

Announcement, Public Service
Procedures

Commission modifies present procedures to enable broadcast licensees to receive greater credit for airing Public Service Announcements (PSAs). This action will encourage the use of PSAs where appropriate and effective. BC 78-251

FCC 80-557

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

Petition to Institute a Notice of Inquiry and Proposed Rule Making on the Airing of Public Service Announcements by Broadcast Licensees.

BC Docket No.
78-251
RM-2712

REPORT AND ORDER
(PROCEEDING TERMINATED)

(Adopted: September 25, 1980; Released: October 27, 1980)

BY THE COMMISSION:

1. This proceeding concerns the airing of public service announcements ("PSA's"),¹ by broadcast licensees. Now before the Commission for consideration are the filings generated in response to a *Memorandum Opinion and Order and Notice of Inquiry ("Notice of Inquiry")*,² FCC 78-602, 43 Fed. Reg. 37725, released August 24, 1978.

Background

2. In order to place this phase of the proceeding in perspective, we will first provide a brief history of the case to date. On October 11, 1977, by *Memorandum Opinion and Order*, FCC 77-685, the Commission in its initial action in this proceeding denied a petition filed by the Public Media Center *et al.*, to institute a Notice of Inquiry and Proposed Rule Making looking toward the adoption of rules imposing

¹ A public service announcement (PSA) is one for which no charge is made and which promotes programs, activities, or services of Federal, State or local governments (*e.g.*, recruiting, sales of U.S. Savings Bonds, etc.) or the programs, activities or services of nonprofit organizations (*e.g.*, UGF, Red Cross Blood Donations, etc.) or any other announcements regarded as serving community interests. See Section 73.1810(d)(4) of the Commission's Rules.

² A list of the parties filing formal comments and/or reply comments is contained in Appendix B.

specific obligations on broadcasters as to the number, duration, content and source of PSA's which they should present. Petitioners argued that the adoption of such rules would result in allocating more time (especially during more desirable time periods) for the airing of PSA's and in giving local citizens groups and public service organizations a greater proportion of PSA time than they presently receive. Petitioners expressed the view that broadcasters have not been meeting their public service obligation in this regard and contended that PSA's are often given inadequate exposure, usually in the least favorable hours. Moreover, they contended, local charities and citizens groups obtain little access to PSA time which, they argued, is largely monopolized by well-established charities and other entities by virtue of their connection with the Advertising Council.

3. Petitioners proposed to require that broadcasters present a minimum of three PSA's, totalling a minimum of ninety seconds, every two hours throughout the broadcast day.³ Petitioners also would impose a limitation on the number of those PSA's which a licensee or network could accept from a single entity and require that a certain percentage of PSA's be of local origin. It would also call for making station facilities and technical assistance available to local organizations for production of PSA's responsive to ascertained needs. Petitioners also recommended amending the application forms to enable the reporting of a broadcaster's efforts in these respects. Finally, petitioners suggested that the Commission initiate a wide-ranging study into current licensee and network practices with regard to the production and airing of PSA's. Opposing arguments were presented to the effect that the presentation of PSA's falls within an area of licensee programming discretion which the Commission should not disturb through adoption of the proposal. Moreover, these parties asserted that petitioners had not presented the necessary factual basis for taking the action requested.

4. After considering the arguments in favor and in opposition to the proposal, the Commission concluded in the *Memorandum Opinion and Order* that adoption of the proposal would be an inappropriate intrusion into the sensitive area of programming. Because of this concern the Commission has regularly followed a practice of according the licensee broad discretion in programming matters, including the scheduling and selection of PSA's. We noted that decisions as to the quantity, nature, source and scheduling of PSA's aired depend on the community to be served and each licensee's individual situation. We found that petitioners had not substantiated their allegations that inadequate PSA time was being provided or that it was being scheduled improperly, that is customarily during times of little

³ Petitioners contend that such a rule would not only increase the time given to PSA's but would encourage broadcasters in meeting this requirement to fulfill another of petitioners' goals, *viz.* utilizing new and diverse sources for these announcements.

audience. Regarding the allegation of Advertising Council dominance, all that could be said from the information given us on the Advertising Council's role in regard to PSA time was that Council endorsement might facilitate the airing of PSA's. No basis was given for concluding that without such support, PSA's would be denied access to the broadcast medium.

5. Nonetheless, the Commission did agree with petitioners that PSA's can offer an important public service, and we concluded the *Memorandum Opinion and Order* with a statement stressing the Commission's expectation that licensees would make a good faith effort to tailor and schedule PSA's so as to enhance their effectiveness and to provide a meaningful, local, public service. Thus, we noted, the predominant scheduling of PSA's in "graveyard" hours or perfunctory treatment of such announcements could not be considered the type of reasonable effort expected by the Commission. Further, we indicated an expectation that a significant proportion of PSA's on television should be aired during prime-time and on radio during drive-time.

Notice of Inquiry

6. On August 8, 1978, on petitioners' motion, the Commission reconsidered its decision of October 11, 1977. Although concluding that our earlier action declining to propose a specific rule was fully warranted, our view on the merits of conducting an inquiry had shifted. We had come to believe that such an inquiry could serve a useful purpose. What became apparent from new information submitted in the petition for reconsideration⁴ was the Commission's need to be better informed in regard to PSA's as a necessary prelude to determining whether specific rules should be contemplated. We noted that interest in the use of PSA's has grown considerably, not only on the part of this Commission. Congress, as well as governmental agencies, such as the Federal Trade Commission and the Department of Health and Human Services (formerly known as the Department of Health, Education and Welfare), are interested in the employment of PSA's in answering public needs, a fact evidenced in joint comments filed by those two agencies in support of the reconsideration request.

⁴ In its petition for reconsideration, the Public Media Center presented data on the PSA practices of certain local broadcasters and of the Advertising Council not previously submitted. This information, in most part, was obtained from composite week logs provided in license renewal applications submitted to the Commission after the petition for rule making was filed and from a government report first available after the initial petition was filed. The government document referred to is a General Accounting Office report dated August 31, 1977, on the *Federal Energy Administration's Contract with the Advertising Council* which concluded that the Ad Council ". . . has the unique capability to encourage national and local media to contribute public service time on television and radio . . ." Petitioners also noted a Department of Transportation procurement request stating that the Ad Council is the only instrument for designing, developing and implementing national public service campaigns accepted by the advertising industry and the information media.

Important issues thus having been raised, the Commission initiated an inquiry into what role PSA's presently play in serving the public and what role they could or should have in this important regard.

7. Two general categories of questions were raised for inquiry in the *Notice* adopted on August 8, 1978. The first sought information about the present use of PSA's by radio and television broadcasters and is of an essentially factual nature. The second was designed to explore the views of the parties on the possible role of PSA's and any rule or policy changes which they believe could or should be made. The specific questions asked in the *Notice* and the comments responding to these inquiries will be discussed in detail in the following paragraphs.

Category I of the Inquiry: Questions and Answers Concerning the present Use of PSA's by Broadcast Licensees.

8. The factual information currently available to the Commission in regard to present use of PSA's is largely limited to the data requested on applications for license renewal. Radio stations are asked to indicate how many PSA's are aired during the composite week; television stations are also asked to provide this information and to indicate how many PSA's were aired between the hours of 8:00 A.M. and 11:00 P.M. during the composite week. This purely statistical information does not give a full picture of current practices. In order to gather more information as to the number, duration, timing, nature and source of and criteria for PSA's aired, we asked the following questions of broadcast stations and/or other interested parties responding to the *Notice of Inquiry*:

- (1) As to the time given to and the timing of PSA's:
 - (a) How many (the number of) PSA's are usually aired by a station on a weekly basis?
 - (b) How much total time on a weekly basis is usually devoted to PSA's by broadcasters?
 - (c) What is the duration in time of the usual PSA?
 - (d) How are PSA's generally distributed throughout the day? Specifically, how much time is devoted to PSA's during drive (radio) and prime (TV) time?
 - (e) How are PSA's distributed between the various days of the week?
 - (f) How many (the number of) PSA's aired on a weekly basis by broadcasters are directed to children under twelve years of age?
 - (g) How much total time on a weekly basis is usually devoted to PSA's directed to children under twelve years of age?
 - (h) How are those PSA's directed to children under twelve years of age distributed throughout the day?
 - (i) In the case of television stations, how much time is devoted to such PSA's during periods of peak child viewing, for example,

between 7 and 9 A.M. and 3 and 7 P.M. on weekdays and on Saturday and Sunday mornings?

(j) How many (the number of) PSA's aired on a weekly basis by broadcasters are directed to youth (between twelve years of age and eighteen)?

(k) How much total time on a weekly basis is usually devoted to PSA's directed to youth (between twelve years of age and eighteen)?

(l) How are those PSA's directed to youth (between twelve years of age and eighteen) distributed throughout the day?

(2) As to the nature of PSA's aired:

(a) List those topics which are often the subject of PSA's.

