

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Promoting Diversification of Ownership In the Broadcasting Services)	MB Docket No. 07-294
)	
Amendment of Part 1 of the Commission's Rules, Concerning Practice and Procedure, Amendment of CORES Registration System)	MD Docket No. 10-234
)	

To: Secretary, Federal Communications Commission
Attention: The Commission

**COMMENTS
OF PUBLIC RADIO REGIONAL ORGANIZATIONS (PRROs)**

By: /s/ Margaret L. Miller
Todd D. Gray
Margaret L. Miller
Barry Persh

Their Attorneys

Gray Miller Persh LLP
1200 New Hampshire Ave., N.W.
Suite 410
Washington, DC 20036-6802
mmiller@graymillerpersh.com
(202) 776-2914

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SUMMARY

These comments are submitted by Eastern Region Public Media, California Public Radio, Public Radio in Mid America and Western States Public Radio (collectively, the Public Radio Regional Organizations), which are regional membership organizations for public radio stations. These organizations represent nearly 200 noncommercial educational radio stations, including stations in virtually every state in the United States, that broadcast a variety of national and local programming, including substantial national, regional and local news and public affairs programming, programming serving minority audiences and other programming genres. PRROs' members include FCC licensees that are state and governmental entities, public and private college and universities, school districts and nonprofit educational organizations (also known as "community" licensees whose governing board members are volunteers drawn from the community of license). PRROs' member stations are directly and strikingly impacted by the FCC's proposal in the *Further Notice*.

The sole purpose of the PRROs' comments in this proceeding is to urge the Commission to recognize that the FCC's proposal in the *Further Notice* is: (i) harmful to public radio governance structures and station/governing board relationships and (ii) counterproductive to the FCC's announced policy goal in the *Further Notice*.

The PRROs urge the Commission to make no changes to Form 323-E and the associated filing process for the form, and to reject the mandatory use of RUFNRNs for persons reported on that form.

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**COMMENTS
OF PUBLIC RADIO REGIONAL ORGANIZATIONS**

Eastern Region Public Media (“ERPM”), California Public Radio (“CPR”), Public Radio in Mid America (“PRIMA”) and Western States Public Radio (“WSPR”) (collectively, public radio regional organizations, or “PRROs”), on behalf of their nearly 200 noncommercial educational stations represented, submit these joint comments responsive to the *Second Further Notice of Proposed Rulemaking and Seventh Further Notice of Proposed Rulemaking* in MB Docket No. 07-294 and MD Docket No. 10-234, FCC 15-19 (released February 12, 2015) (“*Further Notice*”).

The *Further Notice* proposes to require “Restricted Use” FRNs (“RUFNRs”) to be used in reporting individual attributable interest holders on ownership reports filed by noncommercial educational (“NCE”) radio stations. PRROs vehemently oppose the

proposal. PRROs are not prolific commenters in FCC proceedings. With very limited resources, devoted largely to public radio industry education and internal public radio policy discussions, the PRROs nonetheless feel compelled to raise their station's voices in strenuous opposition on this important FCC policy issue.

The collection of information about governing board members of NCE stations is counterproductive to the FCC's announced policy goal, as it will not contribute useful information regarding diversification of broadcast ownership, because persons reported on NCE ownership reports are not "owners" of broadcast media. Moreover, the information required to obtain an RUFNRN poses grave risks of identity theft, violations of privacy, and compromised personal security. Requiring NCE stations to obtain RUFNRNs for each person reported on their ownership reports will make it more difficult to recruit and maintain qualified NCE station board members and create harmful friction between stations and their institutional license holders, including board members who do not wish to provide the required information, all of which will cause damage to NCE stations' board membership structures, station/licensee relationships, and ultimately, to NCE stations themselves.

Introduction

ERPM, CPR, PRIMA and WSPR are regional membership organizations for public radio stations. These organizations represent nearly 200 noncommercial educational radio stations, including stations in virtually every state in the United States. PRROs' member stations include stations that serve entire states or regions, major markets, medium markets, smaller markets, rural areas and even isolated rural areas (i.e., coverage area population contains less than 40 people per square kilometer) with national and local programming, including substantial national, regional and local news and

public affairs programming, classical music programming, jazz, world music, music discovery, alternative music, minority-oriented programming (such as African/American, Hispanic and Native American programming) and other niche music and cultural programming genres. PRROs' members include FCC licensees that are state and governmental entities, public and private college and universities, school districts and nonprofit educational organizations (also known as "community" licensees whose governing board members are volunteers drawn from the community of license). PRROs' members include NCE stations designated by the Corporation for Public Broadcasting ("CPB") as Minority Audience Service Stations ("MASS"), which must meet one of the following criteria: substantial measured minority audience component, licensed to a designated Historically Black College or University, or licensed to a Native American Tribe, a consortium of Tribes, or an entity controlled by a Tribe, or licensed to a community within recognized Tribal Lands and provides a coverage area of which a substantial portion includes Tribal Lands.

