that the applicant would be free to present all the broadcast matter that is designed to meet community problems from 2:00 to 4:00 a.m. Many comments suggested that certain minimum criteria should be established for the presentation of public service programming in prime time. We believe such a requirement would require a rule-making proceeding. In any event, we do not have sufficient information as to the effect of such a requirement before us. In accordance with previous discussion, "meeting" will be substituted for the phrase "dealing with" in Question 36.

74. There are several matters that have not been discussed in conjunction with any specific question. Since this is an inquiry concerning clarification of Commission policies, and not a rule-making proceeding, we have not discussed those comments looking toward the revision of specific rules. For example, several parties suggested that sections 73.30, 73.230 and 73.630 of the rules should be amended so that only one-third of the stations in a particular community would come up for renewal each year. That suggestion, which certainly has merit, can not be acted upon in this Inquiry. Other suggestions were directed toward revisions in the application forms, which we also believe are beyond the scope of this Inquiry. And finally, some comments were directed toward major changes in Commission policy. For example, it was suggested that the Commission establish certain minimum criteria as to the presentation of public service programming during prime time, which is contrary to our present policy as expressed in Question and Answer 36. Since the purpose of the Inquiry has been to provide clarification and guidelines as to existing policies, and since we are not convinced that such a policy change is appropriate, we have not discussed this and other suggested changes in programming policies.

75. Other parties have suggested additional questions. These have been rejected mostly because they do not reflect Commission policy, or because the matters raised are treated by the existing questions. Thus, for example, separate questions as to ascertaining the problems of children are not warranted, since an applicant would ordinarily consult adults responsible for children's care and education.

76. *Changes in program formats; the recent decision in The Citizens Committee v. FCC.* As should be clear from our discussion of the various questions and answers, the Primer emphasizes community problems and needs. It is only secondarily concerned with the preferences of the people in the community or service area with respect to program formats or the type of entertainment programming they would like to receive. Our view has been that the station's program format is a matter best left to the discretion of the licensee or applicant, since as a matter of public acceptance and of economic necessity he will tend to program to meet the preferences of his area and fill whatever void is left by the programming of other stations.¹⁵ Therefore, we have excluded a question recommended by BEST relating to the showing that must be made in cases where a station proposes to change its for-

¹⁵ The Commission's abstaining from review in this area relates only to types and forms of entertainment programming, or changes therein. It does not include matters such as an increase in commercial matter or decrease in the amount of non-entertainment programming, both of which are subjects of review and concern, and have been for some time.

mat. However, a recent decision of the U.S. Court of Appeals (D.C.) in *The Citizens Committee, etc. v. FCC* (Case No. 23,515, October 30, 1970) necessitates a re-examination of this approach. There, the Court reversed our action granting consent to transfer of control of the licensee of an AM-FM combination in Atlanta, where the transferee would abandon, at least in part, the station's present classical music format and no other Atlanta station presents similar material. A hearing was held to be required in the circumstance.

77. The Commission has not completed its review of this decision and its implications, to determine what is required under it in terms of the Commission's obligations in passing on various types of applications. Therefore, and since the Primer is essentially directed at a different subject and it is desirable to get it out as soon as possible, we are not here discussing this matter at length. Suffice it to say that any application involving a *substantial change in program format*—including assignment and transfer applications (where this type of question has usually arisen) and also applications for renewal or major changes in facilities if they involve a basic programming change—will be scrutinized in light of this decision; and applicants should be prepared to support their proposals to change formats in light of the needs and tastes of the community and the types of programming available from other stations.²⁶ A careful reading of this decision is recommended.

78. As amended, we believe the attached Primer serves substantially to clarify and provide guidelines for our programming policies. As with our other Primers, revisions will be made from time to time where appropriate or necessary.

79. Under section 1.522 of the rules, applicants who believe their showing is deficient under the guidelines of this Primer, may amend their application as a matter of right prior to designation for hearing. Applicants in pending hearing cases may amend their applications if deemed necessary in view of our action here, within ninety (90) days of the release of the Report and Order, or such further time as the presiding tribunal may allow for cause shown.

80. In view of the above, the attached Primer IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

APPENDIX A

PARTIES FILING COMMENTS

Action for Children's Television
Alk and Lubic
American Broadcasting Company (ABC)
Association of Afro-American Television Producers
Badger Broadcasting Company, Inc., *et al.* (Badger Broadcasting)
Badger Broadcasting Company, Inc.
Fetzer Broadcasting Company
560 Broadcasting Corporation
Kansas Association of Radio Broadcasters

²⁶ The Court's holding related only to assignment and transfer applications. As to changes in format not involving application, the court noted that these do not require Commission permission; but that the licensee making such changes "would have done so knowing that the change would have been a factor to be weighed when its application for renewal was filed." (*The Citizens Committee, etc. v. FCC*, slip opinion, p. 13.)

