



Federal Communications Commission  
Washington, D.C. 20554

October 6, 2009

Nicholas A. Fraser  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
Washington, D.C. 20503

**RE: OMB Control No. 3060-0010, FCC Form 323 Ownership Report for  
Commercial Broadcast Stations**

Dear Mr. Fraser,

This letter constitutes the response of the Federal Communications Commission to the public comments submitted by various individuals and entities concerning proposed revisions to the information collection designated OMB Control No. 3060-0010, FCC Form 323 Ownership Report for Commercial Broadcast Stations.

**I. Comments Received**

The Commission received the following comments during the 30-day comment period initiated on August 11, 2009 with respect to the proposed revisions to FCC Form 323:<sup>1</sup> the National Association of Broadcasters ("NAB") filed a Reply to Opposition and initial set of PRA comments on Aug. 21, 2009 ("NAB Reply to Opposition")<sup>2</sup>; Anthony T. Lepore, Esq. filed comments via email on August 21, 2009 ("Lepore Comments"); the Office of Communication of the United Church of Christ, Inc., Benton Foundation, Common Cause, Media Alliance and National Organization for Women Foundation (collectively, "UCC, *et al.*") filed comments on Sept. 9, 2009<sup>3</sup> ("UCC *et al.* Comments"); The Law Office of Dan J. Alpert filed comments on Sept. 10, 2009 ("Alpert Comments"); Saga Communications, Inc. filed comments on Sept. 10, 2009 ("Saga Comments"); forty-seven Named State Broadcasters Associations filed comments on Sept. 10, 2009 ("State Broadcasters Comments"); NAB filed additional comments on Sept. 10, 2009 ("NAB Comments"); and Wiley Rein LLP filed comments on Sept. 10, 2009 ("Wiley Comments"). In addition, joint comments were filed on Sept. 10, 2009 by ABC, Inc.; Americom Las Vegas Limited Partnership; Americom, LP; Broadcasting Licenses, Limited Partnership; CBS Corporation; Eagle Creek Broadcasting of Corpus Christi, LLC; Eagle Creek Broadcasting of Laredo, LLC; Educational Broadcasting Corporation; Fallen Timbers Communications, LLC; Fox Television Stations, Inc.; Galaxy Communications, LP; Great Scott Broadcasting; Greater Media, Inc.; HJV Limited Partnership; Journal Broadcast Corporation; LIN Television

<sup>1</sup> See *Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested*, 74 Fed. Reg. 40188 (Aug. 11, 2009) (hereinafter "OMB Notice").

<sup>2</sup> The NAB Reply was filed in connection with a separate Petition for Reconsideration filed by NAB concerning the Commission's adoption of its *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). As noted in the Commission's August 11, 2009 Supporting Statement to OMB (the "Supporting Statement"), the 323 Order adopted changes to the Commission's Form 323 that require OMB approval.

<sup>3</sup> UCC *et al.*'s comments are dated September 10, 2009 but were submitted a day earlier, on September 9, 2009.

Corporation; Lincoln Financial Media Company; M. Belmont VerStandig, Inc.; Mountain Licenses, L.P.; NBC Telemundo License Co.; NBC Universal, Inc.; Sarkes Tarzian, Inc.; Spanish Broadcasting System, Inc.; Stainless Broadcasting, L.P.; Talking Stick Communications, LLC; and The Walt Disney Company (“ABC et al. Comments”).

Because many of the commenters raise the same issues with respect to the proposed revisions to Form 323, this memorandum will address the comments by topic rather than by commenter. The Commission’s responses follow below.

## **II. Comments Concerning Non-Attributable Interest Ownership Information To Be Addressed In A Future Response**

A number of the commenters submitted comments criticizing the Commission’s new requirements that holders of certain non-attributable broadcast interests be reported biennially on Form 323.<sup>4</sup> The Commission will respond to the comments concerning the biennial collection of non-attributable interest information in a separate response to follow.

## **III. Response to Comments**

### **A. Comments Concerning Paperwork Reduction Act Procedure**

A number of the commenters argue that the Commission failed to adhere to the requirements of the Paperwork Reduction Act (“PRA”). They argue that the FCC violated the PRA because a draft copy of the revised form was not attached to the published *323 Order*, released in May 2009, nor to the 60-day notice published in the Federal Register.<sup>5</sup>

The Commission does not dispute that a copy of the revised Form 323 was not attached to the *323 Order* or the Federal Register notices that the Commission published in anticipation of submitting a revised form to OMB. The Commission feels that the substantive changes to the proposed revision to the collection were described in the *323 Order* and were made available for comment during the 60-day notice period, as evidenced by the fact that the Commission received comments from the public during the 60 day notice period.<sup>6</sup> Those comments were addressed in the Commission’s Supporting Statement submitted to OMB at the close of the 60 day comment period.

The Commission disagrees with the commenters who suggest that the FCC violated section 1320.8(d)(2) of the OMB’s rules by releasing the completed revised Form 323 to the public at the same time that it made its OMB submission, on August 10, 2009, and not earlier when it filed its 60-day notice.<sup>7</sup> According to this rule, “If the agency does not publish a copy of the proposed collection of information, together with the related instructions, as part of the

<sup>4</sup> See, e.g., ABC et al. Comments at 6-7; Wiley Comments at 5, 10-11; NAB Reply to Opposition at 7-9.

<sup>5</sup> *Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 74 Fed. Reg. 27,549 (Jun. 10, 2009) (“60-Day Notice”). See State Broadcasters Comments at 1-6; Wiley Comments at 3-5; ABC Comments at 8-10; NAB Comments at 2-6.

<sup>6</sup> See Supporting Statement at 5-8.

<sup>7</sup> See State Broadcasters Comments at 5-6; Wiley Comments at 4.

Federal Register notice, the agency should-- (i) Provide more than 60-day notice to permit timely receipt, by interested members of the public, of a copy of the proposed collection of information and related instructions; or (ii) Explain how and from whom an interested member of the public can request and obtain a copy without charge, including, if applicable, how the public can gain access to the collection of information and related instructions electronically on demand.” The Commission has typically submitted revised information collections to OMB for approval in conjunction with publication of the 30-day Federal Register notice, not when the 60-day Federal Register notice is published. In any event, the parties had 60 days to comment on the changes to Form 323 that were described in the *323 Order* and had an additional 30 days to review the revised draft of the form itself and provide comments with respect to the revised information collection. This was clearly an adequate amount of time, as is evidenced by the number of comments filed and their length and detail.

ABC et al. also criticize the Commission because it did not provide a “live” version (that is to say, fully-coded electronic version on CDBS) of Form 323 for commenters to experiment with prior to submitting the revised form to OMB.<sup>8</sup> The Commission has not, as a general practice, made the revised versions of broadcast forms available on CDBS until those forms have been approved for use by OMB, and nothing in OMB’s rules requires that it do so. The paper copy of the form submitted to OMB on August 11th approximates the appearance of the form as it will appear in the CDBS system after approval and provided more than adequate information on which to evaluate the potential burdens. In addition, the Commission has suspended the filing deadline until no earlier than 30 days after approval of the revised form to allow parties time to become familiar with the form before they are required to file it.<sup>9</sup>

## **B. Comments Concerning the Commission’s Proposed Use of FCC Registration Numbers (“FRNs”) as a Data Quality Verification Mechanism**

A number of the commenters provided feedback on the Commission’s adoption of a new requirement that ownership interest holders (both individuals and entities) reported on Form 323 include a unique FCC Registration Number for each owner.<sup>10</sup> These commenters raise a number of different issues relating to the FRN that we address below.

### **1. The FRN is a Vital Mechanism for Data Quality Assurance and Verification Adopted In Response to Public Demands for Better and More Reliable Ownership Data**

The Commission needs accurate data concerning minority and female ownership of media outlets to carry out its statutory obligation to review its media ownership rules quadrennially as such data will be used as a basis of research studies. In addition, it needs this data to evaluate the levels of minority ownership and determine what measures are necessary and

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<sup>8</sup> See ABC et al. Comments at 8-10.