PRROs understand that the FCC seeks to obtain accurate information on diversity of ownership of broadcast stations, which is worthy goal. PRROs member stations have been leaders, in conjunction with the Corporation for Public Broadcasting ("CPB"), in developing their own diversity initiatives for public radio stations, which initiatives help fulfill the statutory mandate of public broadcasting stations to provide diverse programming to diverse audiences. In fact, public radio stations receiving funding from CPB are already subject to a host of diversity requirements designed to help fulfill the statutory mandates of Section 396 of the Communications Act relating to programming diversity, which portion of the Act is administered by CPB, not the FCC.

For example, PRROs note that, the Communications Act requires CPB to report annually on the provision of services to minority and diverse audiences by public broadcasting and public telecommunications entities. The Act also requires CPB to compile a triennial assessment of the needs of these audiences. Each year, CPB conducts a survey of its NCE station grant recipients to gather data on the size and composition of the public broadcasting workforce, which survey tracks the race and ethnicity of public broadcasting employees, including employees that control program production.

In contracts, however, as has been amply and forcefully demonstrated by the public broadcasting community here and in earlier rounds of this proceeding, the concepts of ownership that apply to *commercial* broadcast stations have no applicability to *noncommercial educational* broadcast stations because NCE stations are ***not*** owned by individuals or corporations. If the Commission's purpose in proposing changes to NCE ownership reporting is to collect information about the diversity of the "owners" of NCE stations, the proposal is utterly misguided, reflecting a complete misunderstanding of the portions of the Communications Act mandating diverse programming by public broadcasters, the role of CPB with regard to diversity of programming and station employment diversity, and the basic structure of NCE station governance, including as set out in the Communications Act and long-standing FCC rules and policies regarding noncommercial educational broadcast stations.

PRROs strongly urge the Commission to conclude that the ownership concepts applicable to commercial stations do not apply to NCE stations, that NCE stations should not be regulated the same way as commercial stations in their "ownership" filings, and that the proposed changes to the commercial station ownership reporting regime should

not be carried over to the NCE context. When it comes to commercial/noncommercial broadcast ownership concepts, one size does not fill all.

Unique Considerations of NCE Broadcast “Ownership”

In ¶ 28 of the *Further Notice*, the FCC asks whether there are “unique considerations” with respect to NCE stations that would lead to a different conclusion for NCEs than for commercial stations with regard to the information proposed to be included to obtain an RUFNR. As explained in these comments (and as has been explained before in this proceeding and similar proceedings), the answer is a resounding “yes” --- there are unique considerations applicable to NCE stations that should lead the FCC not to require that NCE station board members provide their full names, residence addresses, dates of birth and last four digits of their SSNs.

However, the FCC also needs to decide a much more fundamental question, which is whether it makes sense to apply *any* of the commercial ownership reporting regime to NCE stations, and thus (among other things) require individuals disclosed on Form 323-E to obtain RUFNRs at all. PRROs urge that the FCC should not do so.

Under Section 73.503(a) of the Commission’s rules, all NCE station licensees have to be “nonprofit educational organizations.” In the case of PRROs’ member stations, as noted above, these nonprofit educational organizations include state and governmental entities, public and private college and universities, school districts and nonprofit educational organizations. None of these entities issue stock. None of them have stockholders. No individuals invest money in exchange for an interest in these entities, and no one has a right to any share of their revenue, net income or assets. These NCE entities do not (DO NOT) have individual or corporate “owners.”

Even though NCE stations do not have individual owners, the Commission has nevertheless traditionally looked to an NCE station licensee's governance structure as a rough substitute for ownership. Thus, the current Form 323-E seeks information about persons who serve on a licensee's governing board. However, the practice of reporting governing board members on NCE station "ownership" reports – or calling the report an "ownership" report -- does NOT make them owners.¹

The roles and motivations of board members of public or private nonprofit entities are not the same as those of owners of for-profit corporations operating commercial broadcast stations. No NCE board member has an investment stake in his or her NCE broadcast station, and board members are not motivated by a desire to obtain any financial return to themselves. Governing board members of NCE broadcast stations are (1) unpaid volunteers who support (often with donations of both their time and their money) the educational and public service of the public broadcasting station in their community or region, (2) unpaid volunteers who serve on the board of an educational institution to which the station is licensed, or (3) elected or appointed public officials, including some who serve on station governing boards by virtue of their holding other positions in state or local government (such as governor, superintendent of public instruction, member of the state legislature, or member of a governmental commission). Many NCE stations are licensed to state educational institutions that have far broader missions and responsibilities than broadcasting, meaning that their governances are not "broadcast-centric."