(b) Are most PSA's concerned with local or national issues? Specifically, what percentage of PSA's on a weekly basis usually deal with local versus national topics of interest? Of those PSA's aired on local matters of interest, how many were broadcast on behalf of local groups or organizations?

(c) Do any PSA's aired deal with controversial issues? If so, what is the usual percentage of controversial PSA's broadcast on a weekly basis?

(d) What topics are usually the subject of PSA's directed to children under twelve years of age?

(e) What topics are usually the subject of PSA's directed to youth (between twelve years of age and eighteen)?

(3) As to the sources of PSA's aired:

(a) What and how many production sources are there for PSA's?

(b) Do broadcasters solicit the production of specific PSA's or are PSA's generally provided to broadcasters for their use?

(c) To what extent, if any, are PSA's provided to broadcasters in package form rather than on an individual basis?

(d) Do broadcasters produce their own PSA's and, if so, to what extent?

(e) What are the costs involved in producing the usual PSA?

(f) To what extent are these costs a factor in the presentation of particular PSA's?

(4) As to the criteria for choosing which PSA's will be aired:

(a) What criteria do broadcasters generally employ in determining which PSA's to air?

(b) Do broadcasters employ their list of ascertained community problems, needs and interests as a guide in determining which PSA's will be aired?⁵ If so, what percentage of PSA's on a weekly

⁵ As part of the material submitted for renewal of broadcast licenses, applicants are called upon to provide a showing of their efforts to ascertain and respond to the problems, needs and interests of the community which they are licensed to serve. See the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants* ("Renewal Primer"), 57 F.C.C. 2d 418 (1976). See also the *Primer on Ascertainment of Community Problems by Broadcast Applicants* ("Primer for New

basis respond to those problems, needs or interests discovered through the community ascertainment process?

(5) Finally, how useful are PSA's in serving the public?

Summary of Formal Comments

9. Approximately ninety parties filed formal comments in response to the *Notice of Inquiry*. These submissions were filed on behalf of interested individuals, the three major networks, a variety of broadcasters' associations, individual broadcast stations, broadcasting and communications corporations, government agencies, The Advertising Council, national charities, public interest and service organizations, national and local citizens' groups and members of the academic community. Of these submissions, approximately twenty-five filings provided substantial data answering questions asked in Category I of the *Inquiry*.

10. The comments providing statistics can be divided into two categories. One category of submissions includes those filed by broadcast stations or groups of stations. These tend to be reports of PSA performance of the particular facilities. It should be noted at the outset that only those stations wishing to respond did so.⁶ Thus, the sample may be considered statistically biased. Also, broadcaster filings concern only individual stations with no comparison to others in the market or other areas. The other category of comments consists of studies of the PSA performance of various groups of broadcast stations (market-wide, state-wide, etc.) by non-licensees. These samples involved either portions of large groups of stations, such as those in a large geographic area, randomly selected, or consuses of all stations in a particular market area. A variety of techniques, such as on-the-air monitoring and examination of station logs, were employed by non-broadcasters to develop their data. The lack of a national sample, however, limits the statistical accuracy of these studies. Nevertheless, we believe the data will serve a useful purpose in assisting the Commission to determine what, if any, action it should take regarding the airing of PSA's.

11. The data provided in the submissions generally supports the following conclusions:⁷

Applicants"), 27 F.C.C. 2d 650 (1971), which provides ascertainment guidelines for applicants for construction permits for new commercial broadcast stations; and the *Primer on Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants ("Noncommercial Primer")*, 58 F.C.C. 526 (1976), which delineates the ascertainment requirements for all noncommercial educational radio and television applicants, renewal and otherwise.

⁶ Among other things, it is likely that broadcast stations most aware of Commission proceedings, as well as those facilities either performing particularly well in the PSA area or most opposed to a PSA rule making, will file comments in this proceeding.

⁷ The parties generally have submitted sketchy data. Nevertheless, we believe that the conclusions drawn from the furnished information, with their apparent limitations, shed further light on the PSA situation at the present time.

- (1) As to the time given to and the timing of PSAs:
- (a) On the average, a little less than 200 PSA's are aired per week per station.⁸
 - (b) About slightly more than two hours of weekly time is devoted to PSA's.⁹
 - (c) The usual PSA runs approximately 30 seconds.¹⁰
 - (d) PSA's seem to be evenly distributed throughout the day, that is they are not necessarily aired in graveyard hours, but also they are not centered in drive and prime-time periods. The ratio for drive and prime-time periods is not significantly different than the non-drive and prime-time ratio, to the extent that specific data is available.
 - (e) Among the few comments which deal with the days of the week issue it appears that a higher number of PSA's are presented on weekends than weekdays.
 - (f) Approximately 7% of all PSA's aired (the number thus is about 14 per week) are specifically directed to children under 12 years of age.¹¹
 - (g) 8½ minutes per week is usually devoted to PSA's directed to children under 12 years of age.
 - (h) Child-directed PSA's are more common during child viewing time. 20% of child-oriented PSA's are broadcast during programming directed to children.
 - (i) Approximately 1½ minutes per hour are devoted to PSA's during child dominant viewing times.
 - (j) through (l) The comments addressing these questions, which concern youth (ages 12 through 18) are very few. The limited data, however, indicates figures similar to those reported for children (questions and answers (f), (h) and (i)).
- (2) As to the nature of the PSA's aired:
- (a) The subject matter of PSA's is varied. Those concerning health and safety, however, appear most common. Also dealt with in PSA's are matters relating to social services, civic activities and environmental concerns.
 - (b) Few responses were received on the issue of local versus national PSA's. On the average, those submissions dealing with

⁸ Taking all reporting stations into consideration, an average of 1 to 1½ PSA's are aired per broadcast hour.

⁹ This amounts to from one to two percent of all broadcast time.

¹⁰ PSA's also run for 10, 20 or 60 seconds but rarely, if ever, any longer.

¹¹ See Docket No. 19142, FCC 79-851, for a *Notice of Proposed Rule Making* released in *The Children's Television Programming and Advertising Practices* proceeding. The *Notice* was published in the Federal Register on January 9, 1980, Vol. 45 Fed. Reg. 1976, with comments and reply comments due June 16 and August 1, 1980, respectively.

the question indicated that about one-third of the PSA's they aired dealt with local topics or were locally produced.¹²

- (c) It appears from the data submitted and general statements made by broadcasters that PSA's concerning controversial matters are not usually aired.
 - (d) The topics usually the subject of PSA's directed to children under twelve years of age concern, as they do for adults, health and safety.
 - (e) The topics usually the subject of PSA's directed to youth are drug abuse, alcoholism and venereal disease.
- (3) As to the sources of PSA's aired:
- (a) Production sources for PSA's are numerous since any organization having access to an audio studio and trained assistance can produce such announcements. Therefore, no specific listing could be developed from the furnished information.
 - (b) Broadcasters tend to have PSA's provided for them and do not on a general basis solicit the production of specific PSA's.
 - (c) Although PSA's are sometimes provided on an individual basis, they are generally offered to broadcasters in package form.
 - (d) Broadcasters produce some of their own PSA's but to what extent was not meaningfully revealed by the furnished data.
 - (e) The data submitted was inadequate to draw any conclusion on the cost of PSA's.
 - (f) It appears that in comparison to other types of spot announcements, few costs are involved in PSA production and they are not a significant factor in the presentation of particular PSA's.
- (4) As to the criteria for choosing which PSA's will be aired:
- (a) Broadcasters generally state that local public service is the criteria for choosing which PSA's to air, whereas non-broadcast parties conclude that availability and convenience are the criteria employed.
 - (b) Broadcasters employ their list of ascertained community problems, needs and interests as a guide in determining which PSA's will be aired, however, the degree to which they do so appears to vary widely.
- (5) Stations and non-broadcast parties find PSA's are useful in serving the public. A question raised in this context, however, is whether repetition of even worthwhile messages is counter-productive.

12. We believe it will be helpful for later discussion to indicate statistical data provided by particular broadcasters, as well as non-licensees, in order to provide a sampling of the information furnished

¹²The majority of commenters take issue with any Commission differentiation between local and national PSA's, generally stating that national PSA's are only aired if they meet the needs of the particular community involved.

the Commission. Thereby, a more complete record will be provided for the disposition of the issues raised in this proceeding. Initially, we note that Boston Broadcasters, the licensee of Station WCVB-TV, reported airing PSA's for 118 organizations during the composite week. The station aired over 2 PSA's, or one minute of PSA time, every hour on the average. 35% of WCVB's PSA's are aired between 6 a.m. and 12 noon, 30% between 12 noon and 11 p.m. and another 35% from 11 p.m. to 6 a.m. The station indicates that a greater proportion of PSA's are aired on weekends; 7% of their PSA's are for either adolescents or children, with their subject matter being alcoholism, drug abuse and venereal disease for the former and nutrition and safety for the latter; and 80% of their PSA's are local. The topics which are frequently the subject of WCVB's PSA's for adults are health, social services, minority affairs and civic activities. WCVB also notes that PSA's are either provided directly by the public service organizations benefiting from the announcements or the announcements are produced by the station for local public service groups and entities, at a cost to the station of \$250 per announcement. It submits that \$62,000 was spent by the station in 1977 to produce PSA's. When national organizations furnish the PSA's, states WCVB, it is not uncommon for them to be provided in package form. The subjects of its PSA's transcends, WCVB asserts, problems ascertained through its community ascertainment survey.