<sup>9</sup> See *In re Promoting Diversification in the Broadcasting Services*, Order, DA 09-2165 (Rel. Oct. 2, 2009), available at <http://www.fcc.gov/mb/>.

<sup>10</sup> See, e.g., Alpert Comments at 1-5; Lepore Comments at 1; Saga Comments at 4-6; ABC et al. Comments at 11-26; State Broadcasters Comments at 7-10; Wiley Comments at 9-11; NAB Comments at 7-11.

appropriate to foster diversity. At the present time, it does not have such data, and the current Form is not adequate to allow such data to be collected. The next statutorily required quadrennial ownership review proceeding must be commenced in 2010, although the Commission has already taken steps to begin this proceeding by initiating public workshops on the analytical framework it should use in this proceeding. The current revisions to the Form were intended to address the serious concerns raised about the data collected and the data base generated by using the current Form.

Such concerns have been widely expressed by GAO and as well as by researchers who have tried to use the minority and female ownership data collected by the Form as a basis for studies. GAO and the researchers have criticized the data obtained from the Form as unreliable, inaccurate, and incomplete. In addition, the data base is not searchable, and the data is not aggregable. The current Form 323 has been criticized by researchers who attempted to use the data in connection with economic studies of the media ownership landscape during the Commission's 2006 Quadrennial Review of its media ownership regulations. These authors stated that the current version of the form "cannot be relied on as a basis for credible analysis of issues relating to ownership of broadcast outlets by women and minorities" because "the data are incomplete, inaccurate, duplicative, and subject to significant measurement error."<sup>11</sup> Similarly, in March 2008 the GAO released a report on media ownership<sup>12</sup> that identified major weaknesses in the FCC's Form 323 data. GAO concluded that the weaknesses stemmed from inadequate data quality procedures and problems with data storage and retrieval of the information collected on Form 323.<sup>13</sup> GAO recommended that the Commission adopt internal administrative processes to verify and review the data collected on Form 323.

In order to address these concerns, the Commission sought to revise Form 323 to improve the quality, reliability, and usability of the collected data by eliminating inconsistencies and inadequacies in the data submitted. To improve accuracy and completeness of the data collected by the Form, the Form was revised to make clear what information was sought in response to each question, to require responses to specific questions rather than allowing broadcasters to submit confusing catch-all exhibits that prohibited rigorous study of the data, and to build in a number of measures to assure that the data submitted could be searched, aggregated, and audited to be sure that it is accurate and complete.<sup>14</sup> The addition of Federal Registration Numbers ("FRN") to the data collection is an integral part of that effort.

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<sup>11</sup> *323 Order* at ¶¶ 7, 24 FCC Rcd at 5900, 5909.

<sup>12</sup> "Media Ownership: Economic Factors Influence the Number of Media Outlets in Local Markets, While Ownership by Minorities and Women Appears Limited and Is Difficult to Assess," Report to the Chairman of the Subcommittee on Telecommunications and the Internet, Energy and Commerce Committee, House of Representatives, GAO-08-383 (Mar. 2008) (hereinafter, the "GAO Report").

<sup>13</sup> See *323 Order*, ¶¶ 9-10, 24 FCC Rcd at 5901-5902, 5909; GAO Report at 4.

<sup>14</sup> The *323 Order* specifically gave notice of the Commission's intentions in this respect. See *323 Order*, ¶¶ 20-24, 24 FCC Rcd at 5907-5909 ("Commission staff is directed to modify Form 323 so that ownership data is incorporated into the database, is searchable, and can be aggregated and cross-referenced electronically. . . . Commission staff is directed to build additional checks into Form 323 to perform verification and review functions and to preclude the filing of inaccurate data . . . staff is directed to modify the form to ensure that all ownership data will be filed in a format that can be electronically searched, aggregated, and cross-referenced . . . [w]e authorize the

The FCC's electronic filing systems require the input of a unique number, called an FCC Registration Number ("FRN"), in order to submit documents, forms, and comments to the Commission. The FRN is a unique identifier associated with a specific individual or entity. In order to obtain an FRN, an individual or person acting on behalf of an entity enters her name (or entity's name), contact information, and Taxpayer ID Number (either a Social Security Number or TIN, in the case of an entity) into the "Commission Registration System" ("CORES") and selects a personal password for use with the FRN. The system then assigns the user with a unique FRN and associates the user's selected password with the number.

The FRN and password together serve as a mechanism for verifying the identity of persons filing official documents electronically on the Commission's various electronic filing systems, *without the need to collect sensitive personal information to verify each filing.*<sup>15</sup> FRNs (but not the passwords associated with them, nor the Social Security numbers or taxpayer ID numbers used to obtain an FRN in the first instance) are publicly searchable on the CORES website. Social Security Numbers / TINs are not searchable on CORES, nor can they be retrieved from public FRN records.

Because FRNs are unique numbers specific to the person or entity that obtains one, they are the best possible mechanism for the Commission to use in order to electronically match up Form 323 ownership data with specific owners, a critical functionality that the current Form 323 lacks. Form 323 requires filers to enter the names, addresses, and ownership interests held by specific persons and entities. This requires users to manually type in names into text boxes. Any irregularity in spelling causes problems when the Commission attempts to aggregate the data electronically. An electronic database system has no way of determining that all the variations of a single name, for example, "Jonathan Smith" or "Jon Smith" are in fact references to the same person unless the entries include a unique tag that does not change from application to application. Further, an FRN will help to determine that whether "John Smith" on one Form is the same or a different person from a "John Smith" reported on a different form. Associating the name with a unique FRN eliminates the data quality problems that arise from reliance on inconsistent data entry and allows the Commission to verify that the ownership interests reported on Form 323 are complete and accurate.

## 2. Use of FRNs is Appropriate In This Context

The Commission disagrees with the comments submitted by The Law Office of Dan J. Alpert and ABC et al. concerning the use of the FRN as a verification mechanism on Form

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Bureau to make revisions to Form 323, its instructions, and the electronic database, as necessary in order to conduct random audits").

<sup>15</sup> As a practical matter, all broadcast licensees and entities that have filed a Form 323 or any other FCC form electronically at any time in the past already have an FRN and password, because filing electronic forms via CDBS is impossible without submitting a valid FRN as the last step in the filing process. Accordingly, the Commission estimates that many entities whose FRNs will have to be reported on the revised Form 323 already have such FRNs and that requiring reporting of such FRNs will therefore cause no additional burden to respondents. For that reason the Commission also disagrees with comments suggesting that the CORES system will be overburdened by new FRN applications.

323.<sup>16</sup> Alpert recites the history of the adoption of the FRN in 2000 and then states that the Commission's use of the FRN on Form 323 "goes beyond the authority of the scope of the rationale adopted originally by the FCC for the FCC Registration Number."<sup>17</sup> The Commission disagrees. While Alpert and ABC et al. are correct that the FCC adopted a rule that FRNs must be obtained by anyone "doing business" with the Commission,<sup>18</sup> the Commission previously determined, when a similar argument was made in connection with reporting of ownership interests in wireless services, that attributable owners (regardless of whether the owner directly holds the FCC license) are persons or entities "doing business" with the Commission.

