

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Promoting Diversification of Ownership	)	MB Docket No. 07-294
In the Broadcasting Services	)	
	)	
2006 Quadrennial Regulatory Review – Review of	)	MB Docket No. 06-121
the Commission’s Broadcast Ownership Rules and	)	
Other Rules Adopted Pursuant to Section 202 of	)	
the Telecommunications Act of 1996	)	
	)	
2002 Biennial Regulatory Review – Review of the	)	MB Docket No. 02-277
Commission’s Broadcast Ownership Rules and	)	
Other Rules Adopted Pursuant to Section 202 of	)	
the Telecommunications Act of 1996	)	
	)	
Cross-Ownership of Broadcast Stations and	)	MB Docket No. 01-235
Newspapers	)	
	)	
Rules and Policies Concerning Multiple Ownership	)	MB Docket No. 01-317
of Radio Broadcast Stations in Local Markets	)	
	)	
Definition of Radio Markets	)	MB Docket No. 00-244
	)	
Ways to Further Section 257 Mandate and To Build	)	MB Docket No. 04-228
on Earlier Studies	)	

To: Marlene H. Dortch, Secretary

For transmission to: The Commission

**MOTION FOR STAY**

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November 16, 2009

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## SUMMARY

Fletcher, Heald & Hildreth, P.L.C. moves the Commission to stay, or otherwise hold in abeyance, its December 15, 2009 deadline for the filing of biennial ownership reports including FRNs from all attributable interest holders. Compliance with that deadline will involve the disclosure of personally identifiable information, including social security numbers, from thousands of individuals, raising serious privacy concerns. The required disclosure of FRNs was inappropriately adopted not through notice and comment rulemaking, as mandated by the Administrative Procedure Act, but through an unexpected revision to the Form 323 made by the Media Bureau without prior notice to or opportunity to comment from the public. The Commission has not explained, much less requested comment on, its rationale for imposing this requirement. Indeed, the public learned of this revision only after the submission to the Office of Management and Budget of a revised Form incorporating the requirement. The Commission has also not yet provided any details regarding the security of the systems it will use to collect this highly sensitive information from members of public, including the measures it will use to ensure that this information is used appropriately, kept private, and disposed of properly. Accordingly, the Commission should stay or hold in abeyance the requirement that licensees file ownership reports including the FRNs of every attributable interest holder until such time as it has completed the administrative procedures required by the Administrative Procedure Act and those necessary to ensure that the privacy of the requested information would be ensured.

1. Fletcher, Heald & Hildreth, P.L.C., on behalf of various broadcast clients and pursuant to Section 1.44(e) of the Commission's rules, hereby moves the Commission to stay, or otherwise hold in abeyance, its December 15, 2009 deadline for the filing of biennial ownership reports which include FCC Registration Numbers ("FRNs") from all attributable interest holders. The filing of such reports, using the revised Form 323 prepared on delegated authority by the Media Bureau, would require the unnecessary disclosure of private information by thousands of individuals. Disclosure of this information raises extremely serious privacy concerns, and has not been justified as serving any legitimate public interest benefit. And even if some legitimate justification could, *arugendo*, be shown to exist, the Commission in any event failed to comply with steps, mandated by the Administrative Procedure Act, necessary to impose such new obligations on regulatees. Moreover, the Commission has not yet completed the administrative procedures required to ensure the privacy of such information.

2. The required disclosure of such information should be stayed until such time as the Commission takes adequate steps, consistent with its statutory obligations, to: (a) provide notice and opportunity for comment relative to any obligation to provide FRN's for any and all individuals holding any form of attributable interest, and (b) adopt and release documentation of its privacy policies for the collection of private information that such obligation would entail.

#### **BACKGROUND**

3. For decades the Commission has required licensees of full-power broadcast stations to file periodic reports disclosing their ownership structures and identifying their attributable interest holders. Entities holding attributable interests in those licensees have also been required to file their own, separate, ownership reports. In filing those reports, only the licensee itself has ever been required to obtain and provide an FRN.

4. Since 2001, the Commission has also required individuals “doing business” with the Commission to obtain a “unique” identifying number, known as the FRN.<sup>1</sup> This number may be obtained online using the “Commission Registration System” (“CORES”). To obtain an FRN, a user must submit its Taxpayer Identification Number or Social Security Number and other personally identifiable information. Under the Commission’s System of Records Notice (“SORN”) for the CORES system, FRNs have only been required for entities or individuals “who incur application or regulatory fee obligations,” but have not been required for other entities or individuals who merely hold attributable interests in broadcast licensees.<sup>2</sup>

5. In March, 2008, the Commission, as part of its rulemaking proceeding regarding diversity of ownership in the broadcast industry, released a *Notice of Proposed Rulemaking* in which it requested comment on, among other things, proposed changes to its ownership reporting requirements for commercial broadcast licensees.<sup>3</sup> In a brief, four paragraph section of the *NPRM*, the Commission requested comment on proposals to require all licensees to file ownership reports on a single date and to require filings from certain entities who had not previously been subject to these reporting requirements.<sup>4</sup> The Commission also requested comment on whether, and how, it should revise the form (FCC Form 323) it uses to collect ownership information. Nowhere in the *NPRM* did the Commission suggest making any revisions to the existing requirements for submission of FRNs by any entities filing ownership

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<sup>1</sup> The FRN is “unique” only in that any given number is issued only once. A single individual or entity, however, may obtain multiple FRNs. A casual search of the Commission’s FRN database reveals that, in fact, many regulatees have obtained multiple FRNs for themselves.

<sup>2</sup> System of Records Notice FCC/OMD-9, *available at* <http://www.fcc.gov/omd/privacyact/documents/records/FCC-OMD-9.doc>.

<sup>3</sup> Promoting Diversification of Ownership in the Broadcasting Services, *Report and Order and Third Further Notice of Proposed Rulemaking* in MB Docket No. 07-294, FCC 07-217, *rel.* Mar. 5, 2008 (the “*NPRM*”).

<sup>4</sup> *Id.* at ¶¶ 93-96.

reports. In response to the *NPRM*, numerous parties submitted comments; none of those comments suggested requiring the submission of FRNs for additional parties filing ownership reports.

6. On May 5, 2009, the Commission released a *Report and Order and Fourth Further Notice of Proposed Rulemaking* in which it adopted a number of the revisions it had proposed in the *NPRM*.<sup>5</sup> In the *R&O*, the Commission revised its rules to, among other things, require the filing of biennial ownership reports by all broadcast licensees on a single date and to expand the universe of licensees required to file reports to include sole proprietorships, partnerships comprised of natural persons, and licensees of low power television stations. The Commission also required each *entity* filing an ownership report to obtain an FRN and to disclose both its own FRN and the FRN of the entity or entities in which it held attributable interests in its report(s).<sup>6</sup> Specifically, the *R&O* stated as follows:

[T]o further improve the ability of researchers and other users of the data to cross-reference information and construct complete ownership structures, we will require each attributable entity above the licensee in the ownership chain to list on Form 323, the FCC Registration Number (FRN) of the entity in which it holds an attributable interest. In other words, each filing entity must identify by FRN the entity below it in the chain. We direct staff to revise Form 323 accordingly.

*R&O* at ¶21 (footnote omitted). The Commission made no reference to individuals who might hold an attributable interest. The Commission declined to provide parties with a copy of any proposed Form 323 for comment; instead, it simply delegated to the Media Bureau the authority to revise the form to reflect the changes adopted in the *R&O*.

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<sup>5</sup> Promoting Diversification of Ownership in the Broadcasting Services, *Report and Order and Fourth Further Notice of Proposed Rulemaking* in MB Docket No. 07-294, FCC 09-33, *rel.* May 5, 2009 (the “*R&O*”).

<sup>6</sup> *R&O* at ¶ 21.

7. The *R&O* was published in the Federal Register on May 27, 2009, thereby establishing June 26 as the deadline for petitions for reconsideration. However, as of June 26, no member of the public had been afforded an opportunity to review the revised Form 323 itself, since the Bureau had not made its proposed revisions public by that date (and, as noted, the Commission itself had failed to publish a copy, either).<sup>7</sup> On June 10, 2009, the Commission did publish a Paperwork Reduction Act (“PRA”) notice indicating that the FCC was in the process of revising the Form 323 and requesting comment on the proposed collection of information.<sup>8</sup> That notice specifically admitted that “the instructions and questions in all sections of the form have been significantly revised.” Nevertheless, no copy of proposed revisions was included in that notice and, indeed, the Commission had not yet submitted any such revisions to the Office of Management and Budget (“OMB”).<sup>9</sup> Despite the complete lack of any opportunity to review the proposed form, two parties did file Petitions for Reconsideration of certain aspects of the *R&O*. Presumably because of the complete lack of such opportunity, neither of those parties made any reference to any dramatic expansion of FRN collection. The National Association of Broadcasters also filed comments in response to the PRA Notice noting that until the revised form was provided by the Commission, it was impossible to provide meaningful comment on any revisions which the Commission might be proposing to the collection requirements.<sup>10</sup>

8. On August 11, 2009 (only one day after comments on the June 10 PRA notice were due to have been filed, and necessarily without consideration of any such comments), a

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<sup>7</sup> Promoting Diversification of Ownership in the Broadcasting Services, 74 Fed. Reg. 25163.

<sup>8</sup> Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, 74 Fed. Reg. 27549.

<sup>9</sup> *Id.* at 27550.