13. Another television station submitting data to the Commission is Station WBAY licensed to Nationwide Communications. WBAY averaged less than one PSA per hour for a weekly total of approximately 120 PSA's, 7% being directed to children and adolescents. The average duration of the station's PSA's is 30 seconds. They are generally distributed throughout the day and the week. PSA's for children are generally aired from 7 a.m. to 9 a.m. weekdays and on weekend mornings. PSA's directed to teenagers are aired during late afternoon periods. The subject of children's PSA's are nutrition, safety and dental care; those for adolescents are drug abuse and education; and those for adults are health, social services, minority affairs, civic activities and safety and environmental concerns. WBAY considers 75% of its PSA's as dealing with local issues and concludes that few concern controversial issues. PSA's are given to the station by public service organizations, governmental agencies and the Advertising Council. Again, when national organizations provide PSA's, they are often in package form. 10% of WBAY's PSA's are provided in that fashion. Approximately 50% or more of those PSA's aired by WBAY on a weekly basis are directly responsive to ascertained community needs.

14. As to radio stations, KEZY generally broadcasts 170 PSA's weekly. These announcements average from 10 to 20 seconds in length and frequently include special announcements which range up to one minute in duration. KEZY's PSA's are generally distributed throughout the day, except during the all-night programming. Such announce-

ments are broadcast in one-hour intervals starting at 6:50 a.m. and continuing in that fashion until 1:50 a.m. the following morning.¹³ 29% of its PSA's are specifically directed to children under twelve years of age. Approximately 100 PSA's are directed to adolescents. KEZY reports that 90% of its PSA's are concerned with local as opposed to national issues. The subject matter of the spots for children are the same as listed for Stations WCVB-TV and WBAY-TV. KEZY reports that its PSA material is typically acquired through community inquiry. PSA's are not generally obtained in package form and 10% of its spots are produced at its station. 35% of the PSA's carried are directly responsive to ascertained community problems.

15. Turning to the networks, CBS states that it airs about one PSA per hour, but the number of stations clearing such PSA's varies a great deal.¹⁴ CBS owned radio stations broadcast 60, 30, 20 and 10 second spots but 60 second announcements predominate. 30 second spots are the most popular with CBS owned television stations.¹⁵ As to the CBS television network, there is no significant difference in the scheduling of PSA's between the various days of the week. The TV network usually devotes a minimum of 5½ minutes per week to PSA's designated primarily for children.¹⁶ It is also indicated that a majority of PSA's aired by each of the CBS owned TV stations are broadcast on behalf of local sponsors. CBS argues, however, that it is artificial to distinguish between national and local PSA's. A national topic, it submits, is one which by definition has an impact on many communities. CBS' view is that the Commission's questions in this regard implies a preference against PSA's for national organizations or local chapters as compared to some unspecified and unidentified local and community group. As to PSA's addressing controversial issues, CBS network will not consider them for airing. The topics which are often the subject of CBS' PSA's include education, health, safety, social problems, the environment, community welfare, religion, consumer affairs and government information. According to its comments, the majority of PSA's are provided to CBS TV Network and CBS owned stations in package form.¹⁷ That is, three or four or sometimes more PSA's of different length and perhaps content are often received from

¹³ Group W stations (Westinghouse Broadcasting Co.) report that they air on an average of 2 PSA's per hour.

¹⁴ ABC indicates less than one PSA per hour broadcast.

¹⁵ The duration of PSA's broadcast on NBC-TV usually ranges from 10 to 60 seconds, with 30 second spots being most common. Radio PSA's are usually 10 to 15 seconds long.

¹⁶ NBC-TV stations try to schedule children's PSA's during children's programs. NBC radio stations are generally programmed to attract an audience over 18 years and, therefore, do not broadcast PSA's directed to children.

¹⁷ ABC reports that PSA's generally are provided on an individual basis rather than in package form.

a single organization. Many of the unsolicited PSA's CBS received are produced by the public service sponsors themselves.¹⁸ A large number of PSA's are produced by the CBS-owned stations and the CBS Radio Network on behalf of public service sponsors who lack the technical expertise or financial resources to produce their own air-quality PSA's. According to CBS, an average PSA costs a public service sponsor anywhere from \$5,000 to \$12,000 to produce. It is the general experience of the CBS-owned stations that irrespective of whether there is a conscious decision for PSA's to mirror ascertained needs, the great majority of PSA's broadcast do in fact directly respond to problems discovered through the community ascertainment process. The network also indicates that its stations receive substantial feedback in the form of letters and telephone calls describing various benefits to public service sponsors from exposure given their spots.

16. Turning to some of the specific comments submitted by non-licensees, we note the study of radio PSA's aired in several midwestern states done by Soley and Redd of Michigan State University. They found a wide variance in the number of PSA's aired, a variance that could not be explained by traditional economic and programming factors. The average number of PSA's aired in this survey was 1.3 per hour.¹⁹ In looking at the material submitted on children's programming in the Boston market, submitted by Action for Children's Television ("ACT"), we note that a little over one minute per hour was devoted to PSA's. 20% of these spots were considered by ACT to be directed specifically to children with most classified as general or adult oriented in content analysis.²⁰ The largest share of the PSA's, that is 40%, concerned health and safety. ACT reported that few PSA's were in fact local.

17. New York City broadcast stations were examined by Jan Geller who found that most PSA's were scheduled in non-drive and non-prime hours.²¹ Most PSA's were found to be neutral in terms of content controversy, an observation supported by station executives inter-

¹⁸ According to ABC, the overwhelming majority of PSA's aired are voluntarily provided from outside non-profit public service oriented organizations.

¹⁹ The Interfaith Centers for Racial Justice analyzed the schedules of Detroit area broadcast stations and determined that the number of PSA's aired was limited, that is less than requested by petitioners.

²⁰ The FTC asserts that half of the PSA's scheduled during children's television time which it monitored were directed toward a general audience. The FTC also argues that there is limited airing of nutritional PSA's directed to children.

²¹ The Interfaith Centers for Racial Justice determined that most PSA's aired by Detroit area stations were broadcast in non-peak audience hours.

viewed who noted that this was station policy. Few minority-oriented PSA's were aired,²² according to Geller who also submitted that little attention was given to the scheduling and production of PSA's.

18. The Public Media Center also viewed a number of facilities and found them wanting. As to Station WABC-TV, New York City, petitioners assert that 63.6% of all PSA's aired were before 8 a.m. and after 11 p.m., with only 30.6% of total PSA time being given to local organizations. As to WCBS-TV, New York City, most PSA's, it is submitted, were aired before 7 a.m. and after 3 a.m., with nearly 30% of all PSA time parcelled out to just seven public service campaigns. None of these spots concerned controversial issues. In regard to KTBU-TV, San Francisco, California, although only 164 PSA's were aired during a particular week, that being June 18-24, 1978, petitioners note the station's strong commitment to local PSA's, some of which even addressed controversial topics. KTBU devotes a substantial amount of its PSA time to daylight hours and petitioners state that in their opinion a reasonable portion of prime-time is given to PSA's. Other stations were evaluated, such as WTOP-TV, Washington, D.C., with over 3 hours a week of PSA's, the bulk being in daytime. Petitioners further note that on a weekly basis WTOP gave 3 prime time minutes to PSA's with national PSA campaigns being generally favored over local. Additional data is provided on other broadcast stations with similar fluctuations indicated.

19. Also of interest is the submission filed by the Heart, Lung and Blood Institute of the Department of Health and Human Services citing a 20% drop in cardiovascular disease in recent years and attempting to correlate the drop with the airing of PSA's on the subject. Also, the Georgia Department of Human Resources quotes a mail survey of theirs which reports that 70% of broadcast stations in Georgia use the PSA's sent to them by that Department frequently. Although these submissions are not strictly statistically accurate, we believe their notation is informative.

Category II of the Inquiry: Questions and Answers Concerning the Possible Future Role of PSA's.

20. Before discussing those comments which address the subject of what role PSA's now play and what that role could or should be in the future, we point out that the Commission's rules do not presently impose a PSA obligation on broadcasters. Rather, as was stated in our earlier *Memorandum Opinion and Order*, nothing more is specified than that the licensee proceed with good faith. Consequently, in the *Notice of Inquiry* we invited interested parties to indicate whether they thought a specific requirement should be imposed on broadcasters

²² The PSA's aired by Detroit area stations, according to the Interfaith Centers, were usually of general appeal rather than directed toward specific and/or minority audiences.

in regard to the presentation of PSA's. Specifically, we asked whether such a requirement was necessary to ensure that broadcasters air a reasonable number of PSA's. Might we encourage rather than require their presentation if we provided some recognition for airing a greater number of these announcements. This question was raised since present Commission procedures provide little credit to licensees for the airing of PSA's. Although these announcements, to a certain extent, may be used to meet community ascertainment requirements for renewal, as well as for the grant of a construction permit for a new station,²³ they may not be listed as illustrative programming on the annual problems-program list to be placed in the public file.²⁴ Nor, for that matter, does the Annual Programming Report (FCC Form 303-A), which is to be filed by commercial television licensees and permittees, note the time given to PSA's during the composite week. The only programming categories to be reported are "news," "public affairs" and "other," the last category being exclusive of entertainment, sports and PSA's.