Specifically, the Commission adopted use of the FRN as a unique identifier for ownership reports collecting data about persons (including individuals) and entities that hold attributable interests in wireless communications licenses (such as cellular phones and other wireless services).<sup>19</sup> At the time the Commission adopted FRN reporting requirements on Form 602<sup>20</sup> for reporting wireless service ownership interests, some commenters complained that the use of FRNs in this manner exceeded the scope of the definition of "doing business" with the FCC. They argued, as Alpert argues, that owners who do not have actual control over the licensee are not "doing business" with the Commission and therefore should not be subject to the FRN reporting requirement. The Commission disagreed. As it explained: "we do not consider the presence or absence of control to be the only consideration in whether a person or entity is 'doing business' before the Commission." The FCC went on to give two reasons why FRN reporting was justified for all attributable interest holders on Form 602: first, because persons or entities with attributable interests "have a significant stake in the venture and reap significant benefits from the award of the license," and second, because "it is directly relevant to the qualifications of the applicant for a wide variety of purposes, including spectrum cap and cross-ownership rules, eligibility for small business status, and foreign ownership."<sup>21</sup>

Just as the Commission requires wireless attributable interest holders to obtain and report their personal FRNs, the Commission is extending the same requirement to persons who hold attributable interests in broadcast licensees.<sup>22</sup> This data is critical to the Commission for data

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<sup>16</sup> See Alpert Comments at 1-4; ABC et al Comments at 14-16.

<sup>17</sup> Alpert Comments at 1.

<sup>18</sup> Alpert Comments at 3.

<sup>19</sup> See *In re Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System In The Wireless Telecommunications Services*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd at 11488, ¶ 29 (Commission, 1999).

<sup>20</sup> OMB Control No. 3060-0799.

<sup>21</sup> *In re Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System In The Wireless Telecommunications Services*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd at 11488, ¶ 29 (Commission, 1999).

<sup>22</sup> Once a collection is approved the data collected may be used for purposes other than that for which the agency sought approval. *Tozzi v. EPA*, 1998 WL 1661504, No. Civ. 98-0169 (D.D.C. 1998). Therefore, use of the FRN in this context is permitted. In any event, the Commission did not exclude the possibility of FRNs being used for other purposes when it adopted the FRN system. See *In re Amendment of Parts 1, 21, 61, 73, 74, and 76 of the Commission's Rules—Adoption of a Mandatory FCC Registration Number*, Report and Order, 16 FCC Rcd 16138, 16139, ¶ 5 (2001) (debt collection context).

verification (providing an additional check to ensure the listings are complete and accurate), quality assurance (use of a unique number that is not subject to the same inconsistencies and variations as a typed name), and aggregation purposes (increasing the utility of the data collected by making it aggregable and searchable electronically). Broadcast ownership structures are not exceptionally different in size, scope or complexity than wireless ownership structures. Applying the same requirement in the broadcast context as is required in the wireless context will allow the Commission to harmonize its processes between different licensing divisions and directly improve the quality and usefulness of the collected data, as described above.

3. Allegations That the Revisions to Form 323 Violate the Privacy Act Are Wrong

A number of the commenters argue that the revisions to Form 323 implicate the Privacy Act and that the Commission erred when it indicated in its Supporting Statement that the revised collection has no Privacy Act impact.<sup>23</sup> The Commission currently collects information from sole proprietors, shareholders, and officers and directors on Form 323. The FCC does not consider sole proprietors (i.e., individual licensees) and officers and directors to be individuals for purposes of the Privacy Act. The Commission considers these persons to be acting in an entrepreneurial role. This has been the Commission's long standing position that is not altered by this proceeding. To the extent that there are any privacy implications, the Commission is resolving those matters by creating a System of Records for Form 323.

a. Form 323 Does Not Collect Social Security Numbers

Form 323 does not collect Social Security Numbers. However, SSNs are collected on the form used to obtain an FRN. FRNs are obtained through the CORES system and Form 160, which has a separate OMB Control Number (3060-0917) and is covered by its own system of records under the Privacy Act (<http://www.fcc.gov/omd/privacyact/documents/records/FCC-OMD-9.doc>).<sup>24</sup>

b. The Commission Is In The Process of Establishing a System of Records for Form 323

ABC, et al. argue that the Commission should have established a System of Records for Form 323.<sup>25</sup> The Commission agrees and is already in the process of preparing a System of Records Notice ("SORN") and a Privacy Impact Assessment ("PIA") in compliance with the Privacy Act and the E-Government Act of 2002 for this collection. With respect to ABC et al.'s related criticism that the Commission lacks a PIA for its CORES system,<sup>26</sup> the CORES system already has an established System of Records and the Commission is currently in the process of

<sup>23</sup> See ABC et al. Comments at 12-13; NAB Comments at 9; Wiley Comments at 10; State Broadcasters Comments at 8; Saga Comments at 5.

<sup>24</sup> The Commission intends to amend the Form 160 collection under OMB Control No. 3060-0917 to increase the number of persons who will submit the form as a result of these changes. That revision will take place next year when the Commission seeks renewal of OMB approval for the collection.

<sup>25</sup> ABC et al. Comments at 17.

<sup>26</sup> ABC et al. Comments at 16, 18-19.

publishing a PIA for CORES. Until those processes are complete, the Commission will not retrieve information from the Form 323 database by use of a personal identifier until the System of Records documentation is in place. Approval of the collection itself does not hinge on the System of Records, but the Commission will revise its Supporting Statement to indicate that it is in the process of preparing the SORN and PIA for this collection.

c. ABC et al.'s Arguments Concerning Application of State and Federal Privacy Laws Are Without Merit

ABC et al. argue that broadcasters' efforts to comply with the requirements of the revised Form 323 will necessarily trigger other state and federal privacy regulations and that broadcasters will be forced to comply with those regulations as a result.<sup>27</sup>

With respect to the various state laws cited by ABC et al., those statutes (as well as long-standing principles of federal preemption) provide that federal law supersedes state law restrictions.<sup>28</sup> FCC regulations are federal requirements having the force of federal law and supersede the state statutes cited by ABC et al. to the extent that there is a conflict. As for ABC et al.'s other argument—that the burdens of protecting personal information a broadcaster might collect in order to comply with the FCC's Form 323 reporting requirements are onerous—simply rings hollow. Entities filing Form 323 are already required to comply with all applicable federal and state privacy protection statutes and regulations.

d. The Commission Has Established Valid Reasons for Collecting Personal Data

ABC et al. also argue that the Commission has not demonstrated the need for collecting data that includes personal information rather than aggregated or anonymous data.<sup>29</sup> The Commission disagrees. As stated previously, the Commission adopted changes to Form 323 in direct response to criticisms from the GAO and other commenters about flaws in the current form that rendered it unreliable and difficult to use. One of GAO's principal complaints about the current state of the data collected on Form 323 is that it cannot be audited—and therefore the data are less reliable as a result. The Commission responded to this criticism by revising the form to in a manner that permits periodic data quality checks and audits to be performed. The use of anonymous or aggregated data would thwart one of the chief goals of the Commission's revisions to Form 323.

Demographic data that are not individually identifiable cannot be used for studies and research purposes. Study authors must be able to trace broadcast ownership to individuals in order to produce meaningful study results. Without such data, the Commission will not be able to determine the extent of broadcast ownership based on gender, race, and ethnicity.

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<sup>27</sup> ABC et al. Comments at 22-25.

<sup>28</sup> ABC et al. cite, for example, Section 1798.85(b) of the California Civil Code, which itself states that the California state prohibition against collection, use or release of Social Security Number information does not apply if "required by state or federal law." (Emphasis added.) See ABC et al. Comments at 23.

<sup>29</sup> ABC et al. Comments at 19-20.