<sup>10</sup> *Comments of the National Association of Broadcasters* in MB Docket No. 07-294, OMB Control No. 3060-0010, submitted Aug. 10, 2009 at 2.

notice in the Federal Register announced that the Media Bureau had submitted its draft revision of Form 323 to the OMB as required by the PRA.<sup>11</sup> While the draft Form 323 was itself *not* published in the Federal Register, a copy was posted on the OMB website on or shortly after August 11. This marked the first time that any member of the public was provided an opportunity to review the revised Form 323, although even then one needed to navigate through several layers of the OMB’s website to do so. The revised form incorporated a number of changes not anticipated by the *R&O*. In particular, the Media Bureau had revised the form to require that every holder of any attributable interest in a broadcast licensee obtain and provide an FRN. As the Commission later admitted, this revision “expand[ed] the class of FRNs to be included.”<sup>12</sup> Since this dramatic expansion of the reporting requirements had not been addressed *in any way* in the *R&O*, or the *NPRM* or any comments leading up to the *R&O*, that expansion cannot be said to be a “logical outgrowth”<sup>13</sup> of the original proposal.

9. Surprisingly, despite the fact that the proposed revision would require the disclosure of social security numbers and other personally identifiable information by possibly thousands of individuals, the Commission’s Federal Register notice claimed that the revision had no Privacy Act impact.<sup>14</sup> In its “Supporting Statement” initially filed with the OMB, the Commission reiterated this plainly incorrect notion, stating that: “this information collection does not affect individuals or households,” and “there is no need for confidentiality with this collection of

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<sup>11</sup> Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested, 74 Fed. Reg. 40188.

<sup>12</sup> Promoting Diversification of Ownership In the Broadcasting Services, *Memorandum Opinion and Order and Fifth Further Notice of Proposed Rulemaking* in MB Docket No. 07-294, FCC 09-92, *rel.* Oct. 16, 2009 (the “*MO&O*”) at n. 20.

<sup>13</sup> *See, e.g., NBMC v. FCC*, 791 F.2d 1016, 1022-23 (D.C. Cir. 1986).

<sup>14</sup> 74 Fed. Reg. at 40188.

information,” and “this information collection does not address any private matters of a sensitive nature.”<sup>15</sup>

10. A number of parties filed comments with OMB objecting to the revised Form 323, pointing out the extraordinary impact of the unanticipated revisions to the form as well as the fact that parties had been given no meaningful opportunity to comment on these revisions before the Commission, as the form had not previously been made available. Moreover, they observed, the *R&O* and related documents had provided no notice of the precise – or even the general – extent or nature of the changes the Media Bureau would make to the form itself.

11. On October 16, 2009, the Commission released the *MO&O*, in which it addressed the Petitions for Reconsideration filed in response to the *R&O* – Petitions that had necessarily been filed *before* parties had been given an opportunity to review the changes to the Form 323. Not surprisingly, therefore, the *MO&O* did not substantively address the Media Bureau’s revision of the Form 323 to require submission of vastly more FRNs than had been required before. The Commission simply acknowledged that the Bureau had incorporated such a change, and acknowledged that this “expand[ed]” the universe of individuals required to submit FRNs from that addressed in the *R&O*.<sup>16</sup> Nowhere in the *MO&O*, however, was any justification or explanation provided for this revision.

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<sup>15</sup> OMB Control No. 3060-0010, FCC’s August 2009 Statement in Support, at A1, A10, A11. The Commission’s Supporting Statement as originally filed in August has since been removed from OMB’s website and replaced with the significantly revised version submitted by the Commission in October, 2009. A copy of the Commission’s August, 2009, Statement, downloaded from the OMB website prior to its removal therefrom, is included as Attachment A hereto for the reader’s convenience.

<sup>16</sup> *MO&O* at n. 20, ¶ 8.

12. On October 30, 2009, the Commission published a notice in the Federal Register announcing that OMB had approved the revised Form 323.<sup>17</sup> In contrast to the notices it had published on June 10 and August 11, the Commission now admitted that the Form, as revised, *would* require the submission of significant amounts of confidential information. The “Synopsis” included in the notice conceded that “this information collection contains personally identifiable information on individuals.”<sup>18</sup> The Commission also noted that it was still in the process of establishing a “System of Records” to cover the “collection, purposes(s), storage, safeguards, and disposal” of this personally identifiable information and would eventually release a SORN providing details on how this system would keep this information secure.<sup>19</sup> That notice has not yet been released.

13. On November 3, 2009, the law firm of Koerner & Olender, P.C. submitted a Petition for Partial Reconsideration of the *MO&O*, requesting that the Commission reconsider its decision to require the submission of FRN information from every individual or entity holding attributable interests in broadcast licensees. The Petition pointed out a number of issues with the Commission’s adoption of this requirement, raising significant questions about the security of the information, the need for the information, and the procedures the Commission followed in adopting the FRN filing requirement. That Petition remains pending. The deadline for additional such petitions remains open until November 30.

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<sup>17</sup> Promoting Diversification of Ownership in Broadcast Services, 74 Fed. Reg. 56135.

<sup>18</sup> *Id.* This post-11th hour admission paralleled a similar retraction included in a “Revised Supporting Statement” filed by the Commission with the OMB on October 16, 2009. While the submission of that “revised” statement was posted by OMB on its own website, the Commission does not itself appear to have taken any steps to alert the public to the fact that its earlier representations concerning privacy considerations had been rendered inoperative. For the reader’s convenience, a copy of the FCC’s “revised” statement, obtained from the OMB website, is included as Attachment B hereto.

<sup>19</sup> *Id.*

14. The Commission has since announced that all broadcast licensees must submit biennial ownership reports – using the newly-revised Form 323 – no later than December 15, 2009. To file those reports, each licensee will be responsible for the submission of an FRN from every entity *and individual* holding an attributable interest in that licensee, including many individuals who have never been required to have an FRN before. Indeed, the Commission’s current SORN for the CORES system notes that registration is required only for individuals “who are doing business with the Commission as defined in 31 U.S.C. 7701(c)(2) *and* who incur application or regulatory fee obligations” – a definition that does not apply to non-licensee attributable interest holders.<sup>20</sup> To register for those FRNs, each of those individuals will need to submit their social security number to the Commission; the FRN itself will then need to be submitted using a system of records for the Form 323 for which the Commission has provided no information whatsoever.

#### DISCUSSION

15. Stay requests require consideration of four (4) separate factors: (a) the likelihood of the movant incurring irreparable harm if the stay is not granted; (b) the harm to other interested parties; (c) the public interest; and (d) the movant’s likelihood of success on the merits.<sup>21</sup> Each of those factors favors a grant of the instant stay request.

16. First, the likelihood of irreparable harm in this case is clear. The Commission’s revised Form 323 will require the electronic submission of personally identifiable information from thousands of individuals. Once disclosed, that information cannot be taken back. It will,

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<sup>20</sup> SORN, FCC/OMD-9.

<sup>21</sup> See *Liberty Productions*, 16 FCC Rcd 18966, 18970 (2001), citing *Washington Metropolitan Area Transit System v. Holiday Tours*, 559 F.2d 841 (D.C. Cir. 1977), *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921 (D.C. Cir. 1958), and *Wisconsin Gas Co. v. FERC*, 758 F.2d 669 (D.C. Cir. 1985).

presumably, be retained in the FCC's databases for some indeterminate period of time. And unless and until the Commission releases a SORN for this system, parties will have no way to know how long this information will be retained, how it will be used, and how it will ultimately be disposed of. If that information were to be obtained by other parties – whether through inadvertence, intentional misappropriation (by, *e.g.*, “hackers”), or otherwise – the individuals who provided that information would be open to identity theft and other serious harms. The importance of keeping such information secure is undeniable.<sup>22</sup> As has been demonstrated numerous times, even the most seemingly secure electronic databases are imperfect, and the frequent result is the release of highly sensitive information. At this time, the Commission has not even published an explanation of the system of records it will use to ensure that this information is protected from misuse or release to the public. Without detailed information regarding the security of the Commission's system of records, it is impossible to judge the likelihood of such release in this case. The harm of such an event, however, would be undeniable and irreparable.

17. Second, with respect to the effect of a stay on any other interested parties, it is safe to say that staying the effectiveness of the requirement that individuals and entities disclose this personal information is unlikely to cause harm to any party. Indeed, the need for the submission of such information at all is highly questionable. The Commission has not provided any substantive justification for the collection of this information, much less any meaningful opportunity for public comment on this requirement. The only statement the Commission has

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<sup>22</sup> The validity of this cautionary admonition has been confirmed by Chairman Genachowski himself, who has noted that “it is critical that all consumers take precautions to protect their privacy and ensure their well-being online.” *FCC and FTC Chairmen Jointly Encourage the Public to Take Safeguards to Protect Themselves, Their Privacy, and Their Personal Information Online*, released October 9, 2009 (available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-293921A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293921A1.pdf)).

made regarding the need for individual FRNs from all attributable interest holders was a single sentence stating that “the [Media] Bureau determined it was necessary...to ensure the usefulness of the data.”<sup>23</sup>

18. Third, for these same reasons, the public interest cannot support requirements, promulgated with only the vaguest justification and no opportunity for public comment, that would compel the release of personally identifiable information by thousands of individuals. The procedures required under the PRA and the Administrative Procedures Act (“APA”) exist to protect the public interest. Failure to follow those procedures, therefore, presumptively *disserves* the public interest.

19. If the first three factors favor a grant of the stay, the moving party needs only to make “a substantial showing” with respect to the likelihood of success on the merits.<sup>24</sup> The facts and circumstances present here easily satisfy that standard.

