

REVISED SUPPORTING STATEMENT

A. Justification:

1. Licensees of commercial AM, FM, and full power television broadcast stations, as well as licensees of Class A and Low Power Television stations must file FCC Form 323 every two years. Ownership Reports shall provide information accurate as of October 1 of the year in which the Report is filed. The Form shall be filed biennially beginning November 1, 2011, and every two years thereafter.

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

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate FCC Form 323 must be filed for each entity in the organizational structure that has an attributable interest in the Licensee. The term "Attributable Interest" is described in the instructions to the Form and in the Notes to 47 C.F.R. Section 73.3555.

Updated Information Collection:

With this submission the Commission is complying with The Office of Management and Budget's (OMB's) request to update this collection to be consistent with current Federal standards for the collection of racial and ethnicity data (*see* Notice of Office of Management and Budget Action (NOA), dated 09/13/2012).

The FCC Form 323 (page 7) and Instructions (page 9) have been changed to remove the "Two or more races" option under the Gender/Ethnicity/Race Information. Previously, the question required filers to select one and only one of the following options: American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; White; or Two or more races. As revised, filers are able to select more than one race category, if applicable.

We are requesting a three year approval of this information collection from the OMB.

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History:

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

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

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

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

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

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The FCC has a system of records, FCC/MB-1, "Ownership Report for Commercial Broadcast Stations," which covers the personally identifiable information (PII) that may be collected via these information collection requirements, *i.e.*, PII that individual respondents may submit on FCC Form 323. FCC/MB-1 was approved without comment on December 15, 2009.²

The FCC expects to complete the Privacy Threshold Analysis (PTA) and Privacy Impact Assessment (PIA) for FCC/MB-1 SORN shortly. Upon completion, the FCC will post both documents on the FCC webpage, as required by OMB Memorandum, M-03-22 (September 22, 2003).

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

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

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

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

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

The Commission's 2009 action, the 323 Order expanded the class of entities that are required to file the Form 323 biennially to include additional classes of commercial licensees previously exempt from filing. Sole proprietorships, partnerships of natural persons, LPTV licensees, and Class A Television licensees now file biennial ownership reports on Form 323. The reporting requirement affected radio and TV stations, including LPTV and Class A stations.

6. The FCC requires this reporting to detect violations and maintain and support the purpose of the multiple ownership rules. For reports filed on a biennial basis, less frequent reporting would not provide FCC staff enough information to establish trends in minority and female ownership as accurately. We have established a uniform date for biennial filings so that a more accurate snapshot

² This System of Records (SORN) was published in the Federal Register on November 19, 2009, (74 FR 59978).

of minority and female ownership may be obtained that could then later be used to assess trends. In addition, the data collected on biennially-filed Form 323 Reports are intended to be used by the Commission to prepare economic analyses in conjunction with its statutorily-mandated periodic review of the FCC's media ownership regulations. The Commission requires collection of data on a regular periodic basis in order to track ownership trends over time and gauge the effects of FCC policy on media ownership in the United States. Less frequent reporting would materially degrade the quality of the data collected and would hamper the ability of the Commission to make meaningful evaluations of ownership trends.

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

8. The Commission published a Notice (77 FR 28382) in the Federal Register on May 14, 2012 seeking public comments for the information collection requirements contained in this supporting statement. The Commission received a comment from Harry F. Cole of Fletcher, Heald & Hildreth, P.L.C. on August 15, 2012. In the comment, Mr. Cole notes that multiple changes, which the Commission characterized as non-substantial, were made to the FCC Form 323 following the form's approval by OMB in 2009. Mr. Cole seeks confirmation "that no changes from the most recently approved version of the form are contemplated by the currently pending request for approval."