21. In considering whether greater credit should be given to broadcasters for airing PSA's, we raised for inquiry the question of what weight should be given or what procedure established for crediting licensees for a particular level of performance in this regard. For instance, does the record support the consideration of PSA's as "other programming" on the Annual Programming Report for the total amount of time given to PSA's.²⁵ Comments were also invited on possible ways of giving greater recognition to, and thus encouraging the airing of, PSA's during drive and prime-time, perhaps by considering them the equivalent of twice the amount of time presented at other hours.

22. In view of our current concern with children's programming, as indicated by our present inquiry into the matter, we raised the issue of whether (and if so how) licensees should receive credit for broadcasting

²³ See Question and Answer 29 of the *Renewal and New Applicant Primers* where it is stated that PSA's may be broadcast to treat ascertained community problems, needs and interests. Also to be noted is Question and Answer 30 of both *Primers*, in which we stated our misgivings about relying solely on PSA's to treat ascertained needs.

²⁴ See Question and Answer 33 of the *Renewal Primer* and paragraph 48 of the *Noncommercial Primer* for the licensee's obligation to document on an annual basis its efforts to program to meet ascertained community needs. Specifically, the licensee must place in its public inspection file a list of no more than ten significant problems, needs and interests ascertained during the preceding twelve months. Concerning each problem, need or interest listed the licensee must also indicate and describe typical programs broadcast in response to those problems. Such programs are not to include either PSA's or ordinary news coverage.

²⁵ If a number of PSA's are aired together as a "community bulletin," a licensee presently may receive credit for their broadcast under the category "other programming."

PSA's tailored for children and youth during programs directed to them, as well as during other programs frequently viewed by them.²⁶ Comments were also invited on possible ways of encouraging the airing of those announcements. Similarly, should broadcasters receive credit for airing PSA's which serve other specialized audiences, such as those directed to the Spanish speaking and captioned for the deaf?

23. Another matter for consideration in this inquiry is whether radio and television should be treated differently with respect to any PSA obligation imposed or credit given to broadcasters. If so, in what way? Also, should the PSA definition be modified and, if so, in what manner? Specifically, should any new definition reflect the particular purposes to which PSA's may be put? For instance, PSA's may be employed in campaigns concerned with good nutrition, preventive medicine, employment, and consumer items. Should the PSA definition refer to such purposes and/or include a statement that controversial matters may be the subject of PSA's. These were the specific questions asked of those commenting. Of course, they were also invited to make any suggestion they considered pertinent to the subject matter of the proceeding.

Summary of Formal Comments

24. Of the approximately ninety parties filing formal comments in response to the *Notice*,²⁷ some provide data in answer to the factual questions asked in Category I of the *Inquiry* but do not offer an opinion on the adoption of either specific rules or a credit system for PSA's. As to the filings expressing a viewpoint, that being approximately seventy, slightly more than half were against any Commission action being taken. Of the submissions remaining, half were against specific regulations but in favor of credit procedures and half were in favor of particular PSA rules.

Comments Favoring The Adoption of Specific PSA Rules

25. Those parties favoring the adoption of specific PSA regulations generally argue, as does the United Church of Christ, that most if not all PSA's are scheduled during time slots when commercial messages have not been sold. A number of commenters contend that most broadcast stations will air PSA's during prime-time only if they are required to do so. Volunteer programs, they submit, are not consistent or constant. The Interfaith Centers for Racial Justice also allege that the data provided in answer to questions asked in Category I of the *Inquiry* indicates that television stations, especially network owned facilities, are incapable of carrying out any Commission policy unless

²⁶ Children's programs are presently defined as those programs produced for children, not those programs viewed by children.

²⁷ For a description and listing of the parties filing formal comments and reply comments in this proceeding, see para. 9 *supra*, and Appendix B *infra*, respectively.

quantitative standards are established. Proponents contend that minimum quantitative standards for PSA's are constitutionally permissible and statutorily authorized and are an appropriate mechanism for dealing with what they view as inadequate PSA practices.

26. Various parties attest to the value of PSA's, stating that they can bring the public's attention to significant social problems. In fact, the Federal Trade Commission ("FTC") notes that a spot message broadcast to a widespread audience is a uniquely effective means of communicating with the public. PSA's can also be useful tools for stimulating a healthy commercial marketplace submits the FTC. PSA's distributed by the Federal Government or nonprofit groups can be used to complement commercial messages, educate the public, disseminate nonbrand comparative product information and generally improve the quality of consumer choice. The FTC asserts that PSA's are the only cost effective means for government agencies and non-profit organizations with limited funds to communicate with vast numbers of consumers. But PSA's will not have this meaningful impact, it submits, if their timing and frequency is left entirely to the discretion of the broadcasters.

27. Proponents of specific PSA rules also argue, as do individuals Peter Thurston and James Murray, that a relationship must be formulated in the use of the public airways which gives public service messages parity with advertising. As an example of data supporting this opinion, the Southern California Committee for Open Media indicates that while the typical radio station in the Santa Barbara market gives about one percent of its time for PSA's, these same stations allocate an average of twelve to twenty percent of their time for the broadcast of commercial advertisements. Thus, it is argued that a formula should be established which recognizes that PSA's are to be used for promoting public interest concepts and programs in the same manner as paid advertising. Such a PSA/commercial ratio should not only be established, it is submitted, but maintained throughout the broadcast day so that the public through PSA's enjoys the same access to prime time as does the corporate advertiser. In addition, some proponents of specific PSA regulations believe that broadcasters should be required, also on a formula basis, to provide production time and professional program development services.

28. Finally, a few advocates of specific rules in the PSA sphere suggest even more stringent measures than those recommended by petitioners. For instance, the Council on Children, Media and Merchandising ("Council on CM & M") advises that not only should broadcasters be required to report their PSA performance on an annual basis as well as at renewal time, but that stations be required to report monthly on various aspects of their PSA performance to their local viewers. Also, the Council on CM & M recommends that the Commission publish a report of all stations' activity in the PSA sphere.

Comments Opposing Any Commission Action Regarding PSA's

29. A number of arguments were offered in opposition to any Commission action being taken in regard to PSA's, that is, any inquiry into or recognition of PSA performance or the adoption of rules mandating a particular level of PSA activity. As stated by Combined Communications Corporation ("CCC") and the National Broadcasting Company ("NBC"), many opponents believe that any rules requiring broadcasters to air a particular number of PSA's, to air them at a particular time or to air those promoting a particular organization would amount to censorship violative of Section 326 of the Communications Act as well as the First Amendment. It is asserted that these provisions prohibit government intrusion into decisions affecting program content. Thus, programming matters have traditionally been left to the discretion of individual licensees, state opponents, rather than governed by regulatory action. Additionally, such comments as Storer Broadcasting Company and the National Association of Broadcasters ("NAB") conclude that the mere existence of the inquiry may have a chilling effect on broadcasters' future programming decisions despite the Commission's lack of authority to act on the information gathered in this proceeding. The Columbia Broadcasting System ("CBS") also submits that any offer of credit to encourage broadcaster performance in this area is nothing more than another Commission attempt to regulate by means of the raised eyebrow in order to achieve what cannot be attained by the enactment of new rules.

30. In addition to the jurisdictional argument made by some opposing parties, many commenters assert that PSA regulations are unnecessary since broadcasters already meet their public interest responsibilities in this regard. Station KRCR-TV states that this is an area in which no evidence exists that licensees are providing an insufficient number of PSA's, improper placing of such announcements²⁸ or denying organizations telecast time for the airing of PSA's.²⁹ In fact, the National Radio Broadcasters Association submits that radio licensees, without government prodding, are already providing ample service of the type envisioned by the Commission in its

²⁸ In one of the nine reply pleadings filed in this proceeding, Queen City Communications, Inc., submits that the most significant conclusion to be drawn from the evidence submitted by petitioners is that broadcasters do not follow uniform practices regarding PSA's. Queen City contends that this lack of uniformity is proof that our current system of broadcasting works. True diversity, it states, can exist only if broadcasters are given maximum freedom and discretion to program their own stations.

²⁹ A significant number of groups, such as the American Radio Relay League, the Boy Scouts of America, the President's Council of Physical Fitness and Sports, the Lexington League of Women Voters and the United Negro College Fund indicate no difficulty in getting their PSA's aired and, thus, see no valid reason for the adoption of any specific PSA requirements. The Lexington League of Women Voters, however, believes that a credit system to encourage the airing of PSA's is an appropriate Commission action.