20. As a preliminary matter, the enormous expansion of FRN-collection which the revised Form 323 entails flatly contravenes the APA, which requires that the agency provide notice and opportunity for comment relative to proposed rule changes.<sup>25</sup> At no time did the Commission ever give any indication that a substantial number of individuals would be having to submit their social security numbers to the Commission in order to obtain their own FRN’s because they would be having to include those FRN’s in the revised Form 323. It may be that this FRN obligation might somehow be justified – although it’s difficult to see how, in view of the fact that the Commission has successfully regulated the broadcast industry for three-quarters of a century without those particular data. But in order to impose that kind of new regulatory

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<sup>23</sup> *MO&O* at n. 20.

<sup>24</sup> *Liberty Productions*, 16 FCC Rcd at 18970.

<sup>25</sup> *See* 5 U.S.C. §553.

burden, the Commission must engage in notice-and-comment proceedings. Here, there has been neither notice nor opportunity for comment: the Commission never even hinted at the universal FRN disclosure requirement until, *mirabile dictu*, the requirement appeared in the draft submitted to the OMB. Nor has the Commission explained, in the context of its own rulemaking processes, precisely why it believes the FRN requirement to be necessary.

21. In various materials submitted to the OMB, the Commission does appear to have essayed some such showing. Those include: (a) its initial August, 2009 “Supporting Statement” – a statement which has been withdrawn *sub silentio*; (b) two letters, dated October 6 and 16, 2009, to an OMB official from the FCC’s Acting Associate Managing Director (“AAMD”); and (c) the October, 2009 “Revised Supporting Statement”. Even if these informal presentations were conclusive statements of Commission rationale – and we know for sure that they are not, since the Commission had no qualms about dumping, summarily, unceremoniously and without any notice at all, its August, 2009 Supporting Statement when it became obvious that that statement was simply wrong – they still fall short of the APA’s requirements.

22. Without conceding that the materials submitted by the Commission to the OMB need be considered here at all, we note that they reflect an odd and inaccurate view of multiple important considerations. For example, in the October 6, 2009, letter to the OMB, the FCC’s AAMD suggested that a reporting obligation imposed by the Commission in 1998-1999 on some, but not all, attributable interest holders in wireless licensees supports the extension of the FRN reporting obligation here. *See* AAMD October 6, 2009 letter to OMB at 6-7. Putting aside the obvious fact that the attribution rules for broadcast are substantially different from those applicable to wireless services, the Commission’s 1998-1999 action – which technically did not involve FRN’s at all (rather, that action mandated disclosure of Taxpayer Identification Numbers) – stopped well short of the universal disclosure requirement the Commission is now

trying impose on broadcasters. For example, the wireless disclosure requirement reached only owners of 10% or more; for broadcasters, the disclosure would reach down to 5% owners. And the wireless disclosure requirement did *not* include “officers and directors that hold no attributable ownership interest and do not otherwise exercise personal control over the licensee”. See *Biennial Regulatory Review*, 14 FCC Rcd 11476, 11488, ¶30 (1999).

23. Further, while the AAMD advised the OMB that the new approach to FRN disclosure is consistent with the Commission’s interpretation of the term “doing business with” as used in the Debt Collection Improvement Act (“DCIA”), the fact is that the Commission itself has defined that term *in its rules* at Section 1.8002, which was codified *after* the 1998-1999 actions relied on by the AAMD. That rule section does not appear to reach as broadly as the AAMD suggests. Nor, for that matter, does the seminal definition of “doing business with” enacted in the DCIA, 31 U.S.C. 7701(c)(2), which definition is incorporated by reference in Section 1.8002 of the Commission’s rules.

24. These are all matters which could, and should, have been made available for comment *before* the Commission attempted to impose its new reporting requirement. Because of the Commission’s failure to do so, that requirement cannot now be imposed.

25. Additionally, the Commission has yet to address privacy concerns which are – or should be, if the Chairman’s admonitions are to be heeded, *see* Note 23, above – paramount.

For the reasons set forth in the pending Petition for Partial Reconsideration and those noted above, it is clear that the Commission has not followed required procedures in adopting the requirement that all individuals holding attributable interests in broadcast licensees disclose their personally identifiable information. It is at least “substantially” likely that, on reconsideration (or judicial review), the FRN disclosure requirement will be abandoned or substantially modified.

## CONCLUSION

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Commission stay, or hold in abeyance, the requirement that licensees of broadcast stations submit ownership reports on December 15, 2009 including FRNs of every attributable interest holder.

Respectfully submitted,

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**Attachment A**

## SUPPORTING STATEMENT

**A. Justification:**

1. Under the revised filing requirements adopted by the Federal Communications Commission on April 8, 2009 (see below), Licensees of commercial AM, FM, and full power television broadcast stations, as well as Licensees of Class A and Low Power Television stations must file revised FCC Form 323 every two years, no later than November 1 of the applicable filing year, and must report information accurate as of October 1 of that year.

Unchanged are the requirements that (1) Licensees and Permittees of commercial AM, FM, or full power television stations must file Form 323 following the consummation of a transfer of control or an assignment of a commercial AM, FM, or full power television station license or construction permit; (2) a Permittee of a new commercial AM, FM or full power television broadcast station must file Form 323 within 30 days after the grant of the construction permit; and (3) a Permittee of a new commercial AM, FM, or full power television broadcast station must file Form 323 to update the initial report or to certify the continuing accuracy and completeness of the previously filed report on the date that the Permittee applies for a license to cover the construction permit.

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate FCC Form 323 must be filed for each entity in the organizational structure that has an attributable interest in the Licensee if the filing is a nonbiennial filing or a reportable interest in the Licensee if the filing is a biennial filing. The terms “attributable interest” and “reportable interest” are defined in the instructions to the Form.

On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the “Diversity Order”) in MB Docket Nos. 07-294; 06-121; 02-277; 04-228, MM Docket Nos. 01-235; 01-317; 00-244; FCC 07-217; 23 FCC Rcd 5922 (2008). The Diversity Order adopts rule changes designed to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

On April 8, 2009, the Commission adopted a *Report and Order and Fourth Further Notice of Proposed Rulemaking* (the “323 Order”) in MB Docket Nos. 07-294, 06-121, 02-277, 01-235, 01-317, 00-244, 04-228; FCC 09-33; 24 FCC Rcd 5896 (2009). The 323 Order directs the Commission to revise Form 323 to improve the quality of the data collected in order to obtain an accurate, reliable, and comprehensive assessment of minority and female broadcast ownership in the United States. Specifically, the Commission changed the biennial reporting requirements on Form 323 so that there is a uniform filing date, broadened the biennial reporting requirements to include commercial broadcast licensees that are sole proprietorships and partnerships comprised of natural persons, and expanded the class of persons and entities that must file to include low power television stations (“LPTV”) licensees, including Class A stations, and provided that the form should be electronically searchable and that there should be edit checks built in. The

## Ownership Report for Commercial Broadcast Station, FCC Form 323

Commission also adopted changes requiring certain non-attributable interests to be reported on biennially-filed Form 323s.

Consistent with actions taken by the Commission in the Diversity Order and 323 Order, the following changes are made to Form 323: The Instructions and questions in all sections of the form have been significantly revised. The instructions to Form 323 have been revised to incorporate a definition of “eligible entity,” which will apply to the Commission’s existing Equity Debt Plus (“EDP”) standard, one of the standards used to determine whether interests in a media entity are attributable. The instructions to Form 323 have also been revised slightly to provide updated citations to the Commission’s applicable rules governing media ownership. The instructions for Section I have been revised to state the Commission’s revised Biennial filing requirements adopted in the 323 Order. Many questions on the form have been reworked or reordered in order to (1) clarify the information sought in the form; (2) simplify completion of the form by giving respondents menu-style or checkbox-style options to select rather than submit a separate narrative exhibit; and (3) make the data collected on the form more adaptable for use in database programs used to prepare economic and policy studies relating to media ownership. The instructions to the Form have been revised to make them clearer and easier to follow by going question-by-question and having each instruction correspond to a relevant question. In addition, portions of the Form that relate only to non-biennial or to biennial filings separately have been placed into separate subsections of the Form. Respondents using the Commission’s electronic filing system will be required to launch only the portions of the form that are applicable depending on the purpose of the filing (i.e, whether it is a biennial filing or a non-biennial filing) and complete only those sections. **These revisions to FCC Form 323 need OMB approval.**

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for this collection of information is contained in Sections 154(i), 303, and 310 of the Communications Act of 1934, as amended.

2. The minority and female ownership data in the revised Form 323, filed biennially, will be used by FCC staff to assess the level of minority and female broadcast ownership in the United States. Form 323 is also used by FCC staff to verify the ownership of broadcast stations and to determine whether the licensee/permittee is complying with the multiple ownership requirements as set down by the Commission’s Rules. The data may also be used to conduct empirical studies to support the Commission’s quadrennial ownership review proceeding.

3. The Commission requires FCC applicants to file FCC Form 323 electronically via the Media Bureau’s Consolidated Database System (CDBS).

4. No other agency imposes a similar information collection on the respondents. There is no similar data available.

**Ownership Report for Commercial Broadcast Station, FCC Form 323**

5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents. This information collection as revised may have an impact on a substantive number of small entities, as described below but the Commission has taken steps to minimize the additional burden.

Specifically, the 323 Order expanded the class of entities that are required to file the Form 323 biennially to include additional classes of commercial licensees previously exempt from filing. Sole proprietorships, partnerships of natural persons, LPTV licensees, and Class A Television licensees must now file biennial ownership reports on Form 323.

The reporting requirement will affect radio and TV stations, including LPTV and Class A stations.

