

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 (LPTV) stations, must file FCC Form 323 every two years. Biennial 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 by December 1 in all odd-numbered years.

In addition, 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.

A copy of all ownership and supplemental ownership reports and related material filed pursuant to Sections 73.3615 and 74.797 of the FCC's rules shall be maintained and made available for public inspection locally.¹

History:

On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking (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 (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

¹ This recordkeeping information collection requirement is covered under OMB Control Number 3060-0214, which requires that a copy of the most recent, complete Ownership Report for Commercial Broadcast Station, FCC Form 323 (OMB control number 3060-0010) filed with the FCC for the station, together with any statements filed with the FCC certifying that the current Report is accurate.

Ownership Report for Commercial Broadcast Stations, FCC Form 323; Section 73.3615, Ownership Reports; Section 74.797, Biennial Ownership Reports

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 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.² 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.

On December 21, 2012, the Commission adopted a *Sixth Further Notice of Proposed Rulemaking*. The *Sixth Further Notice* sought comment on the Commission's requirement that licensees and other entities filing Form 323 provide an FCC Registration Number (FRN) for each attributable individual reported on the form. To obtain an FRN, a party generally must submit a Taxpayer Identification Number (TIN) or Social Security Number (SSN) to the Commission via the Commission Registration System (CORES). Noting that the CORES FRN enables unique identification of individuals, the *Sixth Further Notice* sought comment on its proposal to eliminate the interim Special Use FRN—a computer-generated number that is created by clicking a button in the electronic Form 323 and is not backed by any identifying information. In addition, the *Sixth Further Notice* proposed to extend the filing deadline for biennial ownership reports to give filers an additional 30 days and among other things also sought comment on certain Form 323-related proposals that commenters submitted previously.

On February 11, 2015, the Commission adopted a *Second Further Notice of Proposed Rulemaking and Seventh Further Notice of Proposed Rulemaking (Seventh Further Notice)*. The *Seventh Further Notice* proposed to implement a new Restricted Use FRN, requiring submission

² *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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of an alternative set of identifying information that does not include a full SSN, that filers could use in lieu of CORES FRNs for individuals reported on Form 323. Among other things, the *Seventh Further Notice* also sought additional comment on the elimination of the Special Use FRN.

On January 8, 2016, the Commission adopted a *Report and Order, Second Report and Order, and Order on Reconsideration*, FCC 16-1 (323/CORES Order and Reconsideration Order). The 323/CORES Order and Reconsideration Order adopted changes to the ownership reporting requirements that are intended to further improve the data collected on the form. The 323/CORES Order and Reconsideration Order adopted a Restricted Use FRN within CORES that individuals may use solely for the purpose of broadcast ownership report filings. In light of the Commission's adoption of the Restricted Use FRN, the 323/CORES Order and Reconsideration Order eliminated the availability of the interim Special Use FRN for broadcast ownership reports, except in very limited circumstances. The 323/CORES Order and Reconsideration Order prescribed revisions to the reporting requirements for noncommercial broadcast stations that more closely conform to the reporting requirements for commercial broadcast stations. The 323/CORES Order and Reconsideration Order also made a number of other improvements to the forms that are intended to reduce the filing burdens on broadcasters, streamline the filing process, and increase the quality and usability of the data submitted to the Commission. These changes include extending the biennial filing deadline for Form 323, reducing the number of filings required, improving the reporting of other broadcast and daily newspaper interests, and additional improvements.

Consistent with the actions taken by the Commission in the 323/CORES Order and Reconsideration Order, the following changes were made to Form 323: The instructions were revised to state the revised biennial filing requirements that the Commission adopted in the 323/CORES Order and Reconsideration Order and to state with increased clarity the information sought on the form. The form and instructions were revised to require the reporting of a CORES FRN for entities that hold attributable interests in a commercial broadcast station and the reporting of a CORES FRN or a Restricted Use FRN for individuals that hold attributable interests in such stations. The form and instructions also were revised to allow parent entity filers with multiple licensee subsidiaries to list all of those licensees and their associated stations on a single report, rather than filing separate ownership reports for each of those licensees; and simplify the reporting of attributable interest holders' other attributable broadcast interests by eliminating the need for significant amounts of data entry and file uploading via a series of subforms or spreadsheet attachments and adding simple yes/no buttons. In addition, many questions on the form were reworked or reordered in order to (1) clarify the information sought in the form; (2) provide respondents additional menu-style and checkbox-style options in order to simplify data entry; and (3) make the data collected on the form more adaptable for use in database programs used to prepare economic and policy studies relating to media ownership.