Notice. Also, some commenters are concerned that should the Commission establish a quantitative PSA rule, it will become an industry standard and, in effect, the industry maximum.

31. Opponents also argue that adopting quantitative guidelines will affect the quality of a station's PSA efforts. They submit that increasing the amount of PSA's would not necessarily improve the value³⁰ or effectiveness of such announcements³¹ or the overall service a station provides its audience. Of concern to numerous commenters, such as WJER Radio, Inc., is the possibility that imposing specific regulations would in effect indicate a preference for PSA's over programming in meeting public problems and needs. By narrowing broadcasters' programming choices to inflexible governmental standards, states the Daily Telegraph Printing Company, the Commission would remove the licensee's freedom to build a record based on its editorial judgment of the program mix to best serve local needs.³² Opponents also argue that it would be impossible to derive a standard that is sufficient to meet the needs of large communities without being too great a burden on the stations in small communities.³³ All three networks, among numerous other commenters, take particular note of the Commission's traditional approach of viewing a station's overall performance rather than a particular program type to determine whether the public interest has been served.

32. Finally, opponents submit that regulating the airing of PSA's by broadcasters is inappropriate in light of current social and political trends favoring reductions of governmental interference in the free market system. Such commenters as the American Broadcasting Companies ("ABC") argue that the adoption of specific PSA require-

³⁰ One factor in determining the right amount of PSA time, it is alleged, is the season of the year. For instance, in the fall when the United Way Campaign takes place there is a particular need to publicize its events.

³¹ Metromedia, Inc., submits that a few well produced spots can be far more effective in achieving the desired goal than longer boring spots that are aired *ad nauseum* and are an irritant to the audience. Also Lawrence Soley of the Department of Telecommunications of Michigan State University states that empirical research has indicated that the understanding and effect of a message is maximized with two to five exposures. He submits that advertisers are now realizing that advertising clutter decreases the effectiveness of a message. The addition of PSA's would increase clutter, he argues, making the added PSA less effective as well as decreasing the effectiveness of the paid commercial announcement.

³² Commenters submit that a radio station with a format based principally upon musical appeal may find that PSA's are most effective when kept short and well separated, whereas a station with an all talk format may elect to treat the organizations and activities that are traditionally the subject of PSA's in more comprehensive program-length fashion.

³³ Harte-Hanks Southern Communications, Inc., notes that a broadcast station in a large community may find it necessary to include a large amount of PSA's in order to accommodate many and varied community services needing publicity, whereas a station in a smaller market with fewer such services would likely perceive a need for fewer PSA's.

ments would, and in fact the inquiry itself does, contravene the Commission's announced policy of deregulation.

Comments Favoring a Credit System

33. There are a substantial number of commenting parties who while opposing any rules, policies or mandatory reporting requirements that would embody specific standards concerning the scheduling and airing of PSA's, do favor an improved system of crediting the broadcast of PSA's.³⁴ It is suggested by the Pennsylvania Association of Broadcasters that before the Commission considers adopting a specific regulatory scheme, it should observe the attitude of broadcasters if they are allowed greater credit for airing PSA's. Various parties note that by giving greater recognition to PSA's, licensees will be encouraged to improve their PSA performance.

34. Some commenters suggest that OSA's be accorded at least equal status with other forms of public affairs and informational programming. Other parties specifically recommend that licensees be permitted to list PSA's under "other" programming or "public affairs."³⁵ In fact, Strafford Broadcasting Corporation submits that a credit in the public affairs category should only be issued a station at renewal time for broadcasting a "substantial" amount of PSA's dealing with issues. It is further argued that broadcasters should not be required to report the airing of PSA's in this fashion for the extra paper work caused by an additional reporting requirement could serve to discourage certain broadcasters from airing PSA's. Thus, Belo Broadcasting Corporation recommends that licensees be permitted, on an optional basis, to log PSA's by duration, program type and program source and to include time devoted to PSA's in any program reports or composite week analysis presently required by the Commission.

35. The comments varied as to what credit weight should be given for airing PSA's generally or for their broadcast on particular subjects or at particular times. For instance, Westinghouse Broadcasting Company suggests that the number of PSA's broadcast should be reported rather than, or perhaps in addition to, the time devoted to

³⁴ ABC argues that the Commission should not establish by indirect procedures what it must legally avoid doing by direct regulation and thus states that it is not in favor of a credit system. Further long in its comments, however, ABC submits that if the Commission means that additional credit would represent no more than acknowledgement that PSA's may be utilized by broadcasters in ways that may not have been appropriately recognized in the past, then we have no basic disagreement with the approach.

³⁵ The Public Media Center *et al.*, the petitioners in this proceeding, however, emphasize the belief that licensees should not be allowed to use PSA's for illustrative programming credit unless the Commission also adopts regulations ensuring that broadcasters achieve minimum quantitative PSA levels. To do the former, it is argued, without adopting minimum PSA standards would permit licensees to air less public affairs programming without assuring that the licensee would air more PSA's.

PSA's. Whereas, Belo Broadcasting, as noted above, recommended the crediting of PSA's by length of time.³⁶ A number of broadcast stations believe that licensees should receive special consideration for serving specialized audiences. Also, Station KMET-FM, Los Angeles, California, is most amenable to having drive-time PSA's considered the equivalent of twice the amount of time of a PSA resented in other hours.³⁷ Another comment stresses that the promise of extra programming credit for each ascertainment based PSA aired in prime or drive-time could be enough of a prod to save PSA's from the late-night early-morning graveyard.

The PSA Definition

36. The PSA definition was another matter raised for comment in this proceeding. The opinions were varied on this subject. Certain parties argued that any change in the PSA definition to reflect specific purposes to which PSA's may be put would involve problems of government favoritism of certain ideas and causes in suppression of others. Therefore, NBC argues that a definition geared to some government specified purpose for PSA's would run afoul of the First Amendment. On the other hand, Westinghouse Broadcasting Company believes that it is not necessary to change the definition of a PSA to reflect the specific purposes to which PSA's may be put. It is submitted that PSA's currently address a wide range of issues and any topical limitations are not called for at this time.

37. A number of other commenters disagree, however, with the above opinions. For instance, the United Cerebral Palsy Association submits that the FCC definition is limited and does not reflect the true scope of PSA's. Also, Care, Inc., suggests that the definition be clarified to indicate that the information presented by these announcements be a service to the public. As to specific suggestions, some commenters recommend that the Commission affirmatively state that controversial issues might be dealt with in PSA's, while others suggest that the definition be clarified so as to particularly include non-routine weather announcements. A few parties proposed particular definitions such as the following suggested by the Advertising Council:

"A PSA is an announcement for which no commercial charge is made by the broadcasters or by the non-profit agency, government body or individual providing the message, the purpose of which is to improve the health, safety, welfare or enhancement of people's lives and the more effective and beneficial functioning of

³⁶ Some parties view the giving of credit to broadcasters for meeting or exceeding their PSA commitment as a form of bribery.

³⁷ It is argued by a few broadcasters that once PSA's are given weighted credit, depending on the time of broadcast or the target audience, the government has inevitably made a judgment as to what should be broadcast and when. NBC contends that this would improperly encroach upon and limit broadcaster discretion protected by the First Amendment.

their community, state or region. Such messages shall not be commercial, political or designed to influence legislation."

The Committee for Open Media also recommended a new PSA definition. It reads as follows:

"A Public Service Announcement is a non-routine, non-billable broadcast message which: (1) informs viewers or listeners about a service program or activity of community interest or (2) which provides a form for individuals or groups to express their ideas, viewpoint or opinions. Time signals, routine weather announcements and station promotional announcements are not PSAs."

Different Treatment of Radio and TV Concerning PSA's

38. Certain parties expressed the belief that there is little value in treating radio and television differently. The Public Service Council indicated that it is the responsibility of the organizations wishing to utilize PSA's to think of these two communications services as separate media able to perform in different ways to meet educational objectives,³⁸ but saw no need for regulatory differentiation. Other commenters argue that the establishment of quantitative guidelines would be based on the assumption that there is an unlimited number of PSA organizations clamoring for carriage. While this may be the case in large metropolitan markets, asserts Midwest Family Stations ("Midwest"), it is not the case for thousands of stations located in small communities. Midwest also contends that PSA regulations would have quite a negative effect on daytime-only radio stations. If such a station is to avoid announcement clutter, it would have to cut back on the number of commercials carried per hour. This might have a very negative effect on the often tenuous economic viability of stations with limited hours of operation. Finally, it is noted by Metromedia that this proceeding as it relates to radio should be terminated in view of the proceeding looking toward the substantial deregulation of radio.³⁹

Summary of Informal Comments

39. There were approximately 170 informal comments filed with the Commission in this proceeding. The majority of these submissions favored specific PSA rules requiring broadcasters to air certain amounts of PSA's during prime or drive-time or other desirable time periods. Although most of the arguments in favor of regulation did not specifically mention the amount or duration of PSA's which should be required by the Commission, proponents all noted the important public service role played by PSA's.