With respect to full-power television stations, the Small Business Administration defines a television broadcasting station that has no more than \$14 million in annual receipts as a small business. According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of February 19, 2009, about 918 (71 percent) of the 1,292 commercial television stations in the United States have revenues of \$14 million or less. Based on staff analysis of the 2002 Census, about 180 (14 percent) of the 1,292 commercial television stations are owned by sole proprietorships or partnerships and would be subject to new reporting requirements. However, these figures take into account all partnerships, and only partnerships comprised of natural persons are subject to new reporting requirements. Therefore, our estimate likely overstates the number of small entities that might be affected. In addition, we note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the filing requirements for FCC Form 323, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

An element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

With respect to radio stations, the Small Business Administration defines a radio broadcasting entity that has \$7 million or less in annual receipts as a small business. According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of February 19, 2009, about 10,600 (96 percent) of 11,050 commercial radio stations in the United States have revenues of \$7 million or less. Based on staff analysis of the 2002

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Census, about 1,440 (13 percent) of the 11,050 commercial radio stations are owned by sole proprietors or partnerships, and would be subject to the new reporting requirements. However, these figures take into account all partnerships, and only partnerships comprised of natural persons are subject to new filing requirements. Therefore, our estimate likely overstates the number of small entities that would be affected. In addition, we note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

The rules and policies adopted herein apply to licensees of Class A TV stations and low power television (“LPTV”) stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$14.0 million in annual receipts. Currently, there are approximately 554 licensed Class A stations and 2,300 licensed LPTV stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA’s definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

The Commission considered and adopted a number of measures designed to minimize the burden on all respondents, including the new classes of broadcast licensees required to file biennially, many of whom may be small entities/businesses. Form 323 has been revised significantly in order to make it simpler, easier to understand, and more user-friendly. First, the instructions to the form have been reworked to provide question-by-question guidance to respondents to provide increased clarity and reduce the need for clarification and advice from outside counsel or Commission staff. Thus, although the Form and instructions appear longer, the additional length relates to the additional instructions intended to make completing the Form easier. Second, the Commission has attempted to simplify the form by adding text boxes, check boxes, and other menu-style options to the form. Currently, respondents filling out Form 323 must prepare and attach to the electronic filing separately-created Word or PDF narrative exhibits that contain the information requested on the

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form. The new text boxes, check boxes, and other menu-style options allow respondents to quickly select and/or enter in the requested information directly into the form itself, which will both improve the quality of the data collected and remove the need for preparation of separate exhibits. Third, portions of the Form that relate only to non-biennial or to biennial filings separately have been placed into separate subsections of the Form. Respondents using the Commission's electronic filing system will only need to launch the portions of the Form that are applicable depending on the purpose of the filing. Finally, the FCC's electronic filing system is designed so that many of the form fields in Section 1 of the form automatically pre-populate with data taken from the respondent's previously submitted electronic account records. For example, data fields for the respondent's name, address, and contact representative information pre-populate from data saved on the system when the respondent set up the initial account on the filing system.

To further alleviate the filing of duplicative information and minimize the burden on respondents, the persons or entities filing Form 323 Reports may, if no changes have occurred in the information previously filed, electronically validate and resubmit a previously filed application. However, because of revised information required to be submitted in response to the revised Form 323, persons or entities filing the revised FCC Form 323 for the first time, due on November 1, 2009, will not have the option to validate and re-submit an earlier, out-of-date version of the Form 323. After the November 1, 2009 Biennial filing date, however, the option to validate and re-submit a previously filed Form 323 will be available.

In addition, the expansion of the filing requirements only affects biennially-filed Form 323 reports. Small businesses/entities that may be affected by the revised requirements of this information collection will only need to file once every two years. The 323 Order changed the time frame in which respondents must file biennial Form 323 reports by eliminating the staggered filing deadlines (which were formerly tied to individual stations' renewal cycles) and replacing them with a single, uniform filing date for all biennial reports.

6. Less frequent reporting could result in violations remaining undetected and become established in a manner contrary to the purpose of the multiple ownership rules. For reports filed on a biennial basis, less frequent reporting would not provide FCC staff enough information to establish trends in minority and female ownership as accurately. The frequency of filing has not been changed. However, we are changing the timing of biennial filing to a uniform date, instead of a staggered filing date tied to licensees' renewal anniversaries, so that a more accurate snapshot of minority and female ownership may be obtained that could then later be used to assess trends. In addition, the data collected on biennially-filed Form 323 Reports are intended to be used by the Commission to prepare economic analyses in conjunction with its statutorily-mandated periodic review of the FCC's media ownership regulations. The Commission requires collection of data on a regular periodic basis in order to track ownership trends over time and gauge the effects of FCC policy on media ownership in the United States. Less frequent reporting would materially degrade the quality of the data collected and would hamper the ability of the Commission to make meaningful evaluations of ownership trends.

7. This collection of information is consistent with the guidelines in 5 CFR 1320.5(d)(2).

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8. The Commission published a Notice (74 FR 27549) in the Federal Register on June 10, 2009 seeking public comments for the information collection requirements contained in this supporting statement. The Commission received two comments on the Commission's collection of data on Form 323 in response to the PRA notice of the 323 Order. Joseph A. Belisle argues that collection of race, gender and ethnicity data from broadcasters will do "absolutely nothing to foster diversity in broadcasting" and that "enhanced broadcast ownership reporting" is not sufficient to "address economic inequality and [] lack of opportunity disadvantaged groups face every day." The Commission disagrees with Mr. Belisle's assessment of the purpose, utility, and necessity of the collected information. Indeed, Mr. Belisle's comment essentially constitutes an untimely petition for reconsideration of the underlying 323 Order, disagreeing with the Commission's policies and methods with respect to promoting diversity, rather than an assessment of the specific information collection at issue here. In its separate comment, the National Association of Broadcasters argues that without being able to examine a draft Form 323 or additional description of the changes, it is unable to "realistically assess" the burdens of the new information collection. NAB argues that it needs to review a draft Form in order to comment on "the accuracy of the Commission's burden estimate, ways to enhance the quality, utility, and clarity of the information collected, or ways to minimize the collection burden." NAB also incorporates by reference its June 26, 2009 Petition for Reconsideration of the 323 Order, which asks the Commission to reconsider its decision to require sole proprietors and certain non-attributable entities to file biennially. NAB notes in its proposals that "ownership data for sole proprietors be obtained from existing records because it does not change over time; and...if the Commission does not reconsider its decision to require ownership reporting by certain nonattributable investors, such reporting should be limited to race, gender, and ownership percentage of the nonattributable investors, rather than full reporting of the names, addresses, familial relationships, and unrelated media holdings of these investors." The Commission will address NAB's Petition for Reconsideration separately.

In response to NAB's comments, the Commission notes that it is submitting the Form 323 to OMB, and parties will have an opportunity to access the Form on OMB's website. On August 11, 2009, the Commission published in the Federal Register a notice that provides parties with an additional 30 days to submit comments once the form is submitted to OMB. In addition, in the 323 Order, the Commission described the basic substantive changes to the Form that it adopted and that are incorporated in the Form being submitted to OMB. The 323 Order states that the Commission expanded the scope of parties subject to the biennial ownership report filing requirement to low power television and Class A stations, as well as to sole proprietors and partnerships composed of natural persons. The Commission also stated that the revised biennial form would obtain information on certain non-attributable interest holders (minority voting shareholders in a corporation with a single majority shareholder and interests that would be attributable but for a new exemption pertinent to investments in eligible entities). The Commission stated that all filers subject to the revised biennial ownership report filing requirement are required to submit the revised Form 323 no later than November 1, 2009, with information current as of October 1, 2009, in order to provide a snapshot comparison. The Commission also explained that it would modify the Form to make it electronically searchable by adding additional checkbox and menu-type questions, and eliminated the ability to file

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ownership information in attachments that could not be incorporated in a database. The Commission explained that it retained the practice of having entities with ownership interests in a licensee file separately. It also explained that the Commission will require entities with attributable interests in licensees to list the FRNs of interest holders below them in the chain of ownership. It explained that each filing entity must identify by FRN the entity below it in the chain.

With respect to NAB's objection to the Commission's inclusion of sole proprietors in the biennial filing requirement, the Commission explained that it expanded the scope of parties that are required to file the ownership report biennially in order to accurately assess the state of minority and female ownership in this country and not overlook a substantial reservoir of minority and female owners of broadcast facilities. NAB's concerns are addressed. Although all filers will be required to file the revised form initially so that the Commission will obtain minority and female ownership information from all filers from the first report, with all information current as of the same date, thereafter, if the information does not change, filers will be able to call up the previously filed form and recertify the information. They will not be required to file a new report.

With respect to NAB's concern about the reporting of certain non-attributable interests, the Commission stated that "in order to measure the extent of minority and female ownership of broadcast outlets and assess the need for and effectiveness of any policies designed to promote minority and female ownership of broadcast outlets, it is important to obtain information on holders of certain nonattributable interests as well as on holders of attributable interests." Obtaining this information will make the data more complete and comprehensive. With respect to minority interest holders in a single majority shareholder corporation, it could help determine whether nonattributable interests could be a source of attributable interest holders in the future. With respect to EDP investors, the Commission's attribution exemption is not based on a finding that these investors are unable to exert significant influence in the licensee but rather on a policy decision that relaxing the rule is necessary to facilitate access to capital by eligible entities, including minority- and female-owned businesses. Thus including these interests is necessary to ensure that the information collection is comprehensive. As noted above, the Commission will separately address the substance of NAB's Petition for Reconsideration of the 323 Order.

