

Before the  
**Federal Communications Commission**  
Washington DC 20554

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

**COMMENTS OF**  
**ALABAMA EDUCATIONAL TELEVISION COMMISSION**  
**THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA**  
**ON BEHALF OF**  
**THE UNIVERSITY OF ALABAMA AND**  
**THE UNIVERSITY OF ALABAMA AT BIRMINGHAM**  
**STATE BOARD OF EDUCATION, STATE OF IDAHO**  
**BOARD OF TRUSTEES OF JACKSONVILLE STATE UNIVERSITY**  
**JOHN BROWN UNIVERSITY**  
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## I. INTRODUCTION AND SUMMARY

The Alabama Educational Television Commission, the Board of Trustees of the University of Alabama (on behalf of the University of Alabama and the University of Alabama at Birmingham), the State Board of Education of the State of Idaho, The Board of Trustees of Jacksonville State University, John Brown University, and Weber State University (together, “Commenters”), all licensees of broadcast stations, hereby respectfully submit these Comments in response to the Commission’s *Seventh Further Notice of Proposed Rulemaking* in MB Docket No. 07-294 and *Second Further Notice of Proposed Rulemaking* in MD Docket No. 10-234, released together on February 12, 2015 (“*FNPRM*”).

Since it began its effort in 2009 to revise the Form 323 Ownership Report, the Commission has attempted to improve its ability to track individual ownership interests.<sup>1</sup> It has claimed that this is to “facilitate long-term comparative studies of broadcast station ownership” by itself and by third-party researchers.<sup>2</sup> It first attempted to require all individuals listed on the Form 323 filing to include a FCC Registration Number (“FRN”), a number assigned by the FCC based on the individual’s Social Security Number (“SSN”).<sup>3</sup> In response to opposition from FCC licensees, both on the substance of the requirement and on the procedures by which the FCC adopted it,<sup>4</sup> the FCC allowed an exemption: in cases where, after “diligent and good-faith efforts,” an individual’s SSN could not be acquired by the licensee, and the individual refused to

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<sup>1</sup> *FNPRM* at ¶ 3.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Comments of Alabama Public Educational Television Commission et al.*, MB Docket No. 07-294, filed February 14, 2013 (“*2013 Comments*”) at p. 2, n. 1 and pp. 2-4.

provide the information directly to the Commission, a “Special Use FRN” (“SUFRN”) could be generated.<sup>5</sup>

Upon review of the data it has obtained since those changes, the Commission decided in 2012 to reopen the Form 323 reform process, fearing that the data it was collecting was insufficiently accurate and complete.<sup>6</sup> In particular, the Commission stated that it sought to gather a sufficiently detailed and accurate picture of broadcast ownership to justify reinstating those portions of the FCC’s *Diversity Order* benefiting women and minorities<sup>7</sup> which were struck down by the Third Circuit in 2011.<sup>8</sup> As a result, it issued the *Sixth Further Notice of Proposed Rulemaking* in January 2013, proposing to reinstate the FRN requirement for all individuals holding a reportable interest in licensees of both commercial and non-commercial stations.<sup>9</sup> Commenters participated in that proceeding, noting many of the same concerns that follow.<sup>10</sup>

In the *FNPRM*, the Commission modified its 2013 proposal in an effort to slightly reduce the burdens of the FRN requirement. The new proposal would allow individual interest holders to register for what it called a “Restricted Use” FRN (“RUFRN”), which would require only a partial SSN, along with full residential address and date of birth.<sup>11</sup> The Commission proposed retaining the SUFRN for individuals who, for whatever reason, simply refused to register for an FRN or RUFRN, but asked for comment on how difficult SUFRNs should be to obtain and use. The Commission maintains its intention to apply this requirement to NCE stations.

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<sup>5</sup> *FNPRM* at ¶ 6.

<sup>6</sup> *Id.* at ¶ 8.

<sup>7</sup> *Promoting Diversification of Ownership in the Broadcasting Services*, 23 FCC Rcd. 2010 (2008).

<sup>8</sup> *FNPRM.* at ¶ 7. *See also Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011).