4. Concerns About Potential Breaches of Security Are Unfounded and Completely Speculative

Four commenters argue that the revised form should be disapproved because the requirement that additional FRNs be provided increases the risk of identity theft because registration for an FRN requires submission of a taxpayer identification number. Lepore states that the new requirement will make the FCC's databases "ripe for identity theft incursions."<sup>30</sup> Alpert cites to general news articles about computer virus programs that harvest data transmitted through the Internet and claims that the FRN registration process "will foster identity theft against unsuspecting users."<sup>31</sup> Saga points to "regular reports of 'hacker' attacks on computer systems, including the U.S. Government's, to steal confidential data" as a reason to eliminate the FRN requirement from Form 323.<sup>32</sup> The Named State Broadcasters Associations cite to a 2006 Congressional report about security breaches at a number of other federal agencies where sensitive personal data was lost.<sup>33</sup>

While identity theft is a serious matter, none of the commenters identify a single instance of a security breach with respect to the Commission's CORES system. Indeed, their claims are purely speculative. The FCC has a robust security architecture in place for CORES that exceeds Federal guidelines and recommendations and has deployed strict operational controls in compliance with NIST guidance. The servers are located in secured locations with strict access control. Logically, the databases are located behind several firewalls that protect the data from the Internet and the general FCC user population. All servers and communications are monitored both by automated tools and systems as well as operational procedures. The CORES application uses separate roles for various user classes, and administrative access is only permitted from limited set of known internal workstations. All transmission of non-public data is encrypted.

In addition, a number of the commenters claim that the new FRN requirement will vastly increase the amount of sensitive data kept on record at the FCC and that the FCC has not taken adequate precautions with respect to the new data. The Named State Broadcasters Associations claim that the revisions to Form 323 will cause the FCC to "suddenly become a virtual warehouse of sensitive identity information."<sup>34</sup> The Named State Broadcasters Associations continue by claiming that the FCC "has not given any consideration to whether its [CORES] database is secure enough to fully protect the thousands of new social security numbers, employer identification numbers and taxpayer identification numbers that will be placed in the hands of the FCC as a result of the new requirements, if approved."<sup>35</sup> Saga likewise claims that "the FCC does not provide for any security whatsoever with respect to [FRN] data; in fact, the FCC says there is no need for confidentiality with the information collection."<sup>36</sup> As discussed above, the Commission has, in fact, taken steps to assure the security of its CORES system.

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<sup>30</sup> Lepore Comments at 1.

<sup>31</sup> Alpert Comments at 4.

<sup>32</sup> Saga Comments at 4-5. Saga does not actually cite to any such "regular reports" in its comments.

<sup>33</sup> State Broadcasters Comments at 8-9.

<sup>34</sup> State Broadcasters Comments at 8.

<sup>35</sup> State Broadcasters Comments at 8.

<sup>36</sup> Saga Comments at 4-5.

Moreover, contrary to the assertions of the Named State Broadcasters Associations, the addition of even tens of thousands of taxpayer numbers into the CORES system would not represent a significant addition to a database that already safeguards the information submitted by approximately 1.2 million individuals. The Commission anticipates that the number of new FRNs generated for individuals reported on Form 323 will be relatively small in comparison to the 1.2 million already in the system.<sup>37</sup>

Saga's conflation of the phrase from the Supporting Statement that "there is no need for confidentiality with this information collection" with the collection of data on a completely different form and filing system<sup>38</sup> is inapposite in any case. The revised Form 323 ownership report would not collect confidential taxpayer numbers. It would collect only publicly available, publicly searchable FRNs, numbers which are unique to the Federal Communications Commission and have no relevance or utility for any purpose other than submitting information to the FCC. In addition, as noted above, the Commission intends to take the steps necessary to make Form 323 a "system of records" under the Privacy Act prior to implementing the ability to search for records using FRNs.

#### 5. Arguments that Collection of FRN Information is Burdensome and Intrusive Lack Merit

In addition to the above concerns about potential security breaches with respect to new applications for FRNs from the Commission, a number of commenters object to inclusion of FRNs on ownership report records on the basis that obtaining and maintaining FRNs is overly burdensome. For example, Wiley objects to the FRN requirement partly on the basis the requirement will add significant administrative burdens in explaining to individuals and entities the procedures for obtaining an FRN and communicating it to the attorneys filling out the Form 323 reports.<sup>39</sup>

The Commission disagrees with the commenters who suggest that collection and retention of FRN information is overly burdensome. The process for obtaining a new FRN is a one-time investment that never needs to be repeated. Accordingly, to the extent that the commenters complain that excessive amounts of time are required to obtain an FRN for each person or entity reported on Form 323, the Commission notes that after the initial time invested, no further re-registration is necessary. Moreover, the process of filling out the simple electronic

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<sup>37</sup> FRNs are registered on Form 160 (OMB Control No. 3060-0917). The Commission will update the Supporting Statement for that collection when that collection is renewed in 2010, and will account for the additional registrants added as a result of the revisions to Form 323 in the burden calculations for Form 160 at that time.

<sup>38</sup> FRNs are not assigned using Form 323 or the CDBS system, where Form 323 applications are filed. FRNs are administered through the CORES system, which is a completely different database and has a separate OMB control number for collection. Accordingly, the Commission's statement that Form 323 would not collect confidential data is accurate.

<sup>39</sup> Wiley Comments at 10-11. *See also* Lepore Comments at 1; State Broadcasters Comments at 9-10 (arguing that broadcasters have difficulty keeping track of FRNs); ABC et al. Comments at 21 (expressing concern that not all persons required to obtain an FRN will actually do so); Alpert Comments at 5 (expressing concern about burdens of assembling FRN data for all reported individuals/entities); Saga Comments at 5 (noting time required to ensure consistent FRNs reported on Form 323 reports).

request form to obtain an FRN takes less than 10 minutes to complete, even by conservative estimates. There is no need for significant expenditure of time and effort to coordinate FRN registrations, even by organizations that have numerous individuals to report. Individuals can obtain their own FRN without the assistance of their attorneys from anywhere with an Internet connection.

The Commission likewise disagrees with commenters who suggest that the addition of FRN data into the Form 323 is burdensome in and of itself. FRNs are public and searchable using the FCC's CORES system, making location of previously registered FRNs simple and efficient. Moreover, the FRN is merely one of many pieces of information that Form 323 already collects from respondents—including station call signs, locations, names, addresses, demographic data, ownership interests, familial relationships, and various other items.<sup>40</sup> The addition of a single, easily searchable FRN to the list of data collected on Form 323 is not nearly the burdensome exercise that some of the commenters describe. On the other hand, the FRN provides the Commission with a critical mechanism for ensuring the consistency and quality of the data collected, as described above.

### **C. Comments Concerning The Burden Effects of the Revised Collection**

#### **1. The Commission Did Not Change the Requirement that All Entities In A Corporate Chain / Indirect Ownership Structure File Separate Reports**

Wiley, NAB, ABC et al., and the Named State Broadcasters Associations claim that the revisions to Form 323 add a “new” requirement that all entities in a tiered ownership structure (that is, where a licensee is owned by one or more corporate parent organizations) must file separate Form 323 reports disclosing their ownership interests.<sup>41</sup> In particular, some of the commenters claim that this is a “change” which will result in numerous new Form 323 filings that were not previously required because filers were permitted to submit consolidated reports covering interests in multiple licensee entities. These comments are simply mistaken.<sup>42</sup> The revised Form does not change the current requirements in this respect.

The current, OMB-approved Instructions to Form 323 clearly state that a separate Form 323 filing is required for each successive entity in a chain of ownership: “If the licensee or permittee is directly or indirectly controlled by another entity or if another entity has an attributable interest in such licensee or permittee, *a separate Form 323 should be submitted for*

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<sup>40</sup> Accordingly, the Commission disagrees with the comments of ABC et al. arguing that the FRN requirement presents filers with a “‘Hobson’s choice’ of either not filing a report, or omitting some relevant individuals and entities on its reports” should one or more of the reported individuals fail to provide the filer with his or her FRN. ABC et al. Comments at 21. The FRN is just one of many pieces of information associated with each individual reported on the form, including his or her ethnicity, name, and address. The Commission has procedures to resolve on a case-by-case basis any problems with discrepancies or omissions in reports filed with the Commission.