40. Informal proponents of Commission action in the PSA sphere

³⁸ For example, the Council indicates that television is superior to radio for reaching children from ages two through fourteen.

³⁹ Few reply comments were filed in this proceeding. They have been considered and where warranted have already been discussed. No further discussion of these reply submissions would serve any useful purpose.

submit, as did a number of formal commenters, that the Advertising Council monopolizes the PSA field to the detriment of non-Council sponsored public service organizations. They also viewed this proceeding as an effort to define in a more exact fashion a broadcaster's responsibility to air PSA's to serve the public interest. Consequently, proponents argued that PSA's meeting ascertained community problems should be given credit at renewal time. Many commenters asserted, again as formal parties did, that PSA's are a more effective means of meeting community needs than lengthy public affairs programs. Those favoring as well as those opposing PSA requirements submitted that whether the informational message is prepared by a "local" or "national" source is irrelevant as long as the announcement is pertinent and appropriate to the needs of the local community.

41. Informal opponents to PSA requirements submitted that it is inappropriate to further regulate at this time since the government is presently considering deregulating several industries including the radio broadcast sphere. A number of broadcasters comment that PSA rules will increase record keeping and paperwork to be filed with the Commission at renewal time, thus imposing an economic burden on licensees. As indicated by a number of formal parties, informal opponents submit that PSA requirements intrude into the area of broadcasters' programming discretion protected by Commission rules. Finally, opposing comments contend that there is no documented evidence of abuses or deficiencies in the present PSA system.

Discussion

42. After studying the record of this proceeding, we have concluded that further rule making is inadvisable. We do not believe that the record supports proposing the adoption of rules imposing specific obligations on television and radio broadcasters as to the number, duration, content and source of PSA's which they should present. The evidence does not indicate that inadequate PSA time is being provided or that it is being scheduled improperly if viewed in light of a broadcaster's total programming. Decisions as to the quantity, nature, source and scheduling of PSA's aired depend on the community to be served and each licensee's individual situation. We hesitate to regulate in the sensitive area of programming and thus have regularly followed a practice of according the licensee broad discretion in programming matters, including the scheduling and selection of PSA's. It has become evident, however, from the information gathered in this proceeding, that greater recognition of the contribution broadcasters make through their airing of PSA's will encourage the use of these announcements where appropriate and effective. Thus, we are modifying our present procedures to enable licensees to receive greater credit for their public interest performance in the PSA sphere if they wish it.

43. In proceeding with our discussion, we will address the significant arguments raised in the comments filed in response to the *Notice*

of Inquiry. Initially, it is noted that since specific PSA rules are not thought necessary or appropriate, we need not reach the issue of whether the First Amendment or Section 326 of the Communications Act bars the adoption of particular regulations concerning the airing of PSA's. As to recognizing the value of PSA's, generally all the parties, as well as the Commission, acknowledge what effective tools PSA's can be in transmitting messages to the public. However, we disagree with those commenters who submit that PSA's will only be aired during drive and prime-time if broadcasters are required to do so. The statistical data submitted and analyzed indicates that PSA's are presently aired during these time periods to a meaningful degree although not in a concentrated amount. Further, there is merit to the assertion that any quantitative PSA rule may become an industry standard which, in effect, is the industry maximum. Therefore, such a regulation might have the unfortunate effect of inhibiting the airing of numerous PSA's.

44. Even if one is convinced that PSA "clutter" will lead to PSA ineffectiveness, and we do not find adequate evidence to draw such a conclusion, we do believe that quantitative guidelines are not a fair measure in themselves of a station's PSA efforts. The particular community must be taken into account in regard not only to subject, but also to the number and the time of broadcast. What is of value to an agricultural community is often different from an industrial or suburban area. In addition to the type of community being served, a particular broadcaster's PSA performance should be evaluated in terms of its total programming in meeting its service area's problems and needs. Similarly, a formula giving public service messages parity with commercial advertisements may well overlook the economic realities of broadcasting as a business.

45. No PSA rules are being imposed on broadcasters. Rather, licensees are being provided with an optional system allowing them greater credit, if they seek it, for their PSA performance. Consequently, an accurate crediting of PSA's does not contravene the Commission's policy to deregulate those broadcast areas which could operate more efficiently and effectively under marketplace conditions. Indeed, we note that the failure to credit PSA's might well have discouraged their broadcast. Modification of our credit procedures will merely be an acknowledgement that PSA's have been utilized by broadcasters to serve their respective audiences.

46. Having decided that greater credit should be provided for the airing of PSA's, the question arises as to what weight should be given and what procedure established for crediting licensees for a particular level of PSA performance. We do not agree with those commenters suggesting that PSA's be considered "public affairs" programming. Muddying the definitional waters does not appear to have any merit. In fact, we are concerned that it would discourage the airing of program-length material meeting community problems. Nor is such a

classification necessary to achieve our goals. Considering PSA's in the "other" programming category of the Annual Programming Report for commercial television licensees, as well as in the renewal application forms for commercial radio and television licenses,⁴⁰ will provide adequate credit without any apparent negative effect on the broadcasting of public affairs material.⁴¹ This is not, however, a mandatory policy. Commercial licensees are required to indicate the length of time they operate in particular categories, these being "news," "public affairs" and "other." Although not specifically excluded from the "other" category, PSA's have not been included because broadcasters have not been required to maintain records indicating the length of time their PSA's aired. Licensees may now wish to keep such records in order to exercise their option to include their PSA performance in the "other" category.⁴²

47. We are considering the employment of PSA's as illustrative programming on the annual problems-programs list for it has become apparent that although PSA's do not possess the length or depth of longer programming, it is the very fact that they are brief, catchy, repetitive announcements that accounts for their dealing in a more effective fashion with certain community problems.⁴³ This is an important aspect of the PSA role. The problems-programs list which is placed yearly in a station's public file is required of all commercial

⁴⁰ In a current rule making proceeding (RM-2898), the Commission is considering deleting the requirement that commercial television stations file the Annual Programming Report (FCC Form 303-A). Also being considered in that docket is the use of a short form as the basic application for license renewal and a detailed long form application to be filed by a randomly selected sample of licensees. Even if at the completion of the rule making process the filing of Form 303-A is no longer required and the short form renewal application is adopted, those licensees completing the long form and those randomly selected for audit by the FCC Field Operations Bureau will be expected to indicate how they have programmed their stations. In those situations, licensees will have the opportunity to include PSA's in their "other" programming category. In any event, all licensees would continue to retain their composite week logs in their public files and may include PSA's in the "other" category of these records.

⁴¹ The "other" category provided in the application form for new noncommercial facilities (FCC Form 340) and for renewal (FCC Form 342) is distinctly different from the "other" category for commercial stations in that, among other things, it includes sports programs. Because of this difference in its nature, no real purpose would be served by permitting PSA's to be included in the "other" category for noncommercial stations. We also note that there was no indication in the record that such an action was desired, least of all warranted.

⁴² We no longer see any valid reason for distinguishing between collective PSA's (community bulletins) and individual announcements. A broadcaster may make a good faith determination that PSA's aired throughout the day in 30, 60 or 90 second spots are more effective than 2-minute spots for its particular audience. In either case, he should receive credit for that performance.

⁴³ PSA's may presently be used to respond to problems ascertained by applicants for construction permits for new commercial stations. If such announcements are proposed, they are to be identified with the community problem or problems they are designed to meet. See Question and Answer 29 of the *Primer for New Applicants*.

licensees, even those in smaller markets who are exempt from other ascertainment reporting.⁴⁴ This requirement is also imposed on noncommercial educational radio and television applicants, permittees and licensees with the exception of licensees, such as those offering wholly instructional programming, who are exempt from ascertainment requirements. These broadcasters, as well as broadcasters generally, may not only find PSA's more effective than other programming in meeting certain community needs, but a sounder economic method for fulfilling their ascertainment responsibilities. This last factor is of particular importance to stations whose economic viability is not an assured matter. Therefore, we believe it appropriate to allow broadcasters the use of PSA's for purposes of the problems-programs list. However, the use of PSA's should not be a broadcaster's primary method for responding to ascertained needs. Where appropriate they may be used to meet community problems. Where ascertained interests necessitate lengthy discussions, such announcements would be an inappropriate vehicle.

