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March 29, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: PP Docket No. 96-17
Improving Commission Processes

Dear Mr. Caton:

Transmitted herewith on behalf of Educational Broadcasting Corporation, Western Kentucky University and WQED Pittsburgh ("Joint Noncommercial Licensees") are an original and nine copies of their Joint Reply Comments in the above-referenced proceeding.

Respectfully submitted,

Barbara K. Gardner

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BKG/kkj
Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

IMPROVING COMMISSION PROCESSES)

PP Docket No. 96-17

JOINT REPLY COMMENTS OF NONCOMMERCIAL EDUCATIONAL BROADCAST LICENSEES

The undersigned noncommercial educational broadcast licensees, filing jointly ("Joint Noncommercial Licensees"), hereby respond to comments on the Commission's Notice of Inquiry, FCC 96-50 (released February 14, 1996) ("Notice") in the above-captioned proceeding. Expanding on a suggestion of the National Association of Broadcasters regarding ownership reporting, Joint Noncommercial Licensees hereby urge the FCC to: (1) delete its existing requirement that noncommercial broadcast licensees file a new ownership report within 30 days of any change in ownership information, and substitute an annual or less frequent reporting requirement; and (2) modify Form 323-E to delete the required reporting of the other broadcast interests of noncommercial licensees or their principals, since the multiple ownership rules limiting such interests do not apply to these licensees in the first place.

I. AT MOST, NONCOMMERCIAL LICENSEES SHOULD BE REQUIRED TO FILE OWNERSHIP REPORTS ON AN ANNUAL BASIS.

Before 1984, pursuant to Rule 73.3615 all FCC broadcast licensees were required to report, within 30 days, any change in their ownership information. In its landmark Attribution proceeding that year, however, the FCC determined to require only annual ownership filings:

We see no need for collecting this information on a more frequent basis. Our information collection comprises primarily a monitoring function, which experience has proven to be sufficiently served by a yearly review.

Corporate Ownership Reporting and Disclosure by Broadcast Licensees, 97 F.C.C. 2d 997, 1032 (1984) (“Attribution”). Although the new requirement was to apply to “licensees” generally, id., only Section 73.3615(a), applicable to commercial licensees, was actually altered. Section 73.3615(f) effectively continues to require noncommercial licensees to file new ownership reports on Form 323-E within 30 days of a change in the reported information.¹

Now, in the context of its request for “suggestions for reducing the quantity of documents and data submitted in any form...,”² is the time for the Commission to correct this apparently unintentional oversight, and terminate its unfortunate disparate treatment of noncommercial educational licensees.

The burden on noncommercial licensees created by Section 73.3615(f) is illustrated by the fact that during 1995 alone, one of the Joint Noncommercial Licensees, Educational Broadcasting

¹ In addition, Section 73.3615(d) requires noncommercial licensees to file an ownership report on Form 323-E with their renewal applications.

² Notice at 18 para. 62.

Corporation (“EBC”), filed four separate ownership reports, reflecting changes in its officers, Board of Trustees, and reportable contracts. In 1994, EBC filed three reports on Form 323-E, one to accompany its renewal application, and two later filings reporting trustee, officer and By-Laws changes. EBC is not unique: in addition to the 30-day reporting obligation triggered by changes in a licensee’s officers, organizational documents or reportable contracts, many noncommercial licensees have forty or more trustees, and every election, interim appointment or resignation of a trustee is a reportable event.

Moreover, noncommercial broadcasters generally lack the financial resources of their commercial brethren, and continuing significant reductions in federal support for noncommercial broadcasting will widen the existing funding gap between the two groups. If anything, therefore, filing requirements for noncommercial licensees should be less rather than more burdensome than those applicable to commercial broadcasters, as the Commission has recognized in other contexts.³ Such forbearance is particularly appropriate with regard to ownership reports, since these reports are primarily intended to assess compliance with the Commission’s multiple ownership rules and, as explained below, those rules do not apply to noncommercial licensees.

For these reasons, Joint Noncommercial Licensees request that at most, annual ownership reporting should be required for noncommercial licensees, and a licensee with a current report on file on its renewal anniversary should be permitted to certify to that report’s continuing accuracy,

³ See, e.g., Children’s Television Programming, 6 FCC Rcd 5093, 5101 (1991) (with respect to children’s programming renewal review, FCC “toll[s] application of specific record-compilation, filing and submission requirements to noncommercial stations.”).

in lieu of filing a new annual report.⁴ Should the Commission adopt NAB's welcome suggestion to require the filing of Form 323 ownership reports or "no change" letters only at four-year intervals (at renewal and at the mid-point of the eight-year license term),⁵ or otherwise relax the annual reporting requirement currently governing commercial licensees, the new requirement should explicitly be made applicable to noncommercial licensees, and Section 73.3615(f) should be deleted.

II. FORM 323-E SHOULD BE REVISED TO DELETE REPORTING OF OTHER BROADCAST INTERESTS.

In response to the Commission's request for comment on the "substance, and amount of information collected through specific forms,"⁶ Joint Noncommercial Licensees offer the

⁴ With respect to any noncommercial licensees currently filing ownership information less often than annually, the Commission's remarks when it instituted annual reporting in 1984 remain appropriate:

For those licensees whose ownership information changes infrequently, the additional burden of more frequent filing is very slight, and will be further reduced by a new provision that any such licensee can simply file a letter stating that the licensee has reviewed its last complete ownership report and that no changes have occurred in the intervening year. This small imposition, even considered cumulatively, is justified in our view by the cumulative benefit obtained for more active licensees under this provision.

Attribution, 97 F.C.C.2d at 1032.

⁵ NAB Comments at 11.

⁶ Notice at 18 para. 62.

following. Question 4 of Form 323-E states: “Show the interests in any other broadcast station of the licensee or permittee, or any of its officers, members of the governing board, and holders of 1% or more ownership interest, if any.” Responding to this query with currently accurate information for those of the dozens of trustees and officers of a typical noncommercial licensee that may hold such interests at any given time is clearly onerous. Moreover, such reporting serves no bona fide regulatory purpose, since the limits on attributable interests in broadcast stations set forth in Section 73.3555 of the Commission’s Rules are, by virtue of Section 73.3555(f), inapplicable to noncommercial educational stations. Accordingly, Question 4 of Form 323-E should be deleted.

CONCLUSION

The Mass Media Bureau’s proposal to “requir[e] filing of broadcast ownership reports on a less frequent basis”⁷ should be adopted, and should be applied identically to commercial and noncommercial licensees. At a minimum, noncommercial licensees should file ownership

⁷ Notice at 16 para. 57.

information no more often than annually. In addition, the requirement to report other broadcast interests of noncommercial licensees and their principals has no purpose and should be deleted

Respectfully submitted,

EDUCATIONAL BROADCASTING
CORPORATION

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WKUE(FM), Elizabethtown, KY
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