All of these non-substantial changes to the form that the Commission made were submitted to OMB and approved. These non-substantial changes are as follows: (1) correcting a typo in Question 5 of Section 1 (ICR Reference No: 200912-3060-002); (2) updating the format of the information submitted in response to Question 3(c) and revising the pop-up language for the Special Use FRN (ICR Reference No: 201003-3060-025); (3) providing clarifying language regarding the use of the Special Use FRN and adding the Special Use FRN feature to the non-biennial section (ICR Reference No: 201006-3060-006); and (4) adding clarifying language to the pop-up box for the Special Use FRN (ICR Reference No: 201109-3060-020). All of these changes, which are incorporated into this information collection, can be viewed on OMB's public viewing website of all information collections, www.reginfo.gov. This information collection does not contemplate any changes to the most recently approved FCC Form 323 other than those specifically detailed herein.

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

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

Confidentiality of Personal Information: As noted in Question 1, the FCC has a system of records notice (SORN), FCC/MB-1, "Ownership Report for Commercial Broadcast Stations," to cover the collection, purposes(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323. FCC Form 323 includes a privacy statement to inform applicants

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(respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII.

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

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

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

12. The following estimates are provided for annual public burden:

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Service	No. of Reports	Respondent's Burden	Annual Burden Hours	Hourly In-House Cost	Annual In-House Cost
Biennial Reports/Certifications ³	7,500	4.5 hours	33,750 hours	\$48.08	\$1,622,700
All Other Reports	1,750	2.5 hours	4,375 hours	\$48.08	\$210,350
TOTALS:	9,250 (Responses)		38,125 hrs. (Burden Hours)		\$1,833,050 (In-house cost)

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

Total Annual Burden Hours: 38,215 hours

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

We assume that the respondent would consult with its in-house staff and/or attorney to complete and file the FCC Form 323 or certification of no change. We estimate that these respondents would have an average salary of \$100,000 (\$48.08/hour). These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

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

7,500 biennial reports / certifications x 10 hours x \$300/hour	=	\$22,500,000
1,750 other reports x 8 hours x \$300/hour	=	\$ 4,200,000
4,000 ⁴ biennial reports/certifications x \$60	=	\$ 240,000
Total Annual Cost Burden	=	\$26,940,000

14. **Cost to the Federal Government:** The Commission will use paraprofessional staff at the GS-11/Step 5 level (\$33.92/hour) to process the FCC Form 323 and all other certifications.

³ Although the biennial reports and certifications are filed every two years, the Commission calculated the 7,500 responses based on an annual basis since OMB requires an annual calculation of filings and burden hours.

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

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7,500 biennial reports / certifications x 2 hours x \$33.92/hour	=	\$ 508,800
1,750 other reports x 2 hours x \$33.92/hour	=	<u>\$ 118,720</u>
Total Cost to the Federal Government	=	\$ 627,520

15. We have updated this information collection to conform to the “Terms of Clearance” as specified in OMB’s NOA dated September 13, 2012. The “Terms of Clearance” provided for a six month approval of this information collection with the condition that this collection is updated to be consistent with Federal standards for the collection of racial and ethnicity data. There are no program changes or adjustments to this collection as a result of the updates to FCC Form 323.

16. The data will not be published. However, the data collected by the Commission on Form 323 may be used in future economic studies and other analyses conducted by the Commission for the purposes of analyzing trends in media ownership, and those studies may be published. In addition, the data collected on Form 323 will be available to members of the public via the search functions of the Commission’s electronic filing systems for Form 323 and other FCC forms. Publicly-available data from Form 323 will include FRNs attached to specific ownership records, but the underlying confidential Taxpayer ID Numbers / Social Security Numbers submitted on Form 160 to obtain those FRNs will not be made public. We anticipate that outside economists, academics, and members of the public may use the data collected on Form 323 in future economic or other academic studies relating to media ownership issues, and that those studies may be published or made publicly available by their respective authors.

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

18. There is only one exception to the Certification Statement. The exception is due to the collection being submitted as a revision instead of an extension to the OMB.

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.