Quincy Broadcasting Company
 Quincy Newspapers, Inc.
 RadiOhio, Incorporated
 Rock Island Broadcasting Company
 Stauffer Publications, Inc.
 WBNS-TV, Inc.
 Thomas F. Baldwin and Stuart H. Surlin
 Black Efforts for Soul in Television (BEST)
 Bonneville International Corporation (Bonneville)
 The Church Federation of Greater Chicago
 Lauren A. Colby
 Columbia Broadcast System, Inc. (CBS)
 Committee to Improve Bay Area Television (Bay Area TV)
 Cosmos Broadcasting Corporation
 Daly & Joyce
 Jon Paul Davidson
 Dempsey & Koplovitz
 Department of Justice, Community Relations Service
 Empire Broadcasting Corporation
 Federal Communications Bar Association (FCBA)
 Franklin Broadcasting Company
 Milton Friedman, *et al.*
 Milton Friedman
 Harry Kalvin, Jr.
 Maurice Rosenfield
 Radio Station WAIT
 Georgetown University Law Center Task Force on the Mass Media (Georgetown)
 Golden West Broadcasters
 Hampton Roads Broadcasting Corporation
 L. L. Hilliard
 KMSO-TV, Inc.
 McClatchy Newspapers
 John J. McGonagle, Jr.
 Media Statistics, Inc.
 Metromedia, Inc. (Metromedia)
 National Association of Broadcasters, Inc. (NAB)
 National Broadcasting Company (NBC)
 National Citizens Committee For Broadcasting (Citizens Committee)
 National Mexican-American Anti-Defamation Committee, Inc. (Mexican-American Committee)
 National Research Center, Inc.
 Office of Communication of the United Church of Christ
 Oregon Association of Broadcasters
 Pierson, Ball & Dowd
 Robert D. Raiford
 Red Lion Broadcasting Company, Inc.
 Herschel Shosteck Associates
 William H. Siemering
 Donald Stockton, *et al.*
 Donald Stockton
 Sanford E. Markey
 J. Jerome Lackamp
 Storer Broadcasting Company
 Tri-State Broadcasting Company, Inc.
 Turner Broadcasting Corporation
 William M. Weir, *et al.*
 William M. Weir
 Dee W. Norton
 Alan Spitzer
 Sue Rosner
 Peter Roberts
 John Spaulding
 Dorothea Dilkes

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APPENDIX B

FEDERAL COMMUNICATIONS COMMISSION PRIMER ON PART I, SECTION IV-A AND IV-B OF APPLICATIONS FORMS CONCERNING ASCERTAINMENT OF COMMUNITY PROBLEMS AND BROADCAST MATTER TO DEAL WITH THOSE PROBLEMS

A. GENERAL

1. Question: With what applications does this Primer apply in answering Part I, Section IV (A or B) of the application forms?

Answer: With applications for:

- a. construction permit for new broadcast stations;
- b. construction permit for a change in authorized facilities when the station's proposed field intensity contour (Grade B for television, 1 mV/m for FM, or 0.5 mV/m for AM) encompasses a new area that is equal to or greater than 50% of the area within the authorized field intensity contours;
- c. construction permit or modification of license to change station location;
- d. construction permit for satellite television station, including a 100% satellite;
- e. the assignee's or transferee's portion of applications for assignment of broadcast license or transfer of control, except in *pro forma* cases where Form 316 is appropriate.

Educational organizations filing applications for educational non-commercial stations are exempt from the provisions of this Primer.

2. Question: If Section IV (A or B) has been recently submitted, must an applicant conduct a new ascertainment of community problems and submit a new Section IV?

Answer: Needless duplication of effort will not be required. Prior filings within the year previous to the tender of the present application will generally be acceptable, where they were filed by the same applicant, for the same station or for another station in the same community and there are no significant coverage differences involved. Parties relying on previous filings must specifically refer to the application relied on and state that in their judgment there has been no change since the earlier filing. Proposed assignors and transferors of control are not required to file Part I even where they must file other parts of Section IV.