<sup>41</sup> See Wiley Comments at 6-7; NAB Comments at 12-13; ABC et al. Comments at 5; State Broadcasters Comments at 11-12.

<sup>42</sup> See, e.g., Wiley Comments at 6 (erroneously stating that “the Commission’s reporting system currently allows a parent company with multiple licensee subsidiaries to file a single report, and permits each of that parent’s licensees to cross-reference that report”).

*such entity.*”<sup>43</sup> Nowhere on the form or instructions are filers instructed that they may consolidate filings for a corporate organization (in whole or in part) into a single form, or escape the requirement that separate forms be filed for each entity by cross-referencing a “global” report of a corporate parent somewhere in the chain of ownership.<sup>44</sup> Based on the Commission’s review of the history of revisions to Form 323 approved by OMB, there has been no change in the filing requirements in this respect since at least 1983 (the earliest OMB-approved version of the form in the Commission’s files). Similarly, the Commission has not changed the ability of respondents to list multiple stations under common ownership on a single form, limiting the number of Form 323 reports that must be filed for stations that share common ownership. A licensee will continue to be able to list all of the stations licensed to that same licensee on a single form in response to Section I, Question 7.<sup>45</sup>

## 2. The Commission Has Minimized The Burdens On Collecting Data From Sole Proprietors as Much as Possible

NAB argues in its comments that the Commission should reduce the burdens on sole proprietor licensees by eliminating the new requirement that sole proprietors file Form 323 biennially.<sup>46</sup> Instead, NAB proposes that the Commission incorporate data from previous Form 323 submissions for sole proprietors. NAB contends that the previous ownership data on file will provide current information on race, ethnicity, and gender, as these characteristics would not change over time.<sup>47</sup> UCC et al., on the other hand, support the Commission’s decision to extend the biennial filing requirements to sole proprietors, on the basis that this information is important to provide the Commission with a “complete picture of minority and female ownership.”<sup>48</sup>

The Commission is not persuaded by NAB’s arguments. It is true that once a sole proprietor has filed a new report using the revised form, race, ethnicity, and gender data would not change absent a sale of the station. Under the revised ownership reporting system, however, the non-biennial ownership report filed in connection with a sale will no longer require the submission of minority status or gender data—a change the Commission made to reduce burdens on filers of non-biennial ownership reports. As a result, non-biennial ownership reports would not update our database to accurately reflect minority and female ownership. Further, absent a certification that the previously filed information is correct, the Commission could not be sure

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<sup>43</sup> Form 323 Instructions at 2 (emphasis added).

<sup>44</sup> Adoption of a single-form option to place all ownership information for a corporate structure’s entire chain of ownership on one Form 323 was an option fully considered at the notice and comment stage of the *323 Order*, and specifically rejected by the Commission. The Commission noted that separate filings by each entity in the chain of ownership was a long-standing requirement that the Commission declined to change: “At this time, we are not modifying the current requirement that licensees, parent entities, all attributable entities, as well as the nonattributable entities identified above, file separate forms.” *323 Order*, ¶ 21, 24 FCC Rcd at 5908, 5909 (emphasis added).

<sup>45</sup> As with previous drafts of Form 323 submitted to OMB for review, the copy of the revised Form 323 shows just one text box for entry of station data in Section 1, Question 7. The text of the revised question itself clearly contemplates that multiple station call signs can, and in many cases, will be entered on to the form: “This Report is filed for the following stations.” See Revised Form 323.

<sup>46</sup> NAB Comments at 18; NAB Reply to Opposition at 8-9.

<sup>47</sup> NAB Reply to Opposition at 8.

<sup>48</sup> UCC et al. Comments at 4.

that the information submitted in the previous form has not changed. In addition, the biennial requirement is necessary to capture changes in attributable interests that do not require prior Commission approval (such as entering into a new local marketing agreement, which must be filed with the Commission and reported on Form 323). The biennial filing requirement is the only mechanism by which we can capture this information in a readily searchable format so that it can be used in studies to accurately determine the universe of broadcast ownership by minorities and women.

The Commission already has systems in place to minimize the burdens on sole proprietors as much as possible. After the initial filing, sole proprietor licensees with current reports on file can launch a pre-filled form that already contains the information from its previously submitted Form 323 and can simply sign, date and electronically submit the pre-filled form. No additional data must be entered. After submission of the first ownership report on the new form, the burden for completing future reports will be minimal.

3. The Commission Specifically Rejected the Use of Global Exhibit Attachments in the 323 Order Because Such Exhibits Make It Impossible to Utilize the Collected Information

NAB, ABC et al. and Wiley criticize the Commission for eliminating the ability of filers to place large amounts of data on a PDF or Word exhibit uploaded as an attachment to the Form 323 report rather than enter it into the Commission's database electronically.<sup>49</sup> NAB requests that the Commission retain the practice of using exhibits instead of data entry into Form 323 by arguing that "[t]he Supporting Statement offers no explanation of why these changes are necessary for any Commission functions, and the burdens imposed will add hours to every filing . . . without any countervailing benefit." However, the Commission clearly explained in the Supporting Statement that "[t]he 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."<sup>50</sup> Further, the Commission clearly explained the benefits of eliminating global exhibits in favor of database responses in the 323 Order:

The GAO report and the Quadrennial Review study authors have criticized the difficulty of aggregating and summarizing the data submitted on Form 323. Specifically, the GAO Report criticizes the Commission's procedures that allow respondents to provide attachments with their electronic filing that may include minority and female ownership data. Because the data are not entered into the database, the data cannot be retrieved and evaluated by electronic query. [. . .] We agree that the current procedures for submitting the data on Form 323 should be changed. It is crucial that the data be submitted in a useful manner so the data are electronically searchable and can easily be sorted and aggregated. None of the commenters oppose procedural modifications to collect usable data for performing studies. Therefore, Commission staff is directed to modify Form 323 so that ownership data is incorporated into the database, is searchable, and can be aggregated and cross-referenced electronically.<sup>51</sup>

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<sup>49</sup> See NAB Comments at 13; ABC et al. Comments at 3-5; Wiley Comments at 6-7.

<sup>50</sup> Supporting Statement at 8.

<sup>51</sup> 323 Order at ¶ 20, 24 FCC Rcd at 5908, 5909 (citations omitted) (emphasis added).

In sum, moving from a system where parties are permitted to file non-searchable, non-usable attachments to one based on responses to specific questions corrects a fundamental flaw of the existing Form 323. Indeed, UCC et al., which also participated in the underlying proceeding, commented that the revisions to Form 323 make the form “much more user-friendly, and capable of yielding more accurate data than ever before”<sup>52</sup>—precisely the goal of the revisions.

ABC et al., Wiley and the Named State Broadcasters Associations criticize the removal of exhibits from Form 323 on the basis that “preparing and editing a single, comprehensive exhibit is easier and less time consuming than entering data manually into multiple electronic fields using [CDBS].”<sup>53</sup> First, the Commission is not convinced that entering small portions of the overall ownership picture on individual Form 323s is appreciably more burdensome than entering those same small portions into a single word processing document to submit as an attachment. Second, even if the change in reporting format requires more effort to input, the Commission has already determined—and explained at length in the *323 Order*—that the benefits greatly outweigh the burdens. Wiley also claims that the change from exhibits to data entry increases the risk of transcription error from filers entering data into the form, and that this risk will make the collected data even more unreliable.<sup>54</sup> The Commission disagrees, and believes this argument greatly overstates the potential risk to the quality of the data collected.<sup>55</sup> The current practice of submitting data via exhibits renders the submitted data difficult or even impossible to use, completely negating the purpose and value of the collection in the first place. The data must be submitted in a usable format to have any value.

#### 4. Form 323 Does Not Require Filing Unnecessarily Duplicative Information

ABC et al., NAB, Wiley, and the Named State Broadcasters Associations each criticize the revised Form 323 on the basis that the revised form will require submission of duplicative information.<sup>56</sup> These criticisms appear to derive from a misunderstanding about the extent of the information that each entity in a corporate structure must provide on its Form 323 report.