In 1998, the Commission began collecting data on minority and female broadcast ownership to fulfill the Commission's statutory mandate under Section 257 of the Telecommunications Act of 1996 ("1996 Act") and Section 309(j) of the Communications Act of 1934 to promote opportunities for small businesses and businesses owned by women and minorities in the broadcasting industry. *See* 47 U.S.C. §§ 257, 309(j). At that time, the Commission revised Form 323 to require filers to identify the gender and race or ethnicity of individuals with attributable interests in the licensee. The Commission concluded that the information was necessary to determine accurately the current state of minority and female ownership of broadcast facilities, to determine the need for measures designed to promote ownership by minorities and women, and to chart the success of any such measures that the Commission might adopt.

## Ownership Report for Commercial Broadcast Station, FCC Form 323

In addition, Section 202(h) of the 1996 Act requires the Commission to review its ownership rules (except the national television ownership limit) every four years and “determine whether any of such rules are necessary in the public interest as the result of competition.” *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-112, and Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) (codified at 47 U.S.C. § 303 note (2006)). Under Section 202(h), the Commission “shall repeal or modify any regulation it determines to be no longer in the public interest,” 1996 Act, 110 Stat. at 111-12. Accordingly, the Commission conducts a quadrennial review of its media ownership regulations. The quadrennial review process includes review from Commission staff of the existing regulations and also invites comment from members of the public to provide feedback, criticism and data about the effect of the Commission’s ownership rules. Vital to the Commission’s process is its review of studies prepared by economists, academics, and researchers, who provide the Commission with crucial information about the state of media ownership, trends in ownership, and potential effects of existing regulations and proposed regulations on the media marketplace. Some studies are commissioned by the FCC specifically, while others are submitted to the FCC by members of the public who choose to participate in the quadrennial review process.

The purpose of this information collection is to obtain the comprehensive data about broadcast ownership interests that the Commission (and members of the public) require in order to evaluate the effect of the current media ownership rules and the effectiveness of the Commission’s efforts to promote ownership by minorities and women. The data are used to prepare these economic and academic studies that the Commission relies upon in order to make informed judgments about its policies. During the most recent quadrennial review proceeding (begun in 2006 and completed in December 2007), the Commission received feedback from a number of parties and researchers, both governmental and private, who concluded that the current Form 323 is inadequate. Specifically, these commenters noted that the data collected is difficult to use and subject to significant error. In addition, in March 2008 the General Accounting Office released a report recommending that the Commission identify processes and procedures to improve the reliability of its data on gender, race and ethnicity so that it can more effectively monitor and report on the status of female and minority broadcast ownership. The proposed changes to Form 323 are designed to fulfill the recommendations of the GAO and commenting parties who have requested that the Commission improve the quality and reliability of the data collected. The collection is necessary, practical, and not duplicated elsewhere.

9. No payment or gift was provided to the respondent.
10. There is no need for confidentiality with this collection of information.
11. This information collection does not address any private matters of a sensitive nature.
12. The following estimates are provided for annual public burden:

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Service	No. of Reports	Respondent's Burden	Annual Burden Hours	Hourly In-House Cost	Annual In-House Cost
Biennial Reports/Certifications <sup>1</sup>	7,500	2.5 hours	18,750 hours	\$48.08	\$901,500
All Other Reports	1,750	1.5 hours	2,625 hours	\$48.08	\$126,210
<b>TOTALS:</b>	<b>9,250 (Responses)</b>		<b>21,375 hrs. (Burden Hours)</b>		<b>\$1,027,710 (In-house cost)</b>

**Total Number of Annual Respondents/Responses: 9,250 respondents and 9,250 responses**

**Total Annual Burden Hours: 21,375 hours**

We assume that the respondent would consult with its attorney to complete and file the FCC Form 323 or certification of no change. We estimate that these respondents would have an average salary of \$100,000 (\$48.08/hour).

**Total Annual "In-house" Cost: \$1,027,710**

These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

13. **ANNUAL COST BURDEN:** We assume that the respondent would use an attorney to complete and file the FCC Form 323. We estimate that this attorney would have an average salary of \$200/hour. In addition, licensees must submit a fee (\$55/report) for each biennial ownership report. There is no fee for other reports.

7,500 biennial reports / certifications x 8 hours x \$200/hour	=	\$12,000,000
1,750 other reports x 7 hours x \$200/hour	=	\$ 2,450,000
4,000 <sup>2</sup> biennial reports/certifications x \$55	=	\$ 220,000
<b>Total Annual Cost Burden</b>	<b>=</b>	<b>\$14,670,000</b>

14. **Cost to the Federal Government:** The Commission will use paraprofessional staff at the GS-11/Step 5 level (\$33.12/hour) to process the FCC Form 323 and all other certifications.

<sup>1</sup> Although the biennial reports and certifications are filed every two years, the Commission calculated the 7,500 responses based on an annual basis since OMB requires an annual calculation of filings and burden hours.

<sup>2</sup> Of the approximately 7,500 Biennial Reports, only approximately 4,000 are filed by licensees subject to the Commission's filing fees. The remaining reports are filed by non-licensee entities that hold broadcast ownership interests or by licensees that are exempt from FCC filing fees.

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7,500 biennial reports / certifications x 2 hours x \$33.12/hour =	\$ 496,800
1,750 other reports x 2 hours x \$33.12/hour	= \$ 115,920
<b>Total Cost to the Federal Government</b>	<b>= \$ 612,720</b>

15. The Commission has program changes to the annual burden hours of +18,625 hours and +\$12,503,200 to the total cost burden which are due to revisions to FCC Form 323. These revisions are a result of the Commission adopting the Diversity Order, FCC 07-217 and the 323 Order, FCC 09-33.

Therefore, the instructions and questions in all sections of FCC Form 323 have been significantly revised. The instructions to Form 323 have been revised to incorporate a definition of “eligible entity,” which will apply to the Commission’s existing Equity Debt Plus (“EDP”) standard, one of the standards used to determine whether interests are attributable. The instructions to Form 323 have also been revised slightly to provide updated citations to the Commission’s applicable rules governing media ownership. The instructions for Section I have been revised to state the Commission’s revised Biennial filing requirements adopted in the 323 Order. Many questions on the form have been reworked or reordered in order to (1) clarify the information sought in the form; (2) simplify completion of the form by giving respondents menu-style or checkbox-style options to select rather than submit a separate narrative exhibit; and (3) make the data collected on the form more adaptable for use in database programs used to prepare economic and policy studies relating to media ownership.

16. The data will not be published. However, the data collected by the Commission on Form 323 may be used in future economic studies and other analyses conducted by the Commission for the purposes of analyzing trends in media ownership, and those studies may be published. In addition, the data collected on Form 323 will be available to members of the public via the search functions of the Commission’s electronic filing systems for Form 323 and other FCC forms. We anticipate that outside economists, academics, and members of the public may use the data in future economic or other academic studies relating to media ownership issues, and that those studies may be published or made publicly available by their respective authors.

17. An extension of the waiver not to publish the expiration date on the form is requested. This will obviate the need for the Commission to update electronic files upon the expiration of the collection. OMB approval of the expiration date of the information collection will be displayed at 47 C.F.R. Section 0.408.

18. There are no exceptions to the Certification Statement.

**B. Collections of Information Employing Statistical Methods**

No statistical methods are employed.

**Attachment B**

**REVISED SUPPORTING STATEMENT****A. Justification:**

1. Under the revised filing requirements adopted by the Federal Communications Commission on April 8, 2009 (see below), Licensees of commercial AM, FM, and full power television broadcast stations, as well as Licensees of Class A and Low Power Television stations must file revised FCC Form 323 every two years. The initial filing deadline shall be set by Public Notice issued by the Media Bureau. Thereafter, the Form shall be filed biennially by November 1, 2011, and every two years thereafter. Ownership Reports shall provide information accurate as of October 1 of the year in which the Report is filed, except that the Form filed by the initial filing date shall provide the information as of November 1, 2009.

Unchanged are the requirements that (1) Licensees and Permittees of commercial AM, FM, or full power television stations must file Form 323 following the consummation of a transfer of control or an assignment of a commercial AM, FM, or full power television station license or construction permit; (2) a Permittee of a new commercial AM, FM or full power television broadcast station must file Form 323 within 30 days after the grant of the construction permit; and (3) a Permittee of a new commercial AM, FM, or full power television broadcast station must file Form 323 to update the initial report or to certify the continuing accuracy and completeness of the previously filed report on the date that the Permittee applies for a license to cover the construction permit.

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate FCC Form 323 must be filed for each entity in the organizational structure that has an attributable interest in the Licensee if the filing is a nonbiennial filing or a reportable interest in the Licensee if the filing is a biennial filing. The terms “attributable interest” and “reportable interest” are defined in the instructions to the Form.

On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the “Diversity Order”) in MB Docket Nos. 07-294; 06-121; 02-277; 04-228, MM Docket Nos. 01-235; 01-317; 00-244; FCC 07-217; 23 FCC Rcd 5922 (2008). The Diversity Order adopts rule changes designed to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

On April 8, 2009, the Commission adopted a *Report and Order and Fourth Further Notice of Proposed Rulemaking* (the “323 Order”) in MB Docket Nos. 07-294, 06-121, 02-277, 01-235, 01-317, 00-244, 04-228; FCC 09-33; 24 FCC Rcd 5896 (2009). The 323 Order directs the Commission to revise Form 323 to improve the quality of the data collected in order to obtain an accurate, reliable, and comprehensive assessment of minority and female broadcast ownership in the United States. Specifically, the Commission changed the biennial reporting requirements on Form 323 so that there is a uniform filing date, broadened the biennial reporting requirements to include commercial broadcast licensees that are sole proprietorships and partnerships comprised

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of natural persons, and expanded the class of persons and entities that must file to include low power television stations (“LPTV”) licensees, including Class A stations, and provided that the form should be electronically searchable and that there should be edit checks built in. The Commission also adopted changes requiring certain non-attributable interests to be reported on biennially-filed Form 323s.