3. Question: What is the general purpose of Part I, Section IV-A or IV-B?

Answer: To show what the applicant has done to ascertain the problems, needs and interests of the residents of his community of license and other areas he undertakes to serve (See Question 6, below), and what broadcast matter he proposes to meet those problems, needs and interests, as evaluated. The word "problems" will be used subsequently in this Primer as a short form of the phrase "problems, needs and interests." The phrase "to meet community problems" will be used to include the obligation to meet, aid in meeting, be responsive to, or stimulate the solution for community problems.

4. Question: How should ascertainment of community problems be made?

Answer: By consultations with leaders of the significant groups in the community to be served and surrounding areas the applicant has undertaken to serve, and by consultations with members of the general public. In order to know what significant groups are found in a particular community, its composition must be determined, see Question and Answer 9. The word "group" as used here is broad enough to include population segments, such as racial and ethnic groups, and informal groups, as well as groups with formal organization.

5. Question: Can an applicant rely upon long-time residency in or familiarity with the area to be served instead of making a showing that he has ascertained community problems?

Answer: No. Such an ascertainment is mandatory.

6. Question: Is an applicant expected to ascertain community problems outside the community of license?

Answer: Yes. Of course, an applicant's principal obligation is to ascertain the problems of his community of license. But he should also ascertain the prob-

lems of the other communities that he undertakes to serve, as set forth in his response to Question 1(a) (2) of Section IV-A or IV-B. Applicants for stations licensed to more than one city, or for channels assigned to two or more cities, or proposed transferees or assignees of stations which have obtained waiver of the station identification rules to permit secondary identification with additional cities, are expected to ascertain problems in each of the cities. If an applicant chooses not to serve a major community that falls within his service contours a showing must be submitted explaining why. However, no major city more than 75 miles from the transmitter site need be included in the applicant's ascertainment, even if the station's contours exceed that distance.

7. Question: Must the ascertainment of community problems for the other areas the applicant undertakes to serve be as extensive as for the city of license?

Answer: No. Normally, consultations with community leaders who can be expected to have a broad overview of community problems would be sufficient to ascertain community problems.

8. Question: Should an applicant for a major change in facilities (see Answer 1(b), above) make a new ascertainment of community problems for the entire service area or just the additional area to be served?

Answer: Only the additional area to be served need be subjected to a new ascertainment of community problems. Only communities or areas covered by Question and Answer 6 need be ascertained, to the extent indicated in Answer 7.

9. Question: How does an applicant determine the composition of his city of license?

Answer: The applicant may use any method he chooses, but guesswork or estimates based upon alleged area familiarity are inadequate. Current data from the U.S. Census Bureau, Chamber of Commerce and other reliable studies or reports are acceptable. The applicant must submit such data as is necessary to indicate the minority, racial, or ethnic breakdown of the community, its economic activities, governmental activities, public service organizations, and any other factors or activities that make the particular community distinctive.

10. Question: If the applicant shows consultations with leaders of groups and organizations that represent various economic, social, political, cultural and other elements of the community, such as government, education, religion, agriculture, business, labor, the professions, racial and/or ethnic groups, and eleemosynary organizations, is the applicant still required to submit a showing in support of its determination of the composition of the community?

Answer: Yes. The purpose of requiring a determination of the community is to inform the applicant and the Commission what groups comprise the community. The applicant must use that information to select those who are to be consulted as representatives of those groups. That determination may be challenged on a showing, including supporting data, that a significant group has been omitted. The "significance" of a group may rest on several criteria, including its size, its influence, or its lack of influence in the community.

B. CONSULTATIONS WITH COMMUNITY LEADERS AND MEMBERS OF THE GENERAL PUBLIC

11(a). Question: Who should conduct consultations with community leaders?

Answer: Principals or management-level employees. In the case of newly formed applicants who have not hired a full staff and are applying for new stations, or for transfer or assignment of an authorization, principals, management-level employees, or prospective management-level employees, must be used to consult with community leaders.

11(b). Question: Who should consult with members of the general public?

Answer: Principals or employees. In the case of newly formed applicants who have not hired a full staff and are applying for new stations, or for transfer or assignment of an authorization, principals, employees or prospective employees may conduct consultations. If consultations are conducted by employees who are below the management level, the consultation process must be supervised by principals, management-level employees, or prospective management-level employees. In addition, the applicant may choose to use a professional research or survey service to conduct consultations with members of the general public.

12. Question: To what extent may a professional research or survey service be used in the ascertainment process?

Answer: A professional service would not establish a dialogue between decision-making personnel in the applicant and community leaders. Therefore, such a service may not be used to consult community leaders. However, a professional service, as indicated in Answer 11(b), may be used to conduct consultations with the general public. A professional service may also be used to provide the applicant with background data, including information as to the composition of the city of license. The use of a professional research or survey service is not required to meet Commission standards as to ascertaining community problems. The applicant will be responsible for the reliability of such a service.