<sup>9</sup> *Id.* at ¶ 13.

<sup>10</sup> *See generally, 2013 Comments.*

<sup>11</sup> *FNPRM* at ¶ 18.

Commenters continue to oppose the Commission's proposals. Commenters believe that, even with the change from always requiring full SSNs to allowing a combination of other personally identifying information, the RUFNR requirement is overly burdensome and not justified by the Commission's intended use. Commenters believe that the new information requirement still puts interest-holders' and board members' identities at risk without sufficient justification. Commenters further believe that, should the Commission choose to adopt these new requirements, the exception for individuals who respectfully decline to disclose personal information must remain easily obtainable, and that the new requirement should not be applied to NCE or non-profit licensees, including non-profit licensees associated with colleges, universities, and state governments or agencies. Some of the foregoing entities have a mix of NCE and commercial station licenses, but are non-stock, non-profit corporations, or public corporations associated with governments, which do not have owners in the conventional sense of that term. Use of the term "non-profit" in these Comments includes all of the foregoing. Moreover, the information that the Commission already obtains is sufficient to identify individual owners with a reasonable degree of certainty. The Commission has never demonstrated why a greater ability to track each individual interest holder or board member with absolute certainty is necessary to follow trends in minority or female control of broadcast stations or assist the Commission in fostering diversity.

## **II. DISCUSSION**

### **A. The RUFNR Proposal Remains Overly Burdensome.**

As Commenters noted in their 2013 comments, for many licensees, obtaining personally identifying information from all individuals with an attributable interest in the station is

extremely difficult, if not impossible.<sup>12</sup> This is particularly true of NCE and non-profit licensees, many of whose board members may have little to no day-to-day involvement with broadcast station operations, especially in the case of governmental and other publicly-controlled licensees. Similarly for commercial entity licensees, which often have diffuse ownership and are involved in many businesses, an individual interest-holder may have a tenuous connection to day-to-day decisions relating to broadcasting. This would be the case with investment companies who may hold passive, although attributable, interests in broadcast companies as a small part of a larger investment portfolio.

As such, many board members and interest-holders have minimal, if any, interaction with the FCC. These non-profit board members are prominent individuals whose service on the relevant board is a result of an unrelated position (such as a state Governor, State Superintendent of Education, or other ex officio appointee), or are appointed by a state legislature or state governor in accordance with statutes. As stated in prior Comments, the members of those boards are often not professional broadcasters; rather they are educators, governmental officials or volunteers. Handing over a residential address, along with their date of birth and part of their SSN, is not something these and many other interest-holders and board members will readily consent to do.

Given the likelihood that many individuals will be reluctant, or will even flatly refuse, to provide their data, the burden on the licensee to provide that information is substantial. Even the relatively easily-obtained SUFRN exemption requires that licensees make “diligent and good-faith efforts” to acquire SSNs, which consumes considerable time and effort in preparing Form 323 reports. These burdens are compounded when entities have large numbers of board members

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<sup>12</sup> *2013 Comments* at p.4.

or hold licenses through intermediate subsidiary entities for which ownership reports must also be filed. The additional process of obtaining the newly proposed information, and then obtaining the new RUFNRs, will add unacceptable additional time (and cost). As is common knowledge, many licensees, particularly NCE and non-profit licensees, feature large boards of dozens of individuals. Moreover, the number of entities with interests in a licensee can be substantial, and a Form 323 is required for each entity. In the aggregate, the Commission is contemplating increasing the compliance burden for preparation of required Forms 323 *dramatically*, and this burden will fall on already burdened licensees, many of which struggle to comply with the current Form 323 requirements.