Thus, NCE station "ownership" structures are exceptionally and fundamentally "unique" as compared to those of commercial broadcasters, in that there are no individual

¹ Perhaps the FCC should change the name of FCC Form 323-E to "Governance" Report.

or corporate owners. That being so, collecting and reporting data on board members of NCE stations will do nothing to enhance data that seeks to reflect broadcast ownership in the United States.

The FCC states in the *Further Notice* at ¶ 21 that collection of ownership data “enables the Commission to assess the current state of minority and female ownership of broadcast stations.” In proposing to require NCE stations to report the gender and minority status of their governing board members, the Commission apparently believes that data from NCE stations is necessary to provide a comprehensive nationwide picture of broadcast ownership. But reality is just the opposite. Combining information about individuals who are NOT broadcast station owners detracts from the accuracy and usefulness of the data collected about ownership of commercial broadcast stations, because the combined data will mix two different sets of people -- some of whom are owners and some of whom are not. That makes no sense.

It also makes no sense for the Commission to collect information on NCE station board members but keep that data separately from commercial station ownership data, so as not to skew the real, commercial station ownership data, as doing so will accomplish nothing of value (yet will harm NCE stations). The Commission’s motivation for collecting data about women and minority owners is to determine whether women and minorities are underrepresented and, if so, devise strategies for increasing their presence in broadcast ownership, in furtherance of the policy principal that encouraging minority/female broadcast ownership encourages more diverse programming. These strategies would presumably rely on market-based incentives to lower the economic or regulatory cost of ownership for these individuals. However, such market-based strategies would be irrelevant to NCE stations, as NCE board membership is not

determined by the cost of investment in broadcast properties or prospective financial gain from such ownership. Market-based concepts designed to promote certain aspects of commercial broadcast ownership simply do not translate to NCE broadcasting, which is decidedly non-market based, as the FCC recognized decades ago.²

Irrespective of the *Further Notice*, the bottom line is that NCE station governing board members are not owners. Collection of information about their gender and ethnicity does not provide information about ownership of broadcast stations. Thus, collection of this information for NCE board members does not further the FCC's own policy goals in this proceeding.

RUFNR Requirements for NCE Stations

In the *Further Notice*, the Commission proposes to require RUFNRs for all individuals reported on NCE stations' Forms 323-E. PRROs vehemently oppose such a requirement. It is both unnecessary (as noted above) and uniquely harmful to NCE stations and their governance structures.

Forcing NCE station board members to disclose private information, such as a person's date of birth, residence address and last four SSN digits, will create enormous problems for NCE stations and their relationships with governing board members.

Experience had already shown that unpaid volunteers and public officials, having no

² *Commission Policy Concerning the Noncommercial Nature of Educ. Broad. Stations*, 90 F.C.C.2d 895, 896 (1982) (*1982 Order*) (explaining that the FCC's revised rules "were designed to further the important governmental interest in preserving the essentially noncommercial nature of public broadcasting within a minimal regulatory framework by insulating public broadcasters from commercial marketplace pressures and decisions."

financial stake in an NCE station licensee, do not want to submit their social security numbers or other private information to the FCC.³

Based on their member stations' long experience with NCE station/governing board relationships and their collective understanding of their board members' sensitivities and expectations regarding such board service, and based especially on the loud outcry they hear from their member stations, PRROs believe that requiring board members to provide residence addresses, dates of birth and last four SSN digits as a condition of service will cause harm to NCE governing board structures, discouraging worthy individuals from volunteering, bringing down the ire of public officials or governing board members on NCE stations for even requesting the information, and cause compliance difficulties for stations whose board members ultimately refuse to make the necessary disclosures.

For a commercial station owner or prospective owner hoping to achieve financial objectives in remaining or becoming an owner, the person can weigh the potential harm to him or herself that the FCC's collection of private information will cause against the potential benefits of the investment, and he or she may decide that the benefit of ownership outweighs the harm of disclosure. But NCE station board members obtain no personal financial benefits by virtue of their participation on a station's governing board, and thus it will be all too easy, and unfortunately all too common, for the FCC's insistence on collection of private to cause volunteer board members and prospective board members to decline participation on NCE station boards. In addition, insisting on

³ See, e.g., Window to the World Communications, Inc. Request for Waiver, filed with the FCC on June 8, 2010, detailing resignation of prominent board member and station donor in protest after station requested information to obtain a social security-number based FRN. In the FCC decision denying such waiver (DA 10-1263, dated July 6, 2010), the FCC based its denial on the availability of a special use FRN for "any and all board members who are unwilling to provide information necessary to obtain a [social security-number based] FRN."

the release of private information from government officials and other important or influential persons serving on NCE stations' governing boards will create friction between governing board and station management and, thus, ultimately to the stations themselves. Thus the FCC's proposal, if adopted, will cause serious harm to NCE stations.

