

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**COMMENTS OF THE ASSOCIATION OF PUBLIC TELEVISION STATIONS,
CORPORATION FOR PUBLIC BROADCASTING, NATIONAL PUBLIC RADIO,
AND PUBLIC BROADCASTING SERVICE**

Introduction and Summary

The Association of Public Television Stations (“APTS”),¹ Corporation for Public Broadcasting (“CPB”),² National Public Radio, Inc. (“NPR”),³ and Public Broadcasting Service (“PBS”)⁴ (collectively, “Public Broadcasting”) welcome this opportunity to submit comments on

¹ APTS is a non-profit organization whose membership comprises the licensees of nearly all the nation’s CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

² CPB is a private, non-profit corporation created and authorized by the Public Broadcasting Act of 1967 to facilitate and promote a national system of public telecommunications. Pursuant to its authority, CPB has provided millions of dollars in grant monies for support and development of public broadcasting stations and programming.

³ NPR is a non-profit membership corporation that produces and distributes noncommercial educational radio programs, including *All Things Considered*[®] and *Morning Edition*[®], through more than 1000 radio stations nationwide. NPR’s member stations are themselves significant producers of local, regional, and national news, information and cultural programming. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its member station licensees.

⁴ PBS, with its over 350 member stations, offers all Americans the opportunity to explore new ideas and new worlds through television and online content. Each month, PBS reaches nearly 109 million people through television and over 28 million people online, inviting them to

the Commission’s *Seventh Further Notice of Proposed Rulemaking* (the “*Notice*”) regarding proposed revisions to Form 323-E for noncommercial educational (“NCE”) broadcast stations.⁵

Public Broadcasting strongly supports the Commission’s “long-standing goal of promoting ownership diversity in broadcast stations to ensure that diverse viewpoints and perspectives are available to the American people in the content they receive over the broadcast airwaves.”⁶ As embodied in the Public Broadcasting Act of 1967, a core mission of Public Broadcasting is to “constitute an expression of diversity and excellence” and to serve as a source of telecommunications services for “*all citizens* of the Nation,” particularly for unserved and underserved communities.⁷ This mission is reflected in Public Broadcasting’s intense focus on ensuring that its airwaves are accessible to diverse voices and that its services are responsive to the needs of diverse populations. Because of the unique governance structure and organization of public broadcasting licensees, however, requiring public broadcast station board members to obtain “Restricted Use FRNs,” or RUFNRNs, to track their ownership interests would not further – and would in fact undermine – this shared goal. Public Broadcasting therefore urges the Commission to reconsider applying its RUFNRN proposal to public broadcasting licensees.

experience the worlds of science, history, nature, and public affairs; to hear diverse viewpoints; and to take front row seats to world-class drama and performances.

⁵ In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, *Seventh Further Notice of Proposed Rulemaking*, MB Docket No. 07-294, Amendment of Part 1 of the Commission’s Rules Concerning Practice and Procedure, Amendment of CORES Registration System, *Second Further Notice of Proposed Rulemaking*, MD Docket No. 10-234 (rel. Feb. 12, 2015) [hereinafter “*Seventh FNPRM*”].

⁶ *Id.* at ¶ 1.

⁷ 47 U.S.C. § 396(a)(5) (emphasis added).

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I. Because Individual Board Members Of Public Broadcasting Station Licensees Are Not Owners Of Such Licensees, The Commission Should Not Implement An Approach To Ownership Reporting That Treats Commercial and Public Broadcast Station Licensees As Functionally The Same.

While the use of studios, transmitting antennas, radio-frequency spectrum, and other technical aspects of over-the-air broadcasting may be common to both public and commercial broadcasting, the concept of “ownership” is a fundamental difference between public broadcasting station licensees and their commercial counterparts. In treating commercial and public broadcast station licensee board members alike as having a “cognizable interest” in the station,⁸ however, the Commission has utilized a concept of “ownership” that is specifically designed for commercial broadcasting where individuals are able to obtain and possess a debt or equity interest in the station as a financial investment. Utilizing this concept as an artifice for attributing ownership to individual board members of public broadcast stations has historically not given rise to significant issues because the board member’s “interest” has been reported in the context of individual licensees and stations. By proposing to require uniform reporting on Form 323 and Form 323-E to facilitate data gathering across commercial and public broadcasting, however, the *Notice* is attempting to compare “apples” (commercial station ownership) and “oranges” (public broadcast station governance).

Governance in public broadcasting is fundamentally different than ownership in commercial broadcasting. Only governmental or non-profit entities are qualified to hold the license to a public broadcasting station.⁹ Further, no individual may have a financial interest in a public broadcasting station, and no such stations have actual individual owners. Public

⁸ *Seventh FNPRM* at ¶ 28. The Commission has defined cognizable interest as “any interest, direct or indirect, that allows a person or entity to own, operate or control, or that otherwise provides an attributable interest in, a broadcast station.” 47 C.F.R. § 73.3555 n.1.