**B. The Information Requested for RUFNR Registration Puts Interest-Holders' and Board Members' Identities at Risk.**

As Commenters noted in their 2013 filing,<sup>13</sup> Americans are consistently and strenuously advised, by private organizations and by the government, to safeguard their SSNs.<sup>14</sup> This same concern applies to other personally identifying information, such as that being requested by the Commission.<sup>15</sup> While the number representing the last 4 digits of an SSN (“Last-4”), which the Commission intends to require,<sup>16</sup> is not as dangerous as a full SSN, it is still crucial identifying information, particularly coupled with other information about an individual, such as their date of birth, name, and address. The structure of an SSN has historically been such that the Last-4 is

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<sup>13</sup> *Id. at p.5.*

<sup>14</sup> For example, the Social Security Administration (“SSA”) encourages citizens to be wary of sharing their SSN in its pamphlet, *Identity Theft and your Social Security Number*, <http://www.ssa.gov/pubs/EN-05-10064.pdf>. The SSA has also publicly called for “the use of alternate identifiers in place of Social Security Numbers... [by] government agencies.” <http://www.ssa.gov/phila/ProtectingSSNs.htm>.

<sup>15</sup> The SSA includes date of birth and address in its lists of “personal information” which can lead to identity theft. [http://www.ssa.gov/payee/protecting\\_personal\\_info.htm](http://www.ssa.gov/payee/protecting_personal_info.htm).

<sup>16</sup> *FNPRM* at ¶ 20.

in fact the most personal identifying information in the number: the first three digits were assigned based on place of birth and the fourth and fifth were assigned based on when the number was issued, usually soon after the date of birth.<sup>17</sup> In other words, knowing where and when someone was born would allow an identity thief to roughly calculate an entire SSN with the Last-4.<sup>18</sup>

However, as is obvious, in the event that the Commission's data security is compromised, these individuals' privacy is still very much at risk, even if the full SSN is not reconstructed. Many financial institutions, utility accounts, and other businesses use the Last-4 for security purposes,<sup>19</sup> such as restoring a lost password or accessing an account, rather than requiring individuals to restate their entire SSN, frequently in combination with exactly the sort of personal information the Commission proposes requiring to obtain an RUFNR.<sup>20</sup> This means that, in the event of a compromise of the Commission's system, a hacker would gain the ability to access countless private accounts held by interest-holders and board members. A date of birth is similarly personally-identifying. In addition, the requirement to provide a residential address is

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<sup>17</sup> <http://www.socialsecurity.gov/history/ssn/geocard.html>. While SSN "randomization" was implemented in 2011 to reduce this risk, this is unlikely to affect any significant number of individuals reported on ownership reports for a number of years.

<sup>18</sup> See <http://arstechnica.com/science/2009/07/social-insecurity-numbers-open-to-hacking/>. Note that, in this study, the researchers assumed the Last-4 were unavailable to an identity thief.

<sup>19</sup> See, e.g., Fidelity.com Registration page

(<https://fps.fidelity.com/ftgw/Fps/Fidelity/RtlCust/Resolve/InitNUR>); Venmo Money Transfer Service Frequently Asked Questions (<https://help.venmo.com/customer/portal/articles/736068-social-security-number-why->); CitiBank Card Activation page

([https://online.citibank.com/US/CBOL/sec/secgat/flow.action?siteId=CB&locale=en\\_US](https://online.citibank.com/US/CBOL/sec/secgat/flow.action?siteId=CB&locale=en_US)); Aetna Health Insurance Registration page

(<https://www.aetnavision.com/aetna/public/help.emvc?fragment=remote.content.help.registration>).

<sup>20</sup> Note that this is very different from the use of the Last-4 as a stand-alone identifier; in these cases, the company already has the person's SSN and is simply using this to prove that the person on the other end of the connection is an authorized user, it is not creating the account with the Last-4. Thus, the company's use of the Last-4 does not increase the risk of identity theft in the same way the Commission's does.

concerning for prominent individuals who may wish to keep that information private for personal security reasons, especially in this time when public authorities and their families can be at risk of harm from members of the general public who disagree with a governmental decision, whether or not related to any responsibilities for a broadcast licensee. Combined with the foregoing other information, the addition of Last 4 would compromise security and protections from identity theft and resulting harm.