48. A policy of crediting only a "substantial" or "significant" number of spots aired would appear to have a negative effect on the PSA performance of broadcasters. This is just the situation we are attempting to remedy here. That suggestion will not be adopted, nor will the proposal suggesting that prime and drive-time PSA's be considered the equivalent of twice the amount of time as they would be if presented at other hours. The record evidence has not indicated great interest in a double credit procedure. Moreover, the airing of a PSA at 7 p.m. rather than 6 p.m. does not necessarily make it more worthwhile. A value judgment can only be reached if all the facts of the situation are known, that is the particular PSA aired and the particular community in which it is aired. More specifically, was it a PSA directed to children, adolescents, homemakers or breadwinners? Was the PSA aired in traditional drive-time in the a.m. hours in a farm community? If so, that PSA may have less, rather than more value. If double drive and prime-time credit or double credit for airing PSA's directed to children, youth, the Spanish speaking, etc., were given, we would, in effect, be penalizing communities not fitting the traditional mold of the industrial city or encouraging the broadcast of PSA's during ineffective time periods or for population segments not to any significant extent part of the station's audience, *e.g.*, PSA's aired on radio for children. In view of these difficulties, we considered a complex credit system providing for the many differences discussed above and found such a procedure wanting in merit. If such a system were to be equitable, the particulars of each PSA aired would need to be known. The record keeping this would entail on the part of

⁴⁴ Commercial radio and television stations licensed to communities with a population of 10,000 or less and which are located outside all officially designated Standard Metropolitan Statistical Areas are presently exempt from Commission inquiry into the manner in which they become aware of community problems and needs.

licensees, as well as the expenditure of time it would cost Commission staff, does not appear warranted by any resulting gains. The system of credit, adopted herein, has the advantage of acknowledging the significant role PSA's play while not becoming an encumbrance.

49. No modification of the PSA definition appears warranted.⁴⁵ It has proven to serve its purpose well. The key elements of this term are "no charge" and "serving community interests." Its broad phraseology enables broadcasters to determine what best serves their service areas. Although some parties have complained that PSA's concerning controversial issues are not aired, data was submitted in this proceeding to indicate that indeed such spots were aired although this is not generally the case. Not only does the present definition in no way discourage the airing of such announcements, but controversial spots may be particularly appropriate when responding to ascertained problems. Any definition which more fully described the subject matter allowed might well have a limiting effect on which PSA's receive exposure and thus could be considered an inappropriate programming intrusion.

50. We also conclude that radio and television not be treated differently with respect to the action taken here. The modified procedures adopted today can equally serve both radio and television stations and their audiences. In fact, the very purpose of adopting the credit system is to allow for a true representation of the PSA performance of each individual station, whether radio or television, whether in an agricultural or industrial community, or whether in a small or large market.⁴⁶

51. Where we can achieve a goal without regulation, the public interest is well served. This has been done by the action taken today. Greater credit is given broadcasters for airing PSA's to encourage their use where an appropriate vehicle to impart information to the audience. Thus, the public receives a substantial benefit at a lower regulatory cost, while the broadcaster is enabled to serve his particular community as it requires and not himself be required to meet an artificial standard of performance.

52. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, that the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants*, and the *Primer on Ascertainment of Community Problems by Noncommercial*

⁴⁵ See n. 1 *supra*.

⁴⁶ The Commission is presently reviewing the existing scope of radio regulation in a rule making proceeding, BC Docket No. 79-219. Action taken in that docket could mandate removal of the ascertainment requirements currently imposed on radio broadcasters including the obligation to file a problems-program list, as well as removing any logging requirements for these licensees. If this proves to be the case, the credit procedures provided in this decision, as they affect radio stations, will have limited effect.

Educational Broadcast Applicants ARE AMENDED, effective November 17, 1980, as described above and set forth in the attached Appendix A.

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

54. For further information concerning this proceeding contact Freda Lippert Thyden, Broadcast Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO, *Secretary*.

Attachment: Appendix A

Appendix B not included—may be seen in FCC Dockets Branch.

Appendix A

1. In the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants*, paragraph 43 is revised to read as follows:

43. Although we decline to credit ordinary "news inserts" (see Section 73.3526(a)(9) of the rules) for purposes of the problems-programs list, public service announcements may be used to respond to significant problems and needs. There is no need for this Commission to defend the importance it attaches to news broadcasts in serving the community of license. While news inserts can sometimes respond to problems and needs, they ordinarily do not possess the length or depth to proceed toward a meeting or solution of problems. For this purpose, we seek programs. It is clear from the *Further Notice* that our concept of a "program," particularly on radio, is flexible enough to accommodate even the all-news station, 53 F.C.C. 2d at 6, and that no licensee which takes seriously its non-entertainment programming obligations will have any trouble finding matter for its problems-programs list. Although public service announcements are not programs in the traditional sense, their very nature, that is brief, catchy messages tailored to the community's needs appears to have made them an effective vehicle for addressing various community problems. Consequently, we are allowing the use of public service announcements to respond to the listed 10 significant problems and needs. However, their use should not be a broadcaster's primary method for responding to ascertained needs. As to NAB's suggestion that the list should be triennial rather than annual in scope, we are not persuaded. While we have elected to change the Community Leader Checklist from annual to triennial (see paras. 13-14, *supra*), the rationale applied in modification of that document does not hold for the problems-programs list. The latter possesses a limit of no more than 10 significant problems for each yearly list, while, theoretically at least, there are no ceilings on leader interviews. More importantly, ascertainment remains *continuous*, in the resolution reached here, whether interviews are counted every year or every three years. And the problems-programs list, as an evaluative tool for broadcaster and citizen respecting the programming results of a continuous ascertainment, rightly deserves more "continuity," or frequency, than the triennial compilation would provide. As for the NAB's concern with the broad overview of a licensee's program service, presumably that is met through appending to the renewal application problems-programs list from each year of the expiring term—not to mention other information of three-year scope found in the same application.

2. In the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants*, Question and Answer 29 are revised to read as follows:

Question 29. In what form may matter be broadcast to treat ascertained community problems, needs and interests?

Answer. Programs, news and public service announcements. This includes station editorials, ordinary and special news inserts, program vignettes, and the like. (But see Question and Answer 33 below regarding the exclusion from the yearly problems-programs list of ordinary news inserts of breaking events.)

3. In the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants*, Question and Answer 33 are revised to read as follows:

Question 33. What documentation must be placed in the station's public inspection file regarding the licensee's efforts to program to meet ascertained community problems, needs and interests?

Answer. Each year on the anniversary date of the filing of the station's application for renewal of license, the licensee must place in its public inspection file a list of no more than ten significant problems, needs and interests ascertained during the preceding twelve months. Concerning each problem, need or interest listed the licensee must also indicate typical and illustrative programs broadcast in response to those problems, needs and interests indicating the title of the program or program series, its source, type, a brief description thereof, time broadcast and duration. Such programs do not include news inserts of breaking events (the daily or ordinary news coverage of breaking newsworthy events). However, public service announcements may be used to respond to the listed ten significant problems. Their use, however, should not be a broadcaster's primary method for responding to these needs.

4. In the *Primer on Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants*, paragraph 48 is revised to read as follows:

Problems-Programs List

48. All non-exempt¹³ licensees, radio and television alike, are required to deposit yearly in their public files a list of up to 10 significant problems and needs existing in their service area during the preceding 12 months, and a related list of illustrative programming presented during that period to treat those problems and needs. This list should demonstrate the link between each specific problem and the illustrative program meeting it. Public service announcements may be used to respond to the listed 10 significant problems and needs. They may not, however, be a broadcaster's primary method for responding to such needs. Placement in the station file should occur on the anniversary date of the filing of the renewal application, and, upon sending of that application to the Commission, all such annual problems-programs lists from the term about to expire should be transmitted with it. The requirement also applies to ascertainments in support of applications other than renewal in which cases the lists of problems would be derived from the six-month pre-filing surveys and the programs should be prospective offerings over the initial term of the license.

¹³ Exempt licensees include those offering wholly instructional programming and those operating under Class D, 10-watt authorizations. See paras. 49 and 50 *infra*.

Interference, Cochannel
Rules, Waiver of, Denied
Transmitter, Site Location

Request for waiver of rules to increase power and to move transmitter of FM station denied. Proposed change would create prohibited interference.

FCC 80-552

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re Application of

BOARD OF EDUCATION OF THE CITY OF
ATLANTA (WABE-FM) Atlanta, Georgia

File No. ARN-
790625AD

Has: 90.1 MHz, Channel 211C
30 kW (H&V), 410 feet

Req: 90.1 MHz, Channel 211C
100 kW (H&V), 955 feet

For Construction Permit for A Modification
of Facilities

MEMORANDUM OPINION AND ORDER

(Adopted: September 25, 1980; Released: October 21, 1980)

BY THE COMMISSION: COMMISSIONER QUELLO CONCURRING IN THE
RESULT.

1. The Commission has under consideration the above-captioned application and a request for waiver of Section 73.509(a)¹ of the Commission's Rules submitted by the Board of Education of the City of Atlanta (WABE or applicant).

2. WABE is a non-commercial educational FM station which, from its present transmitting location, reaches approximately 1,461,000 persons in Atlanta. WABE has applied for a change in its transmitter site, and for an increase in its power from 30 kW to 100 kW. WABE calculates that it will be able to reach an additional 181,000 persons if the Commission grants its application and waiver request. At present,

¹ Section 73.509(a) prohibits interference received within the 1 mV/m contour except in the case of Class D stations.