On October 16, 2009, the Commission adopted a Reconsideration Order in response to a Petition for Reconsideration filed by the National Association of Broadcasters.<sup>1</sup> The Reconsideration Order eliminates the requirement that certain non-attributable interests (voting stock interests that would be attributable but for the operation of the single majority shareholder attribution exemption and equity and/or debt interests that would be attributable but for the exemption for certain investments in eligible entities) be reported on biennially-filed Form 323s. The Commission agreed that it was advisable to invite additional comment from the public on requiring reporting of these nonattributable interests and issued a Fifth Further Notice of Proposed Rulemaking inviting such further comment. The Fifth Further Notice requests comment on the Commission’s proposal to require reporting of these nonattributable interests and asks whether imposing the requirement would discourage potential investment in the broadcasting industry or otherwise impose burdens that outweigh the benefits of collecting the information.

Consistent with actions taken by the Commission in the Diversity Order and 323 Order, the following changes are made to Form 323: The Instructions and questions in all sections of the form have been significantly revised. The instructions to Form 323 have been revised to incorporate a definition of “eligible entity,” which will apply to the Commission’s existing Equity Debt Plus (“EDP”) standard, one of the standards used to determine whether interests in a media entity are attributable. The instructions to Form 323 have also been revised slightly to provide updated citations to the Commission’s applicable rules governing media ownership. The instructions for Section I have been revised to state the Commission’s revised Biennial filing requirements adopted in the 323 Order. Many questions on the form have been reworked or reordered in order to (1) clarify the information sought in the form; (2) simplify completion of the form by giving respondents menu-style or checkbox-style options to select rather than submit a separate narrative exhibit; and (3) make the data collected on the form more adaptable for use in database programs used to prepare economic and policy studies relating to media ownership. The instructions to the Form have been revised to make them clearer and easier to follow by going question-by-question and having each instruction correspond to a relevant question. In addition, portions of the Form that relate only to non-biennial or to biennial filings separately have been placed into separate subsections of the Form. Respondents using the Commission’s electronic filing system will be required to launch only the portions of the form that are applicable depending on the purpose of the filing (i.e., whether it is a biennial filing or a non-biennial filing) and complete only those sections.

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<sup>1</sup> *In re Promoting Diversification of Ownership in the Broadcasting Services*, Memorandum Opinion and Order and Fifth Further Notice of Proposed Rulemaking in MB Docket Nos. 07-294, 06-121, 02-277, 01-235, 01-317, 00-244, 04-228; FCC 09-33, DA 09-92 (Rel. Oct. 16, 2009).

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In addition, since the Commission's original submission of a revised draft Form 323 to OMB on August 11, 2009, and commensurate with the changes adopted in the Reconsideration Order, the Commission has eliminated from the August 11, 2009 draft version of the form and instructions the obligation to report certain non-attributable ownership interests on Form 323. An amended version of Form 323 has been submitted along with this Revised Supporting Statement. **The Commission's proposed revisions to FCC Form 323, as revised, need OMB approval.** Along with this Revised Supporting Statement, the Commission is simultaneously submitting a revised draft Form 323 that eliminates the requirement to report the non-attributable interests described in further detail below.

This information collection contains personally identifiable information on individuals ("PII").

(a) The FCC is in the process of publishing a system of records notice (SORN), FCC/MB-1, "Ownership Report for Commercial Broadcast Stations," to cover the collection, purposes(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323.

(b) The FCC will publish the SORN in the Federal Register.

(c) Going forward, if the FCC makes substantive changes to Form 323 after its SORN is published, the Commission will conduct a full Privacy Impact Assessment of FCC/MB-1 SORN, publish a Notice in the Federal Register, and post both documents on the FCC webpage, as required by OMB Memorandum, M-03-22 (September 22, 2003).

Statutory authority for this collection of information is contained in Sections 154(i), 303, and 310 of the Communications Act of 1934, as amended.

2. The minority and female ownership data in the revised Form 323, filed biennially, will be used by FCC staff to assess the level of minority and female broadcast ownership in the United States. Form 323 is also used by FCC staff to verify the ownership of broadcast stations and to determine whether the licensee/permittee is complying with the multiple ownership requirements as set down by the Commission's Rules. The data may also be used to conduct empirical studies to support the Commission's quadrennial ownership review proceeding.

3. The Commission requires FCC applicants to file FCC Form 323 electronically via the Media Bureau's Consolidated Database System (CDBS).

4. No other agency imposes a similar information collection on the respondents. There is no similar data available.

5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents. This information collection as revised may have an impact on a substantive number of small entities, as described below but the Commission has taken steps to minimize the additional burden.

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Specifically, the 323 Order expanded the class of entities that are required to file the Form 323 biennially to include additional classes of commercial licensees previously exempt from filing. Sole proprietorships, partnerships of natural persons, LPTV licensees, and Class A Television licensees must now file biennial ownership reports on Form 323.

The reporting requirement will affect radio and TV stations, including LPTV and Class A stations.

With respect to full-power television stations, the Small Business Administration defines a television broadcasting station that has no more than \$14 million in annual receipts as a small business. According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of August 14, 2009, 923 (72 percent) of the 1,289 commercial television stations in the United States have revenues of \$14 million or less.<sup>2</sup> Based on staff analysis of the 2002 Census, about 180 (14 percent) of the 1,292 commercial television stations are owned by sole proprietorships or partnerships and would be subject to new reporting requirements. However, these figures take into account all partnerships, and only partnerships comprised of natural persons are subject to new reporting requirements. Therefore, our estimate likely overstates the number of small entities that might be affected. In addition, we note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the filing requirements for FCC Form 323, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

An element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

With respect to radio stations, the Small Business Administration defines a radio broadcasting entity that has \$7 million or less in annual receipts as a small business. According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of August 14, 2009, about 10,660 (96 percent) of 11,100 commercial radio stations in the United States have revenues of \$7 million or less.<sup>3</sup> Based on staff analysis of the 2002 Census, about 1,440 (13 percent) of the 11,050 commercial radio stations are owned by sole

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<sup>2</sup> The Commission previously reported television industry figures as of February 19, 2009. These figures have been updated in this Revised Supporting Statement.

<sup>3</sup> The Commission previously reported radio industry figures as of February 19, 2009. These figures have been updated in this Revised Supporting Statement.

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proprietors or partnerships, and would be subject to the new reporting requirements. However, these figures take into account all partnerships, and only partnerships comprised of natural persons are subject to new filing requirements. Therefore, our estimate likely overstates the number of small entities that would be affected. In addition, we note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

The rules and policies adopted herein apply to licensees of Class A TV stations and low power television (“LPTV”) stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$14.0 million in annual receipts. As of June 30, 2009, there are approximately 553 licensed Class A stations and 2,386 licensed LPTV stations.<sup>4</sup> Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA’s definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

The Commission considered and adopted a number of measures designed to minimize the burden on all respondents, including the new classes of broadcast licensees required to file biennially, many of whom may be small entities/businesses. Form 323 has been revised significantly in order to make it simpler, easier to understand, and more user-friendly. First, the instructions to the form have been reworked to provide question-by-question guidance to respondents to provide increased clarity and reduce the need for clarification and advice from outside counsel or Commission staff. Thus, although the Form and instructions appear longer, the additional length relates to the additional instructions intended to make completing the Form easier. Second, the Commission has attempted to simplify the form by adding text boxes, check boxes, and other menu-style options to the form.

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<sup>4</sup> The previously filed Supporting Statement indicated 554 Class A stations and 2,300 LPTV stations. The Commission is providing updated figures in this Revised Supporting Statement.

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Currently, respondents filling out Form 323 must prepare and attach to the electronic filing separately-created Word or PDF narrative exhibits that contain the information requested on the form. The new text boxes, check boxes, and other menu-style options allow respondents to quickly select and/or enter in the requested information directly into the form itself, which will both improve the quality of the data collected and remove the need for preparation of separate exhibits. Third, portions of the Form that relate only to non-biennial or to biennial filings separately have been placed into separate subsections of the Form. Respondents using the Commission's electronic filing system will only need to launch the portions of the Form that are applicable depending on the purpose of the filing. Finally, the FCC's electronic filing system is designed so that many of the form fields in Section 1 of the form automatically pre-populate with data taken from the respondent's previously submitted electronic account records. For example, data fields for the respondent's name, address, and contact representative information pre-populate from data saved on the system when the respondent set up the initial account on the filing system.

To further alleviate the filing of duplicative information and minimize the burden on respondents, the persons or entities filing Form 323 Reports may, if no changes have occurred in the information previously filed, electronically validate and resubmit a previously filed application. However, because of revised information required to be submitted in response to the revised Form 323, persons or entities filing the revised FCC Form 323 for the first time will not have the option to validate and re-submit an earlier, out-of-date version of the Form 323. After the initial filing date, however, the option to validate and re-submit a previously filed Form 323 will be available.

In addition, the expansion of the filing requirements only affects biennially-filed Form 323 reports. Small businesses/entities that may be affected by the revised requirements of this information collection will only need to file once every two years. The 323 Order changed the time frame in which respondents must file biennial Form 323 reports by eliminating the staggered filing deadlines (which were formerly tied to individual stations' renewal cycles) and replacing them with a single, uniform filing date for all biennial reports.