The Commission claims that it will keep this data safe, and that individuals therefore should have no concerns about providing it. It dismisses the GAO report noting its data security issues,<sup>21</sup> claiming that its new measures are sufficient to keep this extremely sensitive data, often on prominent individuals, secure, despite providing no evidence of such security. The near-daily barrage of data breaches, including from government systems<sup>22</sup> and organizations which claimed that the personal information was perfectly secure,<sup>23</sup> shows that private individuals cannot simply accept claims of data security, even from Federal agencies. The truth is that data security is never assured, and while the collection of personal information that creates a risk of identity

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<sup>21</sup> GA0-13-155, FCC Enhanced Secured Network Project, January 2013.

<sup>22</sup> *See, e.g.* breaches to the computer systems of: Healthcare.gov (<http://www.nytimes.com/2014/09/05/us/hackers-breach-security-of-healthcaregov.html>); The White House ([http://www.washingtonpost.com/world/national-security/hackers-breach-some-white-house-computers/2014/10/28/2ddf2fa0-5ef7-11e4-91f7-5d89b5e8c251\\_story.html](http://www.washingtonpost.com/world/national-security/hackers-breach-some-white-house-computers/2014/10/28/2ddf2fa0-5ef7-11e4-91f7-5d89b5e8c251_story.html)); U.S. Postal Service (<http://www.reuters.com/article/2014/11/10/us-cybersecurity-usps-idUSKCN0IU1P420141110>); Office of Personnel Management (<http://www.nytimes.com/2014/07/10/world/asia/chinese-hackers-pursue-key-data-on-us-workers.html>).

<sup>23</sup> *See, e.g.* breaches to the computer systems of: Apple Computers' iCloud service (<http://www.forbes.com/sites/davelewis/2014/09/02/icloud-data-breach-hacking-and-nude-celebrity-photos/>); Home Depot (<http://krebsonsecurity.com/2014/09/banks-credit-card-breach-at-home-depot/>); Cedars Sinai Hospital in Los Angeles ([http://oag.ca.gov/system/files/CSHS%20Press%20Release\\_0.pdf](http://oag.ca.gov/system/files/CSHS%20Press%20Release_0.pdf)); Anthem Health Insurance (<http://www.reuters.com/article/2015/02/24/us-anthem-cybersecurity-idUSKBN0LS2CS20150224>).

theft is sometimes necessary, it must be limited to situations where there is no alternative in order to provide maximum protection. This is not one of those situations.

### **C. The RUFNR Proposal is Not Justified by the Commission’s Arguments.**

The Commission has devoted considerable time and energy to the goal of tracking broadcast ownership. The Commission, however, has yet to clearly articulate why specific SSN-based information is necessary for this goal, nor has it provided the statutory and regulatory basis for demanding this information.<sup>24</sup> Vague statements about “long-term comparative studies of broadcast station ownership”<sup>25</sup> do little to resolve this open question. For an undertaking which has taken up so much of the Commission’s time and energy, and for which the Commission intends to so heavily burden licensees, interest-holders, and board members, the ownership report reform efforts have remarkably little explanation as to their purpose.

Further, the Commission has failed to demonstrate why the RUFNR requirement is necessary to achieving its goals, whatever their merits. In the *FNPRM*, the Commission noted that around a third of individuals filed using a SUFRN.<sup>26</sup> It also stated that “it appears” that SUFRNs were misused by some individuals; but the Commission provides no evidence that misuse of SUFRNs undermined the validity or usefulness of the data it has been collecting since 2009.<sup>27</sup> And it similarly makes no effort to show that the Courts, in reviewing a new *Diversity Order*, would view the currently available data as unacceptable justification for the Commission’s efforts. The Commission is simply telling licensees that, because some people are (perhaps intentionally) failing to correctly use the SUFRN system, the Commission is justified in

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<sup>24</sup> *2013 Comments* at p. 5.

<sup>25</sup> *FNPRM* at ¶ 3.

<sup>26</sup> *Id.* at ¶ 9.

<sup>27</sup> Even the most egregious misuse of SUFRNs could not, by itself, have any impact on the accuracy of the data on race or sex for the individual in question.

imposing substantial new burdens across-the-board based purely on its belief that this new RUFNRN system will provide it with the data it needs. What the Commission has not shown, however, is how incorrect use of the SUFRN system by some individuals has actually undermined any valid Commission purpose or objective.