The 323/CORES Order and Reconsideration Order made the following specific changes to the FCC's rules relating to Form 323:

Ownership Report for Commercial Broadcast Stations, FCC Form 323; Section 73.3615, Ownership Reports; Section 74.797, Biennial Ownership Reports

73.3615(a): The *323/CORES Order and Reconsideration Order* revised the rule to require that the Ownership Report for Commercial Broadcast Stations, FCC Form 323 be filed by December 1, rather than November 1, in all odd-numbered years. As previously required by this rule, the information provided on each Biennial Ownership Report shall be current as of October 1 of the year in which the ownership report is filed. Rather than specifying information that must be provided on Biennial Ownership Reports, the revised rule provides that each ownership report shall include all information required by, and comply with all requirements set forth in, the version of FCC Form 323 (including all instructions for the form) that is current on October 1 of the year in which the ownership report is filed. As previously provided by this rule, a respondent with a current and unamended Biennial Ownership Report on file with the Commission that is still accurate and which was filed using the version of FCC Form 323 that is current on October 1 of the year in which the Biennial Ownership Report is due may electronically validate and resubmit the previously filed Biennial Ownership Report.

73.3615(b): As previously required by this rule, the revised rule requires that each permittee of a commercial AM, FM or TV broadcast station and any entity that holds an interest in the permittee that is attributable pursuant to Section 73.3555 of the Commission's rules must file an Ownership Report for Commercial Broadcast Stations, FCC Form 323 (1) within 30 days of the date of grant by the FCC of an application by the permittee for original construction permit (Permittee Report), and (2) on the date that the permittee applies for a station license. Rather than specifying the information that must be provided on such ownership reports, the revised rule provides that each ownership report shall include all information required by, and comply with all requirements set forth in, the version of FCC Form 323 (including all instructions for the form) that is current on the date on which the ownership report is filed. As previously provided by this rule, if a respondent has a current and unamended ownership report on file with the Commission that was filed pursuant to paragraphs (b)(1) (i.e., a Permittee Report) or (c) of Section 73.3615, was submitted using the version of FCC Form 323 that is current on the date on which the ownership report due pursuant to this subsection is filed, and is still accurate, the Respondent may certify that it has reviewed such ownership report and that it is accurate, in lieu of filing a new ownership report.

76.3615(c): As previously required by this rule, each permittee or licensee of a commercial AM, FM or TV broadcast station must file an Ownership Report for Commercial Broadcast Stations, FCC Form 323 within 30 days of consummating authorized assignments or transfers of permits or licenses. The *323/CORES Order and Reconsideration Order* revised the rule to state the existing requirement that such ownership reports must also be filed by any entity that holds an interest in the permittee or licensee that is attributable pursuant to Section 73.3555 of the Commission's rules. While the instructions for Form 323 stated that a separate Form 323 must be filed for each entity in the organizational structure that has an attributable interest in the licensee or permittee, Section 73.3615(c) previously did not state this specific requirement but instead stated that respondents must provide the information required by the applicable portions of Section 73.3615(a), which required each entity with an attributable interest in the licensee to file an ownership report. In addition, rather than stating that respondents must provide the information required by the

Ownership Report for Commercial Broadcast Stations, FCC Form 323; Section 73.3615, Ownership Reports; Section 74.797, Biennial Ownership Reports

applicable portion of Section 73.3615(a), the revised rule now states that each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 323 (including all instructions for the form) that is current on the date on which the ownership report is filed.

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

(a) The system of records notice (SORN), FCC/MB-1, "Ownership Reports for Commercial and Noncommercial Broadcast Stations," which was approved on November 28, 2016 (81 FR 72047), covers the collection, purposes(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323.

(b) The FCC published the FCC/MB-1 SORN in the Federal Register.

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

Statutory authority for this collection of information is contained in Sections 1, 2(a), 4(i), 257, 303(r), 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 257, 303(r), 307, 309, and 310.

2. The minority and female ownership data in the Form 323, filed biennially, is 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 filers to submit Form 323 electronically via the Commission's Licensing and Management System (LMS).

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

Ownership Report for Commercial Broadcast Stations, FCC Form 323; Section 73.3615, Ownership Reports; Section 74.797, Biennial Ownership Reports

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.

The *323/CORES Order and Reconsideration Order* requires that filers provide a CORES FRN or Restricted Use FRN—requiring the submission to the Commission of an SSN or other limited personal information that includes only the last four digits of an SSN—for any reportable individual attributable interest holder. However, the *323/CORES Order and Reconsideration Order* maintained the availability of the Special Use FRN in limited circumstances so that filers, including small entities, may timely submit Form 323 even if the filer is unable to obtain a CORES FRN or Restricted Use FRN for an individual reported on the form. The *323/CORES Order and Reconsideration Order* also extended the biennial filing deadline for Form 323 to provide all filers, including small businesses, an additional 30 days to file biennial ownership reports. In addition, the *323/CORES Order and Reconsideration Order* adopted other improvements to Form 323 that will reduce the filing burden on all filers, including small entities.