6. Less frequent reporting could result in violations remaining undetected and become established in a manner contrary to the purpose of the multiple ownership rules. For reports filed on a biennial basis, less frequent reporting would not provide FCC staff enough information to establish trends in minority and female ownership as accurately. The frequency of filing has not been changed. However, we are changing the timing of biennial filing to a uniform date, instead of a staggered filing date tied to licensees' renewal anniversaries, so that a more accurate snapshot of minority and female ownership may be obtained that could then later be used to assess trends. In addition, the data collected on biennially-filed Form 323 Reports are intended to be used by the Commission to prepare economic analyses in conjunction with its statutorily-mandated periodic review of the FCC's media ownership regulations. The Commission requires collection of data on a regular periodic basis in order to track ownership trends over time and gauge the effects of FCC policy on media ownership in the United States. Less frequent reporting would materially degrade the quality of the data collected and would hamper the ability of the Commission to make meaningful evaluations of ownership trends.

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7. This collection of information is consistent with the guidelines in 5 CFR 1320.5(d)(2).
8. The Commission published a Notice (74 FR 27549) in the Federal Register on June 10, 2009 seeking public comments for the information collection requirements contained in this supporting statement. The Commission received two comments on the Commission's collection of data on Form 323 in response to the PRA notice of the 323 Order. Joseph A. Belisle argues that collection of race, gender and ethnicity data from broadcasters will do "absolutely nothing to foster diversity in broadcasting" and that "enhanced broadcast ownership reporting" is not sufficient to "address economic inequality and [] lack of opportunity disadvantaged groups face every day." The Commission disagrees with Mr. Belisle's assessment of the purpose, utility, and necessity of the collected information. Indeed, Mr. Belisle disagrees with the Commission's policies and methods with respect to promoting diversity, rather than assessing the specific information collection at issue here.<sup>5</sup> In its separate comment, the National Association of Broadcasters argues that without being able to examine a draft Form 323 or additional description of the changes, it is unable to "realistically assess" the burdens of the new information collection. NAB argues that it needs to review a draft Form in order to comment on "the accuracy of the Commission's burden estimate, ways to enhance the quality, utility, and clarity of the information collected, or ways to minimize the collection burden."

NAB also incorporates by reference its June 26, 2009 Petition for Reconsideration of the 323 Order, which asks the Commission to reconsider its decision to require sole proprietors and certain non-attributable entities to file biennially. NAB notes in its proposals that "ownership data for sole proprietors be obtained from existing records because it does not change over time; and...if the Commission does not reconsider its decision to require ownership reporting by certain non-attributable investors, such reporting should be limited to race, gender, and ownership percentage of the non-attributable investors, rather than full reporting of the names, addresses, familial relationships, and unrelated media holdings of these investors." The Commission considered NAB's Petition for Reconsideration separately, and on October 16, 2009, issued a Memorandum Opinion and Order addressing the substance of NAB's Petition. As a result of the Reconsideration Order, the Commission eliminated the requirement for reporting of certain non-attributable ownership interests. The Commission decided that requiring biennial filing by sole proprietors is necessary because excluding sole proprietors from the initial biennial filing requirement would directly undermine core Commission objectives in undertaking to revise the Form, including rendering the data uniform, comparable, reliable and accessible, and ensuring that the data acquired are as accurate as possible. In addition, under NAB's approach none of the ownership data on sole proprietors that would be included in our database immediately following the initial filing date would be submitted in the research-friendly format of the revised form, nor would it pass through the built-in quality control mechanisms in the revised Form, and its submission would not be informed by the significantly improved instructions incorporated in the revised Form.

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<sup>5</sup> The Commission's previous Supporting Statement erroneously described Mr. Belisle's comments as essentially an untimely petition for reconsideration. That error has been corrected in this revised Supporting Statement.

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In response to NAB's comments, the Commission notes that it is submitting the Form 323 to OMB, and parties will have an opportunity to access the Form on OMB's website. On August 11, 2009, the Commission published in the Federal Register a notice that provides parties with an additional 30 days to submit comments once the form is submitted to OMB. In addition, in the 323 Order, the Commission described the basic substantive changes to the Form that it adopted and that are incorporated in the Form being submitted to OMB. The 323 Order states that the Commission expanded the scope of parties subject to the biennial ownership report filing requirement to low power television and Class A stations, as well as to sole proprietors and partnerships composed of natural persons. The Commission also stated that the revised biennial form would obtain information on certain non-attributable interest holders (minority voting shareholders in a corporation with a single majority shareholder and interests that would be attributable but for a new exemption pertinent to investments in eligible entities). The Commission stated that all filers subject to the revised biennial ownership report filing requirement are required to submit the revised Form 323 no later than November 1, 2009, with information current as of October 1, 2009, in order to provide a snapshot comparison.<sup>6</sup> The Commission also explained that it would modify the Form to make it electronically searchable by adding additional checkbox and menu-type questions, and eliminated the ability to file ownership information in attachments that could not be incorporated in a database. The Commission explained that it retained the practice of having entities with ownership interests in a licensee file separately. It also explained that the Commission will require entities with attributable interests in licensees to list the FRNs of interest holders below them in the chain of ownership. It explained that each filing entity must identify by FRN the entity below it in the chain.

With respect to NAB's objection to the Commission's inclusion of sole proprietors in the biennial filing requirement, the Commission explained that it expanded the scope of parties that are required to file the ownership report biennially in order to accurately assess the state of minority and female ownership in this country and not overlook a substantial reservoir of minority and female owners of broadcast facilities. NAB's concerns are addressed. Although all filers will be required to file the revised form initially so that the Commission will obtain minority and female ownership information from all filers from the first report, with all information current as of the same date, thereafter, if the information does not change, filers will be able to call up the previously filed form and recertify the information. They will not be required to file a new report.

With respect to NAB's concern about the reporting of certain non-attributable interests, the Commission stated that "in order to measure the extent of minority and female ownership of broadcast outlets and assess the need for and effectiveness of any policies designed to promote minority and female ownership of broadcast outlets, it is important to obtain information on holders of certain non-attributable interests as well as on holders of attributable interests." The Commission believes that obtaining this information will make the data more complete and

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<sup>6</sup> The Commission subsequently extended the filing deadlines and "accurate as of" date for the initial biennial filings in 2009, as discussed further below.

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comprehensive. With respect to minority interest holders in a single majority shareholder corporation, it could help determine whether non-attributable interests could be a source of attributable interest holders in the future. With respect to EDP investors, the Commission's attribution exemption is not based on a finding that these investors are unable to exert significant influence in the licensee but rather on a policy decision that relaxing the rule is necessary to facilitate access to capital by eligible entities, including minority- and female-owned businesses. Thus including these interests is necessary to ensure that the information collection is comprehensive. However, as noted above, in response to NAB's Petition for Reconsideration, on October 16, 2009, the Commission, in a Memorandum Opinion and Order, eliminated the requirement for reporting of the two non-attributable ownership interests originally required (voting stock interests that would be attributable but for the operation of the single majority shareholder attribution exemption and equity and/or debt interests that would be attributable but for the exemption for certain investments in eligible entities).<sup>7</sup> The Commission agreed that it was advisable to invite additional comment from the public on requiring reporting of these nonattributable interests and issued a Fifth Further Notice of Proposed Rulemaking inviting such further comment. The Fifth Further Notice requests comment on the Commission's proposal to require reporting of these nonattributable interests and asks whether imposing the requirement would discourage potential investment in the broadcasting industry or otherwise impose burdens that outweigh the benefits of collecting the information.

In addition, to ease burdens on filers, in a separate Order, the Media Bureau extended the date as of which information must be current to November 1, 2009 for the initial filing of the biennial Ownership Report and extended the initial filing date to at least 30 days after the Commission gives public notice of OMB approval of the revised Form 323.<sup>8</sup>

The Commission received other comments from multiple additional persons and entities during the 30-day comment period that began on August 11, 2009 when the Commission submitted a draft revised Form 323 to OMB. The Commission responded to the matters raised in those comments by letters to OMB dated October 6, 2009 and October 16, 2009, respectively. The Commission's responses to those comments as set forth in its previously filed letters are incorporated herein by reference.

In 1998, the Commission began collecting data on minority and female broadcast ownership to fulfill the Commission's statutory mandate under Section 257 of the Telecommunications Act of 1996 ("1996 Act") and Section 309(j) of the Communications Act of 1934 to promote opportunities for small businesses and businesses owned by women and minorities in the broadcasting industry. See 47 U.S.C. §§ 257, 309(j). At that time, the Commission revised Form 323 to require filers to identify the gender and race or ethnicity of individuals with attributable interests in the licensee. The Commission concluded that the information was necessary to determine accurately the current state of minority and female ownership of broadcast facilities, to determine the need for measures

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<sup>7</sup> *In re Promoting Diversification of Ownership in the Broadcasting Services*, Memorandum Opinion and Order and Fifth Further Notice of Proposed Rulemaking, MB Docket Nos. 07-294, 06-121, 02-277, 01-235, 01-317, 00-244, 04-228; FCC 09-92 (rel. Oct. 16, 2009).

<sup>8</sup> Order, MB Docket No. 07-294, *et al.*, DA 09-2165 (MB, Oct. 2, 2009).

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designed to promote ownership by minorities and women, and to chart the success of any such measures that the Commission might adopt.