To justify imposing the additional burdens associated with the RUFNRN system, the Commission must show that the RUFNRN system will in fact provide better data. The *FNPRM* has utterly failed to do so. In its current form, the Form 323 warns all users of SUFRNs that they must use each SUFRN for only one individual, and each individual must only have one SUFRN. If the SUFRNs are being misused, it is either because of mistakes or a conscious decision not to comply. Either remains possible with the RUFNRN system. A transposed number on the Last-4, a typo in a birthdate or address, or forgetting about a previous SUFRN or FRN might accidentally lead to an incorrectly assigned RUFNRN (and perhaps the assignment of multiple RUFNRNs). And of course anyone willing to intentionally violate the Commission's rules on the SUFRN would likely be willing to violate them on the RUFNRN. An additional level of errors may be created through data entry problems with the Form 323 itself, such as inadvertent (or intentional) mistyping of RUFNRNs, SUFRNs, or FRNs. In addition, the Commission intends to retain (because it must) the SUFRN option for individuals who simply refuse to provide their personal information. Together, this means that, even if the Commission indeed imposes this burden on its licensees, it has not shown that its data will improve in any substantial or meaningful way.

In addition, insofar as the Commission intends to allow use of this data by third-party researchers, much of the benefit that comes from the use of RUFNRNs is negated by its recognition that it must keep the underlying data private. This means that researchers will be unable to account for situations where an individual may have multiple SUFRNs, FRNs or

RUFRNs (or some combination thereof), though the Commission believes it can account for this through its own system (assuming the FRNs or RUFRNs were all issued with the same, correct data). As a result, the supposed benefits from this new system are even more minimal than the Commission claims, further reducing the justification for such burdensome requirements.

**D. An Exception for Individual Declining to Disclose Personal Information  
Must Be Easily Obtainable.**

As Commenters have explained, the exception to the Commission's proposed RUFRN system for individuals respectfully declining to disclose personal information remains absolutely essential if licensees are to perform the task of preparing and filing a Form 323. Licensees simply do not have the power to force all those with attributable interests to provide this data, and being unable to file complete reports without it would lead to the Commission having less ownership information than it has now (and to potential forfeitures issued to innocent licensees) or to mass resignations or withdrawal of officers, board members or others with attributable interests, which would not be in the public interest. These burdens could also reduce investment in broadcast licensees, including those owned by minorities, females, and small businesses, due to concerns by passive investors that they would be forced to expose themselves to possible identity theft. Commenters therefore support the continued use of SUFRNs in the event that the Commission chooses to adopt the new RUFRN system.

Commenters also urge the Commission not to impose any of the substantiation requirements it mentioned in the *FNPRM*.<sup>28</sup> As noted above, the RUFRN requirement would already dramatically increase the compliance burden on licensees; adding an additional burden for licensees with board members or interest-holders who decline to disclose personal

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<sup>28</sup> *Id.* at ¶ 33.

information (referred to as “recalcitrant individuals” in the *FNPRM*) on top of that is unwarranted and excessive. Such requirements would also be contrary to the Commission’s efforts to streamline the process for other filings, such as renewals, by allowing licensees to certify compliance, rather than requiring them to provide detailed demonstrations of compliance.<sup>29</sup> Particularly given the often harried and difficult process of preparing these reports, substantiation of a given individual’s unwillingness to provide his or her personal information – an unwillingness which, as discussed above, would be eminently reasonable – is excessive and unjustified.

**E. NCE and Other Non-Profit Licensees Should Not be Subject to These Requirements.**

Finally, Commenters strongly urge the Commission, in the event that it chooses to impose the new RUFNR requirements, to exclude NCE and non-profit licensees, including non-profit licensees associated with colleges, universities, and state governments or agencies. As commenters made clear in Comments filed in 2013, some of the foregoing non-profit licensees have a mix of NCE and commercial station licenses, and are non-stock, non-profit corporations, public corporations or otherwise associated with governments, which do not have owners in the conventional sense of that term.<sup>30</sup> These licensees are fundamentally unlike commercial enterprises. This is true in many ways, but arguably the most striking difference is in the manner in which they are controlled: there are no owners or shareholders whose aim is their own profit. Instead, these licensees have governing boards whose responsibility is to guide the organization in the public interest in accordance with applicable laws.