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<sup>52</sup> UCC et al. Comments at 7. UCC praises in particular the revisions to the form instructions that provide much clearer guidance on how to fill out the form and argue that “[t]hese changes create a more meaningful data collection process by enhancing ease of use and precision, and if anything, they ameliorate—not augment—any burdens associated with filing Form 323.” *Id.*

<sup>53</sup> ABC et al. Comments at 3-4; *see also* Wiley Comments at 6-7; State Broadcasters Comments at 11-12.

<sup>54</sup> Wiley Comments at 6-7. Wiley points in particular to the portion of the form that requires input of station call signs, cities of license, and facility ID numbers as a place for potential transcription error in the new version of Form 323. However, manual entry of station call signs, Facility ID Numbers, community of license and broadcast service type has been a required feature of the Commission’s electronic Form 323 for many years and has not changed in the revised form.

<sup>55</sup> In the Commission’s experience, broadcast corporations with the most complex corporate structures are sophisticated entities and enjoy sophisticated legal representation. In addition, the Commission’s own electronic filing system already contains error-checking protocols to assist filers with identifying missing or incorrect information before the report is submitted to the FCC, further minimizing the potential for error. The Commission is confident that any transcription errors that do occur will be minor and will not outweigh the benefits of assembling a usable database of ownership information.

<sup>56</sup> *See* ABC et al. Comments at 3-4; Wiley Comments at 6-8; NAB Comments at 11-14; State Broadcasters Comments at 11.

Assume, for the purposes of example, the case of a corporate structure that includes three levels: a licensee company, a holding company that owns the licensee company, and a corporate parent that owns the holding company. The licensee's Form 323 report would include demographic data about the licensee and its own officers and directors, etc., and would identify the holding company as its owner. The licensee would not, however, include the *holding company's* personnel and associated demographic data. That information would be required instead on the holding company's Form 323 report, which would list its own officers, directors, and attributable interest holders and identify the licensee company (as the organization it has an attributable interest in) and the corporate parent (as the organization that has an attributable interest in it). The parent must be reported only if it also has an attributable interest in the licensee. That corporate parent would then file its own Ownership Report, listing its officers, directors, and attributable interest holders and would list the name of the holding company that in which it has an attributable interest. Accordingly, the amount of "duplicative" information is limited only to the bare minimum information required to permit the FCC to (1) link a chain of reports together into a cohesive whole; and (2) perform audits to ensure that all entities required to file Form 323 have in fact filed. Information that is common to all filed Form 323s includes the list of stations and the identity of the licensee. These categories of information are necessary to ensure that all filed Form 323 reports applicable to specific stations or licensees can be quickly located and assembled for review. The information is vital to the Commission's efforts to assemble an electronically searchable database. The information submitted on Form 323 can be automatically duplicated in future filings by selecting an option to pre-populate the form from a previous filing. Therefore, after the initial filing on the revised Form 323, filers who have few or no changes to report in the future will not need to repeat the task of data entry. This will minimize burdens for future filings.

The Commission disagrees with the commenters who suggest that the revisions to Form 323 will require submission of unnecessarily duplicative data. While some questions on the form require uniform responses for all entities filing for a particular ownership structure, those questions are limited in number and solely for the purpose of ensuring that the forms are grouped together appropriately after filing.<sup>57</sup>

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<sup>57</sup> Wiley notes in its comments that one of its clients, a corporate parent entity with ownership interests in four different licensee companies, will file four reports that contain much of the same information, with the exception that the list of station licenses (and, in fact, identification of the different licensees) will be different. See Wiley Comments at 7; see also ABC et al. Comments at 11. The Commission notes that filing requirements and all other public interest obligations that broadcasters are required to perform ultimately attach to the *license* for the station. The Commission is charged with the task of administering and managing station licenses. As part of this task, the Commission must have complete information on file for each broadcast license, which includes its technical specifications (location, frequency, authorized power levels, service area, etc.) and ownership information of the *licensee*—the person or entity that is directly holds an FCC station license. Because accurate and timely filing of reporting obligations is a requirement to hold a broadcast license, the Commission's analysis always begins at the licensee level. The obligation to report the full chain of ownership applicable to each license is and always has been required in order to provide the Commission with accurate information about who bears responsibility for the operation of the station. At present, there is no less burdensome mechanism for corporate parents to report ownership interests. The "consolidated" reports proposed by Wiley, which would combine stations licensed to one entity with stations licensed to completely different entities, would make it impossible for the Commission's database systems to construct an accurate chain of ownership.

In revising Form 323, the Commission sought to reduce the amount of data entry to the bare minimum required to compile a complete and usable database. The Commission attempted to reduce the burdens by limiting questions wherever possible. Accordingly, not every question on Form 323 is applicable to every filer. Several of the questions, for example, are applicable only to licensees, and are clearly marked as such. For example, the Commission's new requirement that licensees provide a chart showing the overall corporate structure applies only to licensees and is an additional mechanism for the Commission to verify that the data it receives is accurate and complete. Wiley, NAB, ABC et al. and the Named State Broadcasters Associations object to inclusion of the chart.<sup>58</sup> The Commission disagrees with the objections raised by the commenters that this requirement is burdensome. The chart will provide the Commission with a better picture of the licensee's overall ownership structure, reducing the need for later follow-up questions and requests for more information should the Commission determine in an audit that anything on the reports filed for the applicable stations is unclear. Overall, the Commission believes the inclusion of the chart will thus reduce burdens over the long term and greatly improve the quality and usefulness of the data collected.

#### **D. Comments Concerning Burden Hours / Costs Calculations**

A number of the commenters argue that the Commission underestimated the hours and costs required to complete Form 323 in the estimated burdens section of the Supporting Statement.<sup>59</sup> We address these comments in turn.

##### **1. Estimated Time of Response and Number of Applications**

Several commenters take issue with the Commission's estimated average time required to complete revised Form 323.<sup>60</sup> Others state that the Commission has underestimated the number of annual Form 323 filings or has not explained how it calculated the number of anticipated filings.<sup>61</sup>

The FCC estimated it would take between 1.5 and 2.5 hours on average to fill out the revised Form 323. In calculating the burden hours, the Commission noted that the actual time to complete Form 323 will depend on the complexity of the ownership structure being reported. In general, complex, multi-layered corporate parent-subsidiary organizations take more time to describe on Form 323 than do simple licensee organizations. The Commission therefore uses an average number of hours on its Supporting Statement for Form 323. The FCC anticipated that some applications would take longer than 2.5 hours and some would take significantly less than

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<sup>58</sup> See Wiley Comments at 7; NAB Comments at 14; ABC et al. Comments at 4-5; State Broadcasters Comments at 12.

<sup>59</sup> See Alpert Comments at 6; Saga Comments at 2-3, 5-6; State Broadcasters Comments at 10-12; ABC et al. Comments at 2-3, 8; Wiley Comments at 5-8, 11-12; NAB Comments at 7, 15-16.

<sup>60</sup> See Alpert Comments at 6 (arguing that the addition of FRNs to the reports will substantially increase the amount of time required to complete Form 323); Wiley Comments at 8 (arguing the new requirements will add "hours and hours" to filing process); Saga Comments at 2-3 (arguing completion of the form will take more than 2.5 hours).

<sup>61</sup> See NAB Comments at 15-16 (arguing that the revised Form 323 will require more filings than estimated); State Broadcasters Comments at 10-12 (arguing that the estimated time of response is too low and the Commission did not adequately explain how it calculated the estimates);



1.5 hours to complete, but this range represented what the Commission considered a reasonable average for all reports.