In addition, Section 202(h) of the 1996 Act requires the Commission to review its ownership rules (except the national television ownership limit) every four years and “determine whether any of such rules are necessary in the public interest as the result of competition.” *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-112, and Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) (codified at 47 U.S.C. § 303 note (2006)). Under Section 202(h), the Commission “shall repeal or modify any regulation it determines to be no longer in the public interest,” 1996 Act, 110 Stat. at 111-12. Accordingly, the Commission conducts a quadrennial review of its media ownership regulations. The quadrennial review process includes review from Commission staff of the existing regulations and also invites comment from members of the public to provide feedback, criticism and data about the effect of the Commission’s ownership rules. Vital to the Commission’s process is its review of studies prepared by economists, academics, and researchers, who provide the Commission with crucial information about the state of media ownership, trends in ownership, and potential effects of existing regulations and proposed regulations on the media marketplace. Some studies are commissioned by the FCC specifically, while others are submitted to the FCC by members of the public who choose to participate in the quadrennial review process.

The purpose of this information collection is to obtain the comprehensive data about broadcast ownership interests that the Commission (and members of the public) require in order to evaluate the effect of the current media ownership rules and the effectiveness of the Commission’s efforts to promote ownership by minorities and women. The data are used to prepare these economic and academic studies that the Commission relies upon in order to make informed judgments about its policies. During the most recent quadrennial review proceeding (begun in 2006 and completed in December 2007), the Commission received feedback from a number of parties and researchers, both governmental and private, who concluded that the current Form 323 is inadequate. Specifically, these commenters noted that the data collected is difficult to use and subject to significant error. In addition, in March 2008 the General Accounting Office released a report recommending that the Commission identify processes and procedures to improve the reliability of its data on gender, race and ethnicity so that it can more effectively monitor and report on the status of female and minority broadcast ownership. The proposed changes to Form 323 are designed to fulfill the recommendations of the GAO and commenting parties who have requested that the Commission improve the quality and reliability of the data collected. The collection is necessary, practical, and not duplicated elsewhere.

9. No payment or gift was provided to the respondent.

10. Form 323 collects two types of information from respondents: (a) personal information in the form of names, addresses, job titles and demographic information; and (b) FCC Registration Numbers (FRNs).

Confidentiality of Personal Information: The FCC is in the process of publishing a system of

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records notice (SORN), FCC/MB-1, "Ownership Report for Commercial Broadcast Stations," to cover the collection, purposes(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323. FCC Form 323 will include a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII. This privacy statement will be finalized and included with the form instructions after the Commission has published the SORN for the collection.

Confidentiality of FRNs: FRNs are assigned to applicants who complete FCC Form 160 (OMB Control No. 3060-0917). Form 160 requires applicants for FRNs to provide their Taxpayer Information Number (TIN) and/or Social Security Number (SSN). The FCC's electronic CORES Registration System then provides each registrant with a FCC Registration Number (FRN), which identifies the registrant in his/her subsequent dealings with the FCC. This is done to protect the individual's privacy. The Commission maintains a SORN, FCC/OMD-9, "Commission Registration System (CORES)" to cover the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 160. FCC Form 160 includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII.

11. Form 323 does not collect information on any private matters of a sensitive nature. However, as noted above, it does collect personal information in the form of names, addresses, job titles and demographic information. The form also collects FCC Registration Numbers. Registration of an FRN requires the submission of private Taxpayer Information Numbers (TIN) and/or Social Security Numbers (SSN) on the separate FCC Form 160 (OMB Control No. 3060-0917).

Collection of personal information is necessary in order to permit the Commission to perform quality analyses of ownership trends. Without the addition of the personal information to the general demographic data collected on the form, the Commission cannot verify the data collected are accurate. In addition, the Commission would be unable to determine how many unique owners of broadcast interests there are for the purposes of analyzing data on minority and female ownership.

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12. The following estimates<sup>9</sup> are provided for annual public burden:

Service	No. of Reports	Respondent's Burden	Annual Burden Hours	Hourly In-House Cost	Annual In-House Cost
Biennial Reports/ Certifications <sup>10</sup>	7,500	4.5 hours <sup>11</sup>	33,750 hours	\$48.08	\$1,622,700
All Other Reports	1,750	2.5 hours <sup>12</sup>	4,375 hours	\$48.08	\$210,350
<b>TOTALS:</b>	<b>9,250 (Responses)</b>		<b>38,125 hrs. (Burden Hours)</b>		<b>\$1,833,050 (In-house cost)</b>

**Total Number of Annual Respondents/Responses: 9,250 respondents and 9,250 responses**

**Total Annual Burden Hours: 38,215 hours**

We assume that the respondent would consult with its in-house staff and/or attorney to complete and file the FCC Form 323 or certification of no change. We estimate that these respondents would have an average salary of \$100,000 (\$48.08/hour).

**Total Annual "In-house" Cost: \$1,833,050**

These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

13. **ANNUAL COST BURDEN:** We assume that the respondent would use an attorney to complete and file the FCC Form 323. We estimate that this attorney would charge an average of \$300/hour for such services.<sup>13</sup> In addition, licensees must submit a fee (\$60/report) for each biennial ownership report. There is no fee for other reports.

<sup>9</sup> In response to public comments that the Commission's previous burden calculations underestimated the burden on respondents, the Commission has revised and increased burden hours and cost estimates in this Revised Supporting Statement.

<sup>10</sup> Although the biennial reports and certifications are filed every two years, the Commission calculated the 7,500 responses based on an annual basis since OMB requires an annual calculation of filings and burden hours.

<sup>11</sup> Previously estimated at 2.5 hours.

<sup>12</sup> Previously estimated at 1.5 hours.

<sup>13</sup> Previously estimated at \$200 per hour.

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7,500 biennial reports / certifications x 10 hours <sup>14</sup> x \$300/hour=	\$22,500,000
1,750 other reports x 8 hours <sup>15</sup> x \$300/hour	= \$ 4,200,000
4,000 <sup>16</sup> biennial reports/certifications x \$60 <sup>17</sup>	= \$ 240,000
<b>Total Annual Cost Burden</b>	<b>= \$26,940,000</b>

14. **Cost to the Federal Government:** The Commission will use paraprofessional staff at the GS-11/Step 5 level (\$33.12/hour) to process the FCC Form 323 and all other certifications.

7,500 biennial reports / certifications x 2 hours x \$33.12/hour =	\$ 496,800
1,750 other reports x 2 hours x \$33.12/hour	= \$ 115,920
<b>Total Cost to the Federal Government</b>	<b>= \$ 612,720</b>

15. The Commission has program changes to the annual burden hours of +35,375 hours and +\$24,773,200 to the total cost burden which are due to revisions to FCC Form 323. These revisions are a result of the Commission adopting the Diversity Order, FCC 07-217 and the 323 Order, FCC 09-33.

Therefore, the instructions and questions in all sections of FCC Form 323 have been significantly revised. The instructions to Form 323 have been revised to incorporate a definition of “eligible entity,” which will apply to the Commission’s existing Equity Debt Plus (“EDP”) standard, one of the standards used to determine whether interests are attributable. The instructions to Form 323 have also been revised slightly to provide updated citations to the Commission’s applicable rules governing media ownership. The instructions for Section I have been revised to state the Commission’s revised Biennial filing requirements adopted in the 323 Order. Many questions on the form have been reworked or reordered in order to (1) clarify the information sought in the form; (2) simplify completion of the form by giving respondents menu-style or checkbox-style options to select rather than submit a separate narrative exhibit; and (3) make the data collected on the form more adaptable for use in database programs used to prepare economic and policy studies relating to media ownership.

16. The data will not be published. However, the data collected by the Commission on Form 323 may be used in future economic studies and other analyses conducted by the Commission for the purposes of analyzing trends in media ownership, and those studies may be published. In addition, the data collected on Form 323 will be available to members of the public via the search functions of the Commission’s electronic filing systems for Form 323 and other FCC forms. Publicly-available data from Form 323 will include FRNs attached to specific ownership records, but the underlying

<sup>14</sup> Previously estimated at 8 hours.

<sup>15</sup> Previously estimated at 7 hours.

<sup>16</sup> Of the approximately 7,500 Biennial Reports, only approximately 4,000 are filed by licensees subject to the Commission’s filing fees. The remaining reports are filed by non-licensee entities that hold broadcast ownership interests or by licensees that are exempt from FCC filing fees.

<sup>17</sup> The Commission inadvertently listed the wrong filing fee (\$55 instead of \$60) to calculate the Annual Cost Burden in its previous Notice published in the Federal Register and its previous Supporting Statement. The Commission here provides the corrected figure in this Revised Supporting Statement.

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confidential Taxpayer ID Numbers / Social Security Numbers submitted on Form 160 to obtain those FRNs will not be made public. We anticipate that outside economists, academics, and members of the public may use the data collected on Form 323 in future economic or other academic studies relating to media ownership issues, and that those studies may be published or made publicly available by their respective authors.

17. An extension of the waiver not to publish the expiration date on the form is requested. This will obviate the need for the Commission to update electronic files upon the expiration of the collection. OMB approval of the expiration date of the information collection will be displayed at 47 C.F.R. Section 0.408.

18. The Commission published a Notice (74 FR 27549) in the Federal Register on June 10, 2009 seeking public comments for the information collection requirements contained in this supporting statement. The Notice listed the total annual burden hours as 21,375, the total annual cost burden as \$14,670,000, and the estimated time per response as 1.5 to 2.5 hours per response. With this submission to OMB, the Commission revises these figures as follows: the total annual burden is 38,125 hours, the annual cost burden is \$26,940,000, and the estimated time per response is 2.5 – 4.5 hours. There are no other exceptions to the Certification Statement.

**B. Collections of Information Employing Statistical Methods**

No statistical methods are employed.