⁹ *See* 47 U.S.C. § 397(6).

broadcasting stations have governing boards that are listed on the station’s Form 323-E, but individuals on such boards are far from “owners.” In fact, the roles and motivations of such individuals are entirely different from those of commercial station owners. Board members are not paid by a station, and many serve in ex officio positions by political appointment.¹⁰ These differences would make collecting the same data about the ownership of commercial stations and the governance of public broadcasting stations unhelpful at best and misleading at worst.

The Commission has twice before put forth similar proposals to modify Form 323-E without addressing the fundamentally different role that board members of public broadcasting stations play. In 2009, the *Fourth Further Notice of Proposed Rulemaking* on Promoting Diversification of Ownership in the Broadcasting Services proposed gathering the same information from the board members of public broadcasting stations as from owners of commercial stations in order to “provide a comprehensive picture of broadcast ownership.”¹¹ Public Broadcasting explained in 2009 that ownership is an inapposite concept in the context of public broadcasting stations, that gathering such information would compromise the integrity of the data, and that defining ownership in the public broadcasting context creates the potential for significant unintended consequences related to change in control approvals.¹² Furthermore, the Commission noted that many board members of stations

¹⁰ In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, Comments of National Public Radio, Public Broadcasting Service, Association of Public Television Stations, and Corporation for Public Broadcasting, *Sixth Further Notice of Proposed Rulemaking*, MB Docket No. 07-294, at 5 (filed Feb. 14, 2013) [hereinafter “*Sixth FNPRM Public Broadcasting Comments*”].

¹¹ In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, *Fourth Further Notice of Proposed Rulemaking*, 24 FCC Rcd. 5896, at 5910 (2009) [hereinafter “*Fourth FNPRM*”].

¹² In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, Comments of the Association of Public Television Stations, Corporation for Public Broadcasting, National Public Radio, and Public Broadcasting Service, *Fourth Further Notice of Proposed Rulemaking*, MB Docket No. 07-294, at 6–7, 11–13 (filed June 26, 2009).

are determined by political appointment, known as “ex officio” board members.¹³ As a result, public broadcasting stations are overseen by a governing board whose responsibilities extend well beyond any given station. For example, in Alabama, California, and Illinois, a state-wide board runs the entire educational system, as well as the public broadcasting stations licensed to these school systems.

In 2013, the *Sixth Further Notice of Proposed Rulemaking* on Promoting Diversification of Ownership in the Broadcasting Services proposed collecting the Social Security number from owners of commercial stations *and* board members of public broadcasting stations in order to improve the “accuracy and reliability” of broadcast ownership data.¹⁴ Public Broadcasting reiterated in 2013 that board members of public broadcasting stations are not owners, that collecting data on such individuals would undermine the Commission’s stated goals, and that the proposal would discourage prominent individuals from public service.¹⁵ Over 85 different public broadcasting licensees commented in 2013 to emphasize the unique nature of noncommercial broadcasters and the inadvisability of the Commission’s proposal to treat their board members the same as commercial station owners.¹⁶

Now, in 2015, the Commission proposes once more to treat board members of public broadcasting stations the same as owners of commercial stations. While the proposed requirements are slightly different, the basic flaw in reasoning is the same. The *Notice* proposes to require public

¹³ *Fourth FNPRM*, 24 FCC Rcd. at 5910 n.69.

¹⁴ In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, *Sixth Further Notice of Proposed Rulemaking*, 28 FCC Rcd. 461, at 461, 463 (2013).

¹⁵ *Sixth FNPRM Public Broadcasting Comments* at 3, 6–8.

¹⁶ In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, Comments of Alaska Public Telecommunications Inc., et al.; Comments of Blue Ridge Public Television Inc., et al.; Comments of Alabama Educational Television Commission, et al., *Sixth Further Notice of Proposed Rulemaking*, MB Docket No. 07-294 (filed Feb. 14, 2013).

broadcasting stations to submit the residential address, date of birth, and last four digits of the Social Security number of each board member.¹⁷ The *Notice* asks if this would “improve the quality, usability, and reliability of our broadcast ownership data” or “whether there are unique considerations with respect to NCE stations.”¹⁸ Not only would the proposal not *improve* the quality, usability, and reliability of the Commission’s broadcast ownership data, it would in fact *diminish* those qualities in the data.¹⁹ Further, any policies introduced by the Commission to enhance the diversity of commercial station ownership based upon this data would almost certainly be misplaced in the context of public broadcasting.²⁰

As explained above and in Public Broadcasting’s prior comments, there are a number of unique considerations with respect to noncommercial stations that would make treating their board members as owners a profound mistake. The Communications Act requires that noncommercial licensees be “a public agency or nonprofit private foundation, corporation, or association; or ... a municipality.”²¹ No individual may hold a personal financial interest in non-profit, non-stock public broadcasting stations and thus such stations have no individual owners. As noted earlier in this docket, “the makeup of a non-stock entity’s governing board is secondary in importance to its organizational document ... because the organizational documents establish a continuity of purpose

¹⁷ *Seventh FNPRM* at ¶ 20.

¹⁸ *Id.* at ¶ 28.