The estimates were calculated in major part by FCC staff locating a previously-filed Form 323 and using its data to fill in a sample electronic version of the revised form. The electronic version has not been coded into the FCC's CDBS filing system, but staff was able to approximate the process of CDBS filing via an electronic version of the draft form, which was prepared using electronic copies of the CDBS database screens.<sup>62</sup> Staff selected one of the more complex Form 323 filings to perform a time test, on the theory that using a complex filing as the basis for the calculation would produce an estimate that errs on the side of over-estimation, rather than under-estimation, of the time it will require to complete the filing. The Commission filled in the electronic draft form and calculated the time required to complete each question, added together the total amount of time, and added additional time as a buffer and to account for the seconds or minutes required for the electronic filing system to save the data and upload the completed form into the Commission's databases.

The Commission submits that it took reasonable steps to ensure that its calculations estimated the average time it would take to complete the form. Nevertheless, based on comments that the estimated time is too low to account for very complex filings,<sup>63</sup> the Commission will increase the estimates of time required to complete a non-biennial report by one hour and the time for completion of a biennial report by two hours, for a revised total of 2.5 hours to 4.5 hours estimated time.<sup>64</sup>

Wiley and NAB, among others, argue that the Commission underestimated the number of annual Form 323 filings. For example, NAB states that it used the Commission's CDBS system to show that "12,189 biennial reports were filed in 2008; 30,656 biennial reports in 2007; and 11,784 reports in 2006" for a total annual average of 18,209.<sup>65</sup> NAB then immediately follows this claim with a caveat: "[w]e recognize that this figure reflects more reports than actually were filed."<sup>66</sup> This is an extraordinary understatement. Commission staff was able to replicate NAB's searches in the public CDBS database to obtain the same numbers of alleged "reports" for each year—12,189, 30,656, and 11,784 for 2008, 2007 and 2006, respectively. Those figures do not, in fact, represent reports—they represent the number of ownership filing *records* for a particular

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<sup>62</sup> ABC et al. and Wiley argue that because a "live" CDBS version of the form was not available at the time the form was submitted to OMB that it is impossible for them to gauge the amount of time it will take to complete the form. See ABC et al. Comments at 8-11; Wiley Comments at 5, 11. The Commission used a close approximation of the CDBS system to perform a time trial of the amount of time needed to fill out the form.

<sup>63</sup> The comments arguing that the time calculations are too low tend to focus on the extreme cases—cases where the licenses are held by subsidiary licensee companies with complicated corporate parent structures above them. While many licenses are held in complex corporate structures, many others are not. Accordingly, an average time calculation will be lower than the time required to complete a complex filing, and greater than the time required to complete a simple one.

<sup>64</sup> The Commission expects that as broadcasters, owners, and their professional services providers become more familiar with the mechanics of the revised Form 323, they will be able to significantly streamline their efforts and reduce the amount of time it takes to complete the form.

<sup>65</sup> NAB Comments at 15.

<sup>66</sup> NAB Comments at 15.

year that the CDBS database contains. The records include many multiple copies of the same reports, which are duplicated automatically by the Commission's database system in order to associate the appropriate reports with each individual station license listed on the report. In other words, a single Form 323 report that lists 20 broadcast station licenses may appear in the records 20 times, even though only one report was actually filed.<sup>67</sup> Moreover, the numbers cited by NAB include the biennial reports for noncommercial educational broadcast stations, which are reported on FCC Form 323-E, a completely different form with a completely different OMB Control Number (3060-0084) that is not at issue here.

When the Commission calculated its estimated annual number of reports, it relied on an accurate count of ownership *reports* for a complete 2-year biennial filing cycle. The Commission determined that from the period beginning January 1, 2007 through and including December 31, 2008, a total of 7,693 biennial ownership reports were filed on Form 323. This figure included 5,144 reports from licensees and 2,549 reports from entities that hold ownership interests in licensees ("parent companies") for that two-year period. The existing average annual calculation was, therefore, 3,847 (rounding up) reports filed per year.

The Commission then added significantly to the actual annual filing numbers calculated to account for the new categories of filers required to submit Form 323 reports. At the time the Commission calculated the burdens, there were 554 Class A television stations and 2,298 low-power television stations licensed. Erring on the side of caution, the Commission assumed that each and every station would file separately (in reality, the Commission expects that many of these stations will be grouped together with other stations on a consolidated licensee report, because many stations are owned by licensees holding multiple station licenses).<sup>68</sup> The Commission therefore estimated approximately 1,426 annual reports from Class A / LPTV licensees, and an additional 713 reports from parent companies for Class A / LPTV stations.<sup>69</sup> To account for the increased reports from entities holding non-attributable, but reportable, interests, the Commission conservatively estimated that of the 15,443 full power, LPTV and Class A TV stations, 2,000 would file biennially as sole proprietorships or partnerships of natural persons, and another 1,000 would file biennially for the other categories of non-attributable interests (single majority shareholders and eligible entity exception interests). This works out to an additional 1,500 reports per year. The Commission therefore calculated a total annual number of biennial reports at 7,486 (rounded up to approximately 7,500) and total annual number of other, non-biennial reports at 1,757 (rounded down to approximately 1,750).

These figures represent the Commission's good-faith estimates of the number of reports that will be filed. However, in light of the comments expressing concern with the Commission's

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<sup>67</sup> The revised version of Form 323 will likewise continue to allow filers to list multiple station licenses on a single form where they are licensed to the same licensee, in order to reduce duplicative filings.

<sup>68</sup> NAB cites to these numbers in particular as figures that should have been included in the estimated number of annual filings. NAB Comments at 16. The Commission did, in fact, take these figures into account—and further assumed that each station would file separately, even though the Commission expects many of them to be grouped together (thus lowering the number of actual reports filed).

<sup>69</sup> The Commission estimated that it would receive parent company reports equal to approximately half the number of licensee reports, because this is approximately the same ratio of licensee-to-parent reports it receives from full-power broadcast station owners.

figures (and the revelation, included in Wiley's comments and others, that a number of multi-station owners have historically not filed all of the separate reports as required), the Commission recognizes that it may need to revise the estimated number of reports. Nevertheless, until at least the first filing cycle of the revised Form 323 is complete, it will be very difficult for anyone—commenters or Commission members—to accurately estimate the number of reports. Accordingly, the Commission proposes to retain the current estimated number of filings, and then revisit these estimates in a future Supporting Statement once it has compiled a record of actual reports on which to base a better calculation, if appropriate.

## 2. Estimated Costs

NAB and Wiley point out that the Commission listed an out-of-date filing fee for biennial ownership reports (\$55) instead of the current 2009 filing fee, \$60, for a difference of \$5 per application.<sup>70</sup> The Commission acknowledges this error and will correct the burden calculation to reflect the \$60 fee amount in its revised Supporting Statement.

## 3. Estimated Attorney Time / Costs

Several commenters also object to the Commission's estimates on attorney time needed to prepare Form 323 and the average attorney hourly rates used by the Commission.<sup>71</sup> In particular, the commenters argue that the hour calculations do not take into account the new obligations of FRN reporting and other new features of the form.<sup>72</sup> This is simply incorrect. The Commission well understood that more attorney time would be necessary with the revisions, and therefore significantly increased the estimated number of hours of legal advice from 6 hours to 8 hours for biennial reports, and from 6 hours to 7 hours for non-biennial reports.<sup>73</sup> The Commission believes that this figure accurately represents an overall average among the entire universe of reports, some of which will be more complex than others, and therefore some of which will require either more or less attorney time, respectively, to prepare.<sup>74</sup> Nonetheless, based on these comments, the Commission will increase the estimated attorney hours estimates by 2 hours for biennial applications and 1 hour for non-biennial applications, for revised totals of 10 hours and 8 hours, respectively. The Commission will make this change on the revised Supporting Statement.

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<sup>70</sup> See NAB Comments at 16-17; Wiley Comments at 12.