WABE receives a negligible amount of interference within its service area, from co-channel WEPR-FM, Greenville, South Carolina.²

3. At its proposed transmitting location, WABE will receive interference from WEPR in 2.2% of its proposed 60 dBu contour. The area affected has a population of 8630 persons, which represents 0.5% of the total population within WABE's proposed service area.³ The applicant will also receive interference from a third adjacent channel application in Cumming, Georgia. The area that would receive interference is less than one square mile, located within the confines of Sawnee Mountain and having essentially no population.⁴

4. In support of its waiver request, WABE contends that a grant would be in the public interest for the following reasons: (i) the area and population involved are small; (ii) the proposal is the most technically feasible way for WABE to obtain an improvement in facilities; and (iii) WABE is a minority-controlled station serving a large minority population.

5. It is well established that the Commission may promulgate general rules outlining certain of its policies. See, *United States v. Storer Broadcasting Co.*, 351 U.S. 192 (1956). Presumptions of regularity apply when the Commission acts in reliance on an established and tested agency rule. Thus, an applicant for waiver faces a high hurdle, *WAIT v. FCC*, 418 F. 2d 1153 (D.C. Cir. 1969).

6. The Commission has regularly denied waivers of Section 73.509 if the interference received has been greater than 1% of the 1 mV/m area.⁵ The only exception is when interference is over salt water or uninhabitable terrain not amenable to future development. These types of areas have been traditionally excluded from the computation of interference areas. In support of its request, WABE relies on *Board of Trustees, Leland Stanford Jr. University, supra*, a case which falls squarely within the aforementioned exception. In *Leland Stanford*, the Commission waived interference received over 3.6% of the 1 mV/m area, affecting a population of less than 0.25% of the service area. The Commission granted the waiver only because most of the interference area consisted of rugged mountainous terrain. In the sections where

² WABE's present 60 dBu contour overlaps with WEPR's 40 dbu contour within an area of less than 2 square miles.

³ The figure of 8630 persons is based on the 1970 census.

⁴ In the past, the Commission has waived interference which affected a negligible portion of an area within a station's primary service contour. The Commission has also waived interference received when the interference area consists of mountainous terrain, is over salt water, or is not amenable to future development. See, e.g., *State University of New York*, 56 FCC 2d 433, 35 RR 2d 600 (1975); *Teche Broadcasting Corporation*, FCC 74-468, released May 1, 1974, 30 RR 2d 201 (1974); *Board of Trustees, Leland Stanford Jr. University*, 67 FCC 2d 431, 42 RR 2d 183 (1978). The slight amount of interference received from the Cumming, Georgia application would be the type allowed under the precedents referred to above.

⁵ See, e.g., *New York, New York (WFUV)*, 7 FCC 2d 553 (1967); *Allendale, N.J. (WFMU)*, 6 FCC 2d 627 (1967); *Richmond, California*, 37 FCC 2d 403 (1972).

the slope was not so steep as to preclude development altogether, restrictive zoning prevented any substantial increase in the population. In the present case, the affected area is currently inhabited by 8630 people and amenable to future development. Also, the percentage of the service area's population that would be affected by the applicants proposal is far greater than that affected in *Leland Stanford*.⁶ As a result, the rationale employed by the Commission in *Leland Stanford* is inapplicable to WABE's proposal and cannot be used to justify the excessive amount of interference received.

7. WABE asserts that the benefit of increase in coverage outweighs the detriment of the interference received. However, increased coverage alone is insufficient to warrant a waiver of the rule. Power increase proposals which increase overlap received are, with rare exceptions, accompanied by increased coverage. However, when faced with a choice between increased coverage with increased interference received on one hand, and lesser but adequate coverage without prohibited interference on the other, the Commission favors the latter. *Musicast of the South, Inc.*, 45 RR 2d 1213 (Broadcast Bur. 1979); *The Mountaineer Corporation*, 70 FCC 2d 678, 44 RR 2d 1456 (1979).⁷ The Commission has also denied waiver of its overlap rules when the community of license is adequately served and the gain area receives other service. *KAFY, Inc.*, 15 FCC 2d 704, 14 RR 2d 1167 (1968); *WCSV, Inc.*, 46 FCC 2d 159, 29 RR 2d 1409 (1974). Currently, WABE's 3.16 mV/m contour encompasses the city of license. Thus, coverage is adequate. Further, the applicant has made no showing that the proposed gain area is without service. Accordingly, a waiver of interference received in order to increase WABE's coverage area is unwarranted.

8. WABE argues that its proposal is the most reasonable technically. The applicant states that any greater suppression of the signal through use of a directional antenna would require a waiver of Section 73.316(c).⁸ This argument is without merit. WABE could increase its power by less than the proposed 70 kW, reach additional listeners and not receive prohibited interference or require a waiver of Commission rules.

9. In further support of its request, WABE argues that it is minority-owned, serves a large minority population, and has a record of providing minority programming.⁹ The Commission has held that "requests for waivers based on minority ownership, management

⁶ The area affected in *Leland Stanford* was 0.25% of the total population within its service area.

⁷ The only exception is when the coverage is inadequate. See e.g., *Greater Media, Inc.*, 59 FCC 2d 796, 37 RR 2d 630 (1976); *Taft Broadcasting Co.*, 2 FCC 2d 584, 6 RR 2d 828 (1966).

⁸ Section 73.316(c) defines the uses for directional antennas.

⁹ The Atlanta Board of Education, licensee of WABE-FM, currently has nine members, five of whom are black (including the President). In addition, the Superintendent of

and/or programming would be given a 'hard look', and emphasized that the following variables would be considered in evaluating these waiver requests on a case by case basis: (i) the nature and extent of minority participation in the applicant's ownership and/or management structures; (ii) the nature of the proposed programming; (iii) the apparent need for such programming in the particular community; and (iv) the applicant's record of service to minorities." *Riverside Amusement Park Co. Inc.*, 69 FCC 2d 1040, 1045, 44 RR 2d 423, 428 (1978).¹⁰ In support of its position WABE cites several cases, in the commercial area, which it believes show that a grant of the requested waiver would be consistent with commission precedent.¹¹ The Commission has never before had the opportunity to address the issue of whether a governmental body operating an educational station should be considered in the same light as a minority enterprise.¹² The school board is a representative body whose members are elected or appointed for a specific term. Although the Board has a perpetual existence its individual membership changes. In fact, the current members of the Board will hold their positions only until December 31, 1980. At that time, the minority composition of the Board may change. Regardless of the minority composition of the Board at any point in time, we do not believe that a governmental body should be considered a minority enterprise. To do so would require us to distinguish between one governmental body and another despite the fact that their objectives and policies might well be equally meritorious or, in some instances, identical. In a somewhat analogous situation, the Court of Appeals has permitted the Commission to define a minority leader as one who heads an organized minority group, rather than one who merely holds a traditional position of community prominence, such as an elected official. *Bamford v. FCC*, 535 F. 2d 78 (D.C. Cir. 1976). Thus, at least for ascertainment purposes, we would be inclined to consider minority members of the Board a educational or governmental leaders rather than leaders of a minority group. In conclusion, in determining whether or not a waiver of our engineering rules is justified, we have

Schools is black. According to U.S. Bureau of the Census, County and City Book 1977, Atlanta, the community of license, is 51.5% black.

¹⁰ See also, e.g., *AM Station Assignment Standards* (Docket 20265), 54 FCC 2d 1, 34 RR 2d 603, *recon. granted*, 56 FCC 2d 6, 35 R 2d 151, *clarified*, 59 FCC 2d 9, 35 RR 2d 666 (1975).

¹¹ *Garret Broadcasting Service v. FCC*, 513 F. 2d 1056 (D.C. Cir. 1975); *Por Favor, Inc.* (KUKA), 68 FCC 2d 73, 42 RR 2d 1667 (1978); *Atlass Communications, Inc.* (WUPC), 61 FCC 2d 995, 39 RR 2d 228 (1976); *Riverside Amusement Park Co.*, *supra*.

¹² The Commission has recognized that minority applicants face obstacles in the non-commercial area because of the ownership of most educational stations by state controlled entities. See, *Federal Communication Commission's Minority Ownership Task Force Report* (1978). However, in both the *Task Force Report*, *supra* and the *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979, 42 RR 2d 1689 (1978), the Commission made recommendations and enunciated policy with respect to minority ownership only in the commercial area.

considered the Board as an educational broadcaster rather than as a minority broadcaster.

10. WABE-FM has not provided us with adequate reasons to show how the public interest would be served by waiver of Section 73.509(a) of our Rules. In these circumstances, an evidentiary hearing is not required. *United States v. Storer Broadcasting Co., supra.*

11. Accordingly, IT IS ORDERED, That the WABE-FM petition for waiver IS DENIED and the accompanying application for a major change in the facilities of WABE IS RETURNED.¹³

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO, *Secretary.*

¹³ Nothing contained in this Memorandum Opinion and Order should be interpreted as barring WABE from submitting a new application for a power increase with allowable interference received.