¹⁹ Furthermore, Section II.7(g) of Form 323-E already requires information on whether board members have “existing interests in any other broadcast station, including the nature and size of such interests.” To the extent that the proposals in the *Notice* are aimed at identifying and distinguishing unique individuals listed on submissions by multiple stations, this issue can be sufficiently addressed with the data currently being gathered on existing interests in other stations.

²⁰ *Sixth FNPRM Public Broadcasting Comments* at 6.

²¹ 47 U.S.C. § 397(6).

that transcends the identity of the individuals designated to serve on the governing board.”²²

Therefore, treating the board members of public broadcasting stations as owners for the purposes proposed in the *Notice* would, as before, sabotage the Commission’s laudable goal of collecting meaningful data that could serve as the basis for future policies aimed at increasing the diversity of broadcast *ownership*.

II. The Commission’s Proposal Would Have a Significant Negative Real-World Impact On Public Broadcast Stations.

The Commission’s proposal to require public broadcast station licensee board members to use an RUFNRN will also discourage individuals from serving on the boards of directors of public broadcasting stations. These individuals do not have a financial interest in the station and many would not want to reveal private personal information as a consequence of volunteering to serve a community’s public service broadcaster. Losing these individuals would exact a heavy toll on public broadcasting.

Public broadcasters seek out national, state, and local leaders from a variety of fields because of the experience and expertise that these individuals offer. Some of these individuals are prominent, like renowned filmmaker Stephen Spielberg, while others are less well-known, but still motivated to serve on the governing board of a public broadcasting station because of a commitment to public service and to the state educational system, not because of any remuneration. Many of these individuals would be reluctant to reveal private personal information to obtain an RUFNRN as a condition of serving on a board. Exacerbating the situation, the Commission has not proposed any alternative for these individuals other than

²² *Fourth FNPRM*, 24 FCC Rcd. at 5910 n.69.

resigning or refusing to serve. The loss of these individuals would cost public broadcasting stations invaluable experience and expertise.²³

Moreover, despite the Commission's assurances of the security of private personal information,²⁴ these individuals have every right to be concerned about their private data remaining private. A Government Accountability Office report found there were almost 61,000 cyber-attacks and security breaches across the federal government in 2013, which was a 35% increase since 2010.²⁵ In November 2014, the White House suffered a cyber-attack that forced its system to lose full connectivity for an unprecedented two weeks,²⁶ while in October, the State Department suffered a similar attack.²⁷ While the federal government is attempting to improve data security in response to these cyber-attacks, a single cyber-attack can put the private information of millions of individuals at risk. As explained above, collecting private information about the boards of public broadcasting stations will not further the Commission's goal of increasing ownership diversity. Retaining this information is simply an unnecessary risk; one that too many public broadcasting station board members will simply choose to forgo by declining to serve.

²³ *Sixth FNPRM Public Broadcasting Comments* at 5–6.

²⁴ *See Seventh FNPRM* at ¶¶ 29–30.

²⁵ Frates, Chris and Curt Devine, *Government hacks and security breaches skyrocket*, CNN, Dec. 19, 2014, <http://www.cnn.com/2014/12/19/politics/government-hacks-and-security-breaches-skyrocket> (last visited Mar. 30, 2015).

²⁶ Grim, Ryan, *White House Hit With What Appears To Be Sustained Cyberattack*, Huffington Post, Oct. 28, 2014, http://www.huffingtonpost.com/2014/10/28/white-house-hacked_n_6065166.html (last visited Mar. 30, 2015).

²⁷ Fishel, Justin and Lee Ferran, *State Dept. Shuts Down Email After Cyber Attack*, ABC News, Mar. 13, 2015, <http://abcnews.go.com/US/state-dept-shuts-email-cyber-attack/story?id=29624866> (last visited Mar. 30, 2015).

The *Notice* also erroneously assumes that collecting the full name, residential address, date of birth, and last four digits of a Social Security number is not too intrusive. In fact, many malicious actions can still be taken with that information. For example, many individuals, especially prominent ones, go to great lengths to keep their residential address private because its availability creates a security risk that could result in great personal harm. Further, studies show that once someone has the last four digits of a Social Security number, it is not difficult to obtain the remaining five. In fact, researchers concluded with 44 percent certainty an individual's identity by using their date of birth and last four digits of their Social Security number.²⁸ Therefore, privacy and safety concerns are entirely warranted, and the Commission should not collect this information, especially when it does not advance the Commission's stated interest in promoting the diversification of commercial broadcast ownership.

²⁸ *Social Security Numbers Are Easy to Guess*, Science Mag, July 6, 2009, <http://news.sciencemag.org/2009/07/social-security-numbers-are-easy-guess> (last visited Mar. 30, 2015).

Conclusion

Public Broadcasting supports the Commission’s goal of promoting broadcast ownership diversity, but the Commission should not seek to attribute interests to individual station board members based on such sensitive personal information as Social Security numbers, residential addresses, and birth dates. Because of fundamental differences between commercial and public broadcast stations with respect to station “ownership,” imposing the RUFNR requirement as part of Form 323-E reporting will only serve to detract from the utility of the commercial ownership data collected, make any policies based on such data flawed, and unnecessarily discourage individuals from serving on the boards of public broadcasting stations.

Respectfully submitted,

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