<sup>71</sup> See ABC et al. Comments at 8 (arguing the Commission provided no support for its estimates of the time and cost of attorney assistance to complete the revised Form 323); Saga Comments at 2-3 (arguing attorney rates should be calculated higher); NAB Comments at 16-17 (arguing that estimated attorney rates are too low); Wiley Comments at 12 (stating agreement with NAB comments on the subject of legal fees/time); see also Alpert Comments at 6 (stating generally that legal fees for compliance with the revised Form 323 reporting requirements will be "substantial")

<sup>72</sup> See, e.g., Wiley Comments at 10-11 (noting that it will take some measure of time for attorneys to explain to their clients the one-time process for obtaining an FRN and for collecting FRN information once registered).

<sup>73</sup> The estimated attorney hours for simple re-certifications remains the same, as the Commission is not changing the functionality that allows filers who have no new information to report to simply re-launch a pre-filled report from the previous biennial filing and re-certify it in lieu of preparing an entirely new Form 323 report.

<sup>74</sup> Indeed, the commenters offer no concrete alternatives to the Commission's estimate about the average number of attorney hours, and NAB's proposed recalculation accepts the Commission's figures, but argues that a higher hourly rate should be used. See NAB Comments at 17.

Several of the commenters also take issue with the Commission's use of a standard hourly rate for calculation of estimated attorney fee costs. The Commission has, in the past, used a standard \$200 per hour average rate to calculate attorney costs. The \$200 per hour rate represents the Commission's best estimate, based on available information, of the average hourly rate for outside legal counsel to assist broadcast station owners with filing the Form 323. Based on the FCC's knowledge and belief about the typical practices in outside law firms, many routine activities are handled by low-level staffers—legal assistants, paralegals, and junior associate attorneys—rather than by partners or attorneys who command top dollar rates of the type cited by the commenters as the “going” rates for hourly attorney fees. In addition, not every filer will necessarily engage “communications boutiques” or the most expensive law firms to complete ownership reports. The Commission is aware that there are a range of legal fees in the legal community. Nonetheless, because the \$200 figure has been in use for several years, to acknowledge what have undoubtedly been rising fees, the Commission will increase the standard estimated average hourly rate to \$300.00 per hour. The Commission based this revised estimate on its research into the average rates charged by attorneys serving communications clients as well as a review of the range of estimated attorney fees calculated by other federal agencies for outside legal counsel for assistance with completing similar collections of information. The Commission will include this figure on a revised Supporting Statement for Form 323.

#### **E. Comments Concerning Alleged “Discouragement on Investment”**

NAB, Wiley, ABC et al. and the Named State Broadcasters Associations argue that the Commission's revised reporting requirements will have a deleterious effect on investment in the broadcast industry, on the theory that potential investors will find the biennial reporting requirements overly burdensome and will accordingly decline to purchase ownership stakes in broadcasting operations.<sup>75</sup> The Commission disagrees. In an industry like broadcasting that has historically been heavily regulated under the public interest standard, it simply strains credulity to suggest that any appreciable number of broadcast transactions will be adversely affected by the expense of filing an ownership report once every two years. Investors well understand that FCC reporting requirements are a necessary component of holding a broadcast license. And, the information requested by the form is, as discussed above, necessary for the Commission to carry out its policy goals and statutory objectives. To the extent that commenters argue that reporting of nonattributable interests will deter investment by such potential interest holders, who would otherwise not be reported, we will address that argument separately.

#### **F. Comments Concerning the Robustness of FCC Electronic Filing Systems**

Two commenters state concerns that the Commission's Consolidated Database System (“CDBS”) may not be robust enough to handle the crush of applications submitted on the uniform filing date for biennial ownership reports.<sup>76</sup> The Commission is aware that by changing to a consolidated filing deadline (rather than the staggered filing deadlines currently in effect), many more people will be using CDBS during the 32-day filing “window” for submission of

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<sup>75</sup> See NAB Comments at 18; Wiley Comments at 10; ABC et al. Comments at 20, 26; State Broadcasters Comments at 10.

<sup>76</sup> See Alpert Comments at 4-5; Wiley Comments at 13.

Form 323.<sup>77</sup> The Commission is addressing and preparing for any issues regarding the operation of its computer systems that may arise.<sup>78</sup> In any event, these concerns are speculative and are not relevant to OMB's consideration of the public burdens associated with the form.

## **G. Comments Offering Other Suggestions for Improvement**

### **1. Alternative Suggestion to Collect General Demographic Data Instead of Specific Verifiable Data**

NAB asks the Commission to reconsider its decision to obtain information from holders of certain non-attributable interests. The Commission expanded biennial reporting to include two categories of non-attributable interest holders: minority voting shareholders in corporations with a single majority shareholder and interests that would be attributable but for an exemption pertinent to investments in eligible entities. If the Commission affirms its decision to collect non-attributable information, NAB asks that reporting be limited to race, gender, and ownership percentage of the non-attributable investors, rather than full reporting of their names, addresses, familial relationships, and other media holdings.<sup>79</sup> A response will be forthcoming on this issue.

### **2. Suggestion to Allow Electronic Submission of Copies of Broadcast Agreements Via Form 323**

Alpert suggests that the Commission modify the Form 323 to allow filers to upload certain documents into the form itself. Alpert suggests that this function will reduce the burdens imposed on the Commission's public reference room, improve the accessibility of the documents, and eliminate the need for paper filings of the documents.<sup>80</sup>

Question 1 of Section II-A of Form 323 requires filers to list documents that have otherwise been filed with the Commission pursuant to the requirements in 47 C.F.R. § 73.3613. Form 323 does not require filers to upload any documents with Form 323 or to separately file any documents with the Commission. Alpert's suggestion to allow filers to upload documents with Form 323 appears to have merit. This is an idea that the Commission may want to explore further when the Commission considers changes to its overall electronic filing system. However, Alpert's suggestion is outside the scope of this proceeding. Here, we are undertaking modifications to Form 323 in order to obtain more accurate, reliable, and comprehensive data on minority and female ownership. The form does not require licensees to file any documents pursuant to Section 73.3613 of the Commission's rules—merely list them. In this proceeding, the Commission has not sought comment on any changes to the requirement that such

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<sup>77</sup> The commenters paint a scenario where all or almost all Form 323 filings will occur on the last possible filing date—November 1st. These arguments are misleading. The information submitted on Form 323 must be current as of October 1 of the applicable filing year. Therefore, filers have 32 days (all 31 days in October and until 11:59 PM on November 1st) to submit Form 323 electronically to the FCC. While some filers may choose to procrastinate complying with the filing obligations until the last minute, it is not required that they do so.

<sup>78</sup> This includes generating additional file numbers if necessary. *See* Wiley Comments at 13 (speculating that the Commission might "run out" of filing numbers to assign to applications filed on the November 1 deadline).

<sup>79</sup> NAB Comments at 18.

<sup>80</sup> Alpert Comments at 6-7.

agreements be listed on Form 323, nor to its rules requiring that copies of the agreements be submitted separately to the FCC. Any suggestions to modify current document filing requirements would need to be explored in the context of a separate rulemaking.

**IV. Request for Approval of Revised Information Collection**

The Commission has attempted to address the comments that it has received concerning its proposed revisions to FCC Form 323, but disagrees with commenters arguing that the form should be disapproved, for the reasons explained above. Accordingly, we renew our request for approval of the proposed revisions to Form 323, which the Commission believes will correct serious shortcomings in the existing form and will greatly improve the ability of the Commission to gather data necessary for future review of its diversity and ownership initiatives.

**FEDERAL COMMUNICATIONS  
COMMISSION**

A handwritten signature in cursive script that reads "Walter Boswell". The signature is written in black ink and is positioned above a horizontal line.

Walter Boswell  
Acting Assoc. Managing Director, PERM