6. The frequency for this collection of information is biennially, within 30 days of the date of grant by the Commission of an application by the permittee for an original construction permit, on the date that the permittee applies for a station licensee, and within 30 days of the permittee's or licensee's consummation of an authorized assignment or transfer of a permit or licensee. 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 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 (84 FR 20129) in the Federal Register on May 8, 2019 seeking public comments for the information collection requirements contained in this supporting statement. No comments were received as a result of this Notice.

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

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form of names, addresses, job titles and demographic information; and (b) FCC Registration Numbers (FRNs).

Confidentiality of Personal Information: The FCC/MB-1 SORN, which was approved on November 28, 2016 (81 FR 72047), covers 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 (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 TIN and/or SSN. The FCC's CORES system then provides each registrant with a CORES FRN, which identifies the registrant in his/her subsequent dealings with the FCC. This is done to protect the individual's privacy.

FCC Form 160 also enables applicants to obtain a Restricted Use FRN, which may be used on Form 323 to identify an individual reported as an attributable interest holder. Form 160 requires applicants for Restricted Use FRNs to provide an alternative set of identifying information that does not include the individual's full SSN: his/her full name, residential address, date of birth, and only the last four digits of his/her SSN. Restricted Use FRNs may be used in lieu of CORES FRNs only on broadcast ownership reporting forms and only for individuals (not entities) reported as attributable interest holders.

The Commission maintains a SORN, FCC/OMD-25, "Financial Operations Information System (FOIS)," 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 FRNs. Registration for an FRN requires the submission of a TIN and/or SSN—or in the case of Restricted Use FRNs, other limited personal information that includes only the last four digits of an individual's SSN—on the separate FCC Form 160 (OMB Control No. 3060-0917).

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

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

Service	No. of Reports	Respondent's Burden	Annual Burden Hours	Hourly In-House Cost	Annual In-House Cost
Biennial Reports ³	3,110	2.5 hours	7,775 hours	\$48.08	\$373,822
All Other Reports	1,230	1.5 hours	1,845 hours	\$48.08	\$88,707.60
TOTALS:	4,340 (Responses)		9,620 hrs. (Burden Hours)		\$462,529.60 (In-house cost)

Total Number of Annual Respondents/Responses: 4,340 respondents and 4,340 responses

Total Annual Burden Hours: 9,620 hours

Total Annual "In-house" Cost: \$462,529.60

We assume that the respondent would consult with its in-house staff and/or attorney to complete and file the FCC Form 323. 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 (\$70/station that is not fee-exempt) for each biennial ownership report. There is no fee for other reports.

3,110 biennial reports x 8 hours x \$300/hour	=	\$7,464,000
1,230 other reports x 6 hours x \$300/hour	=	\$ 2,214,000
6,388 ⁴ stations that are not fee-exempt x \$70	=	<u>\$ 447,160</u>

³ Although the biennial reports are filed every two years, the Commission calculated the 3,110 responses (and all other burden estimates for the biennial filings) based on an annual basis since OMB requires an annual calculation of filings, costs, and burden hours.

⁴ Of the approximately 3,110 Biennial Reports, only approximately 1,920 are filed by licensees subject to the Commission's filing fees (i.e., licensees of commercial AM, FM, and full-power television broadcast stations). The remaining reports are filed by non-licensee entities that hold broadcast ownership interests or by licensees that are exempt from FCC filing fees (i.e., licensees of Class A and LPTV stations). For non-exempt reports, the fee is calculated based on the number of commercial AM, FM, and/or full-power television broadcast stations for which the report is filed. Based on the most recent broadcast station totals released by the Commission, we estimate that non-exempt licensees will pay ownership report fees for approximately 6,388 stations on an annual basis.

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Total Annual Cost Burden = \$10,125,160

14. Cost to the Federal Government: The Commission will use paraprofessional staff at the GS-11/Step 5 level (\$37.79/hour) to process the FCC Form 323.

3,110 biennial reports x 1.5 hours x \$37.79/hour	=	\$176,290.35
1,230 other reports x 1.5 hours x \$37.79/hour	=	<u>\$ 69,722.55</u>
Total Cost to the Federal Government	=	\$246,012.90

15. There are no program changes or adjustments to this information collection.

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 TIN/SSN or other confidential personal information 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 are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.