13(a). Question: With what community leaders should consultations be held?

Answer: The applicant has already determined the composition of the community, and should select for consultations those community leaders that reflect that composition. Groups with the greatest problems may be the least organized and have the fewest recognized spokesmen. Therefore, additional efforts may be necessary to identify their leaders so as to better establish a dialogue with such groups and better ascertain their problems.

13(b). Question: With what members of the general public should consultations be held?

Answer: A random sample of members of the general public should be consulted. The consultations should be designed to further ascertain community problems which may not have been revealed by consultations with community leaders. In addition to a random sample, if the applicant has reason to believe that further consultations with a particular group may reveal further problems or may elicit viewpoints that will give him further insight into its problems, he is encouraged to consult with additional members of that group.

14. Question: How many should be consulted?

Answer: No set number or formula has been adopted. Community leaders from each significant group must be consulted. A sufficient number of members of the general public to assure a generally random sample must also be consulted. The number of consultations will vary, of course, with the size of the city in question and the number of distinct groups or organizations. No formula has been adopted as to the number of consultations in the city of license compared to other communities falling within the station's coverage contours. Applicants for stations in relatively small communities that are near larger communities are reminded that an ascertainment of community problems primarily in the larger community raises a question as to whether the station will realistically serve the smaller city, or intends to abandon its obligation to the smaller city.

15. Question: When should consultations be held?

Answer: In preparing applications for major changes in the facilities of operating stations, a complete new ascertainment must be made within six (6) months prior to filing the application. Applicants for a new facility, or the party filing the assignee or transferee portion of an application for assignment or transfer, are also required to hold consultations within six (6) months prior to filing an appropriate application.

16. Question: Is a showing on the ascertainment of community problems defective if leaders of one of the groups that comprise the community, as disclosed by the applicant's study, are not consulted?

Answer: The omission of consultations with leaders of a significant group would make the applicant's showing defective, since those consulted would not reflect the composition of the community.

17. Question: In consultations to ascertain community problems, may a preprinted form or questionnaire be used?

Answer: Yes. A questionnaire may serve as a useful guide for consultations with community leaders, but cannot be used in lieu of personal consultations. Members of the general public may be asked to fill out a questionnaire to be collected by the applicant. If the applicant uses a form or questionnaire, a copy should be submitted with the application.

18. Question: In consulting with community leaders to ascertain community problems, should an applicant also elicit their opinion on what programs the applicant should broadcast?

Answer: It is not the purpose of the consultations to elicit program suggestions. (See Question and Answer 3.) Rather, it is to ascertain what the person consulted believes to be the problems of the community from the standpoint of a leader of the particular group or organization. Thus, a leader in the educational field would be a useful source of information on educational matters; a labor leader, on labor matters; and a business leader on business matters. However, it is also recognized that individual leaders may have significant comments outside their respective fields, and the applicant should consider their comments with respect to all community problems. The applicant has the responsibility for determining what broadcast matter should be presented to meet the ascertained community problems as he has evaluated them.

19. Question: If, in consulting with community leaders and members of the general public, an applicant receives little information as to the existence of community problems, can he safely assume that only a few problems actually exist?

Answer: No. The assumption is not safe. The applicant should re-examine his efforts to determine whether his consultations have been designed to elicit sufficient information. Obviously, a brief or chance encounter will not provide adequate results. The person interviewed should be specifically advised of the purpose of the consultation. The applicant should note that many individuals, when consulting with a broadcast applicant, either jump to the conclusion that the applicant is seeking programming preferences, or express community problems in terms of exposure or publicity for the particular group or groups with which they are affiliated. The applicant may properly note these comments, but should ask further questions designed to elicit more extensive responses as to community problems.

20. Question: In responding to Part I of Section IV-A or IV-B how should the applicant identify the community leaders consulted?

Answer: By name, position, and/or organization of each. If further information is required to clearly identify a specific leader, it should be submitted.

21. Question: Should the information elicited from a community leader, from the standpoint of the group he represents, be set forth after his name?

Answer: It is not required, but the applicant may find it desirable. The information can be set forth in a general list of community problems.

C. INFORMATION RECEIVED

22. Question: Must all community problems which were revealed by the consultations be included in the applicant's showing?

Answer: All ascertained community problems should be listed, whether or not he proposes to treat them through his broadcast matter. An applicant need not, however, list comments as to community problems that are clearly frivolous.