Given that no substantial useful purpose has been shown to support the collection of this information from NCE licensees, because the information from NCE stations has no relevance to "ownership" of broadcasting, that the FCC's proposal will discourage, devalue and unnecessarily complicate NCE board participation, and that the proposal will create friction between stations and their governing boards, the FCC should conclude that the proposal makes no sense for NCE stations in view of the unique nature of NCE governance and the proposal's unique harm to NCE licensees.

Identify Theft and Violations of Privacy

In the *Further Notice*, the FCC has backed off on its prior proposals to require all persons reported on ownership reports to provide their SSNs to obtain an FRN. However, the FCC's current proposal to collect full names, residence addresses, dates of birth and last four SSN digits is hardly any better in respecting privacy and avoiding the risk of identity theft, and it should also be abandoned.

The collection of the last four digits of an SSN is not a safe solution. That is because the five other numbers of the SNN are not random. *See* <http://www.usrecordsearch.com/ssn.htm> for a detailed discussion on how those numbers are determined. It takes very little effort to discover the remaining numbers, thus making identity theft significantly simpler and much more likely.

It has been shown that possession of the last four digits of an SSN, particularly combined with date of birth information, would permit hackers to predict full social security numbers to a significant degree. *See*, for example, the study described in <http://news.sciencemag.org/2009/07/social-security-numbers-are-easy-guess>, in which researchers were able 44% of the time to predict the first five digits of the SSN for persons born after 1989. The disclosure of the combination of date of birth, address and last four social security digit numbers is an outright invitation to identity theft.

Higher education institutions have recognized the need to protect the confidentiality of similar combinations of information which can be used to steal identities. Thus, for example, the California State University System (the largest four-year public university system in the United States, with over 400,000 students, and an NCE broadcast licensee), mandates the highest level of information security – designated by the University as “Level 1 Confidential” -- for a person’s birth date combined with the last four digits of the SSN, noting that unauthorized disclosure of that combination of information “could result in severe damage to CSU, its students, employees or customers...” and “[f]inancial loss, damage to the CSU’s reputation and legal action....”

See

http://www.calstate.edu/icsuam/sections/8000/8065_FINAL_DRAFT_Data_Classification_CW_V4.pdf.

In addition, NCE licensees are concerned about security issues related to publication of home addresses. Universities report that their board members have received personal security threats, and therefore information about board members’ residences is not generally made available publicly. Universities also often have high level public officials and ranking military officers who are required by the realities of

modern life to carefully guard their personal information, often to the extent of only identifying a post office box for university mailings.

In the *Further Notice*, at ¶ 5, the FCC notes that no commenter has identified a single instance of a security breach of the CORES system. The FCC also states that the Commission uses a robust security architecture for CORES that exceeds Federal Guidelines and recommendations. However, even if the FCC's systems have never been breached to date, the FCC cannot guarantee that these systems cannot be breached in light of the numerous supposedly secure public and private systems that have been hacked in recent times. In fact, the FCC's collection of this proposed new data may even heighten the likelihood of a security breach, since hackers may be attracted by the highly confidential data.

The "Recalcitrant" Individual

In ¶18 of the *Further Notice*, the FCC asks for comment on whether Special Use FRNs should remain available in the case of "recalcitrant" individuals. Webster defines recalcitrant as "stubbornly disobedient" and "obstinately defiant of authority." PRROs strenuously object to this label being applied to individuals – who in the NCE station context are unpaid volunteers or public employees and officials -- who in good faith fear that the unnecessary collection and maintenance of highly private and compromising information in a public database might lead to unauthorized disclosures that would allow their identities to be stolen and their privacy and safety to be compromised. PRROs also worry that the FCC's view that such NCE board members are "recalcitrant" may be a first step towards enforcement action against such these individuals or the NCE stations they serve. The FCC's labelling of such individuals as "recalcitrant" is inappropriate.

Conclusion

For the foregoing reasons, the PRROs, on behalf of their nearly 200 NCE station membership, urge the Commission to make no changes to Form 323-E and the associated filing process for the form, and to reject the mandatory use of RUFNRs for persons reported on that form.

Respectfully submitted,

EASTERN REGIONAL PUBLIC MEDIA

CALIFORNIA PUBLIC RADIO

PUBLIC RADIO IN MID-AMERICA

WESTERN STATES PUBLIC RADIO

By: /s/ Margaret L. Miller
Todd D. Gray
Margaret L. Miller
Barry Persh

Their Attorneys

Gray Miller Persh LLP
1200 New Hampshire Ave., N.W.
Suite 410
Washington, DC 20036-6802
mmiller@graymillerpersh.com
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