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<sup>29</sup> See e.g., FCC Forms 302, 314, 316.

<sup>30</sup> 2013 Comments at pp. 9-11.

As set forth above, these boards are often made up of individuals with little or no involvement in day-to-day broadcast operations. Some individuals are members as a result of other, unrelated governmental positions or are volunteers. While their interests are considered attributable for multiple ownership purposes, they are fundamentally *not* “owners” in the sense of “doing business” with the FCC for their own interests, and seek no personal gain from their involvement with broadcast licensees. For this reason, Commenters restate their 2013 argument that this makes the basic FRN rules inapplicable to them as a threshold matter.<sup>31</sup>

The Commission has long recognized this through its radically different treatment of NCE and non-profit licensee ownership issues, particularly in the context of the Forms 323 and in transfers of control. This different treatment is logically sound and should apply in this case. Whatever goals the Commission has in its efforts to improve its information on broadcast ownership, those goals do not apply in the context of these licensees, which operate in a fundamentally different way and with completely different purposes from commercial, for-profit licensees. In particular, its references to the *Diversity Order* and its efforts to reinstate it through a more thorough record do not apply, as those initiatives were limited to for-profit (non-governmental) commercial stations.<sup>32</sup> The lack of pecuniary interest in the operations of the licensee make it unlikely that a detailed tracking of NCE and non-profit licensee board members will add much, if any, meaningful information to the Commission’s analysis of broadcast ownership, not least because their interests *are not ownership*.

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<sup>31</sup> *Amendment of Parts 1, 21, 61, 73, 73, and 76 of the Commission's Rules, Adoption of a Mandatory FCC Registration Number*, 16 FCC Red 16138, 16138-39 (2001).

<sup>32</sup> *In the Matter of 2002 Biennial Ownership Regulatory Review*, 18 FCC Rcd 13620, 13811 (2003) (referring to rules relating to corporation stock ownership and the Small Business Association classifications as the defining characteristics of an ‘eligible entity’).

With this proposal, the Commission risks imposing on NCE and non-profit licensees the burden of loss of qualified individuals who wish to assist these licensees in their work (often unrelated to broadcasting), but who choose not to do so out of the desire to keep their private information private. This result would most certainly not be in the public interest, and the Commission should be unwilling to discourage this participation by requiring such burdensome disclosures.

### **III. CONCLUSION**

Since 2009, the Commission has sought to improve available data on broadcast ownership. While this may be a worthwhile goal, it is impossible to know for sure, because the Commission has failed to clearly explain the reasons for its desire for the information and how it will be used. It has also failed to provide evidence that the data it has acquired since the 2009 Form 323 changes (or even prior to those changes) are inadequate to meet that goal.

The Commission's current efforts to improve its data would impose substantial burdens on licensees without actually achieving the stated purpose of a truly unique and reliable identifier. The risk of personal information falling into the wrong hands and the dramatic increase in the cost of compliance, when weighed against the uncertain improvements in data quality, make clear that the RUFNRN proposal is a misguided one. However, in the event that the Commission chooses to impose these new requirements, it is important that it retain the SUFRN in cases where individuals respectfully refuse to comply with the demand for their personal information. The Commission also must not impose these new requirements on NCE and non-profit licensees, including non-profit licensees associated with colleges, universities, and state governments or agencies, as doing so would be contrary to the public interest and unjustified given the nature of those licensees.

Respectfully submitted,

ALABAMA EDUCATIONAL TELEVISION COMMISSION

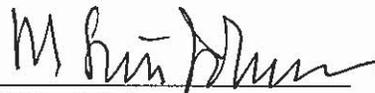
THE BOARD OF TRUSTEES OF THE UNIVERSITY OF  
ALABAMA ON BEHALF OF  
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THE UNIVERSITY OF ALABAMA AT BIRMINGHAM

STATE BOARD OF EDUCATION, STATE OF IDAHO

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