D. APPLICANT'S EVALUATION

23. Question: What is meant by an "applicant's evaluation" of information received as to community problems?

Answer: The applicant's evaluation is the process by which he determines the relative importance of the community problems he has ascertained, the timeliness of the various comments, and the extent to which he can present broadcast matter to meet the problems.

24. Question: Is the applicant's evaluation to be included in his application?

Answer: It is not required. Where the applicant's broadcast matter does not appear to be sufficiently responsive to the community problems disclosed by his consultations, the applicant may be asked for an explanation by letter of inquiry from the Commission. See Questions and Answers 25 and 26.

25. Question: Must an applicant plan broadcast matter to meet all community problems disclosed by his consultations?

Answer: Not necessarily. However, he is expected to determine in good faith which of such problems merit treatment by the station. In determining what kind of broadcast matter should be presented to meet those problems, the applicant may consider his program format and the composition of his audience, but bearing in mind that many problems affect and are pertinent to diverse groups of people.

26. Question: If an applicant lists a number of community problems but in his evaluation determines that he will present broadcast matter to meet only one or two of them, would the proposal be defective?

Answer: A *prima facie* question would arise as to how the proposal would serve the public interest, and the applicant would have the burden of establishing the validity of his proposal.

27. Question: As a result of the evaluation process, is an applicant expected to propose broadcast matter to meet community problems in proportion to the number of people involved in the problem?

Answer: No. For example, the applicant, in his evaluation (see Question and Answer 23) might determine that a problem concerning a beautification program affecting all the people would not have the relative importance and immediacy of a problem relating to inadequate hospital facilities affecting only a small percentage of the community, but in a life-or-death way.

E. BROADCAST MATTER TO MEET THE PROBLEMS AS EVALUATED

28. Question: What is meant by "broadcast matter"?

Answer: Programs and announcements.

29. Question: In the application, must there be a showing as to *what* broadcast matter the applicant is proposing to *what* problem?

Answer: Yes. See Public Notice of August 22, 1968, FCC 68-847, 13 RR 2d 1303. The applicant should give the description, and anticipated time segment, duration and frequency of broadcast of the program or program series, and the community problem or problems which are to be treated by it. One appropriate way would be to list the broadcast matter and, after it, the particular problem or problems the broadcast matter is designed to meet. Statements such as "programs will be broadcast from time to time to meet community problems," or "news, talk and discussion programs will be used to meet community problems," are clearly insufficient. Applicants should note that they are expected to make a positive, diligent and continuing effort to meet community problems. Therefore, they are expected to modify their broadcast matter if warranted in light of changed community problems. If announcements are proposed, they should be identified with the community problem or problems they are designed to meet.

30. Question: Can an applicant specify only announcements and no programs to meet community problems?

Answer: A proposal to present announcements only would raise a question as to the adequacy of the proposal. The applicant would have the burden of establishing that announcements would be the most effective method for meeting the community problems he proposes to meet. If the burden is not met by the showing in the application, it will be subject to further inquiry.

31. Question: What is meant by devoting a "significant proportion" of a station's programming to meeting community problems? [*City of Camden* 18 FCC 2d 412, 421, 16 RR 2d 555, 568 (1969)]

Answer: There is no single answer for all stations. The time required to deal with community problems can vary from community to community and from time to time within a community. Initially, this is a matter that falls within the discretion of the applicant. However, where the amount of broadcast matter proposed to meet community problems appears patently insufficient to meet significantly the community problems disclosed by the applicant's consultations, he will be asked for an explanation by letter of inquiry from the Commission.

32. Question: Can station editorials be used as a part of a licensee's efforts to meet community problems?

Answer: Yes.

33. Question: Can news programming be considered as programming to meet community problems?

Answer: Yes. However, they can not be relied upon exclusively. Most broadcast stations, of course, carry news programs regardless of community problems. News programs are usually considered by the people to be a factual report of events and matters—to keep the public informed—and, therefore, are not designed primarily to meet community problems.

34. Question: If an applicant proposes a specialized format (all news, rock and roll, religious, etc.), must it present broadcast matter to meet community problems?

Answer: Yes. The broadcast matter can be fitted into the format of the station.

35. Question: May an applicant rely upon activities other than programming to meet community problems?

Answer: No. Many broadcasters do participate personally in civic activities, but the Commission's concern must be with the licensee's stewardship of his broadcast time in serving the public interest.

36. Question: Are there any requirements as to when broadcast matter meeting community problems should be presented?

Answer: The applicant is expected to schedule the time of presentation on a good faith judgment as to when it could reasonably be expected to be effective.