

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
Promoting Diversification of Ownership in) MM Docket No. 07-294
the Broadcasting Services)

To: The Commission

JOINT COMMENTS OF PUBLIC BROADCAST LICENSEES

Capital Community Broadcasting, Inc., Florida West Coast Public Broadcasting, Inc., Greater New Orleans Educational Television Foundation, Maryland Public Broadcasting Commission, Mid-South Public Communications Foundation, New Hampshire Public Broadcasting, Oregon Public Broadcasting, South Texas Public Broadcasting System, Western New York Public Broadcasting Association, and WHYI, Inc., (Joint Parties)¹ file these comments in response to the Commission's Second Further Notice of Proposed Rulemaking and Seventh Further Notice of Proposed Rulemaking (FNPRM) in the above-referenced proceeding.

1. The FNPRM seeks comment on a modified proposal to require noncommercial educational licensee entities to secure for each officer and governing board member a unique Restricted Use FCC Registration Number (RUFNR) generated by the Commission Registration System. The RUFNRs would be used in connection with proposed reporting requirements in connection with Form 323-E, Ownership Report for Noncommercial Educational Broadcast Station. The Commission suggests that this scheme would facilitate long-term comparative

¹ A list of the Joint Parties showing their broadcast stations is attached as Appendix A.

studies of broadcast station ownership and advance its goal of ownership diversity. In Comments filed earlier in this proceeding², some of the Joint Commenters opposed the proposal as ill-conceived and counterproductive as applied to non-commercial educational (NCE) licensees. In addition to the privacy concerns raised by the specter of requiring hundreds of individuals to provide their Social Security Numbers (SSNs), they expressed the overriding concern that the information collection scheme would discourage individuals from public service on NCE boards and seriously hamper their efforts to recruit qualified, interested, individuals.

2. Addressing the privacy concerns of various commenters in this proceeding, the Commission now proposes to allow an individual to obtain an RUFNR that does not require submission of a full SSN to the agency. For the reasons below, the Joint Parties submit that the Commission's proposal remains inappropriate for noncommercial educational licensees and, moreover, still does not adequately address privacy concerns.

3. The Joint Parties include governmental and private universities and colleges and nonprofit community organizations. The governmental units are expressly chartered by law and the local institutions and organizations are organized to educate and to provide a noncommercial educational program service. The television station licensees are, moreover, specifically required by the Commission to have governing boards that are broadly representative of their communities.

² See Joint Comments of Public Broadcast Licensees (Joint Comments) filed February 14, 2013 in response to Sixth Further Notice of Proposed Rulemaking, MM Docket 07-294, FCC 12-166, released January 3, 2013.

4. Governmental public broadcast boards are composed variously of elected officials, gubernatorial or other appointees, and *ex officio* members who serve by virtue of their governmental positions rather than based on their individual qualifications. Other types of licensees rely on volunteers to fill positions on their governing boards. It is an ongoing challenge for community group licensees to find qualified, committed individuals to donate their time and attention to station governance. In the case of governmental and institutional licensees, board members who serve by virtue of elected or appointed office are not compensated additionally for their service on these licensee boards.

5. As was true at earlier stages of this proceeding, the thrust of the FNPRM is aimed at gathering accurate data regarding ownership of commercial broadcast stations with a view toward promoting diversity of such ownership. The composition of public station boards and the mission of NCE licensees contrast starkly with their commercial counterparts. The size of nonprofit governing boards varies from a few to dozens of members. Individuals who agree to serve include on one hand those who lead otherwise private lives and on the other well-known community leaders, along with those serving by virtue of their status as elected or appointed officials. Their service may be characterized as a generous donation of substantial amounts of time; many members of community group boards also provide important financial support to the licensee. Though their positions are deemed "attributable" by the Commission, none of these board members has any equity or other ownership interest in the licensee. They do not hold the FCC licenses, they do not own the facilities and, like the licensees they serve, they have no pecuniary interest in revenues or station trading. In the case of governmental

licensees, board members are charged with representing the interests of their constituent citizenry and are not chosen to reflect the interest of a particular group based on race, ethnicity, or sex. As such, the Commission's rationale for collecting such information for these licensees is facially inapposite.

6. There is sometimes considerable turnover in the governing boards of the Joint Parties. The boards of community-based licensees in particular see significant turnover; terms of these board positions are typically two or three years. While some members serve multiple terms, many do not. Similarly, the governing boards of governmental or institutional licensees routinely change as officials are replaced by election or appointment. For community group licensees it is no simple matter to find individuals who would be an asset to the board and who are willing to serve.

7. The Joint Parties believe that adoption of even the Commission's modified proposal would have a significant negative impact on their ability to recruit volunteers to serve on their licensee boards. Preliminarily, restricting the information required to be provided to the last four digits of an individual's SSN does not really solve the privacy issue when viewed in conjunction with the tandem proposed requirement that an individual disclose his/her full name, residential address and date of birth. Until June 2011, the last four digits of the SSN were the only truly arbitrary numbers assigned to an individual. The first two number groupings of SSNs were coded to provide an individual's location and date of birth at the time the SSN was issued. In particular, the first three digits corresponded to the location by state of the SSN's issuance, while the second two digits correspond to the range

of years in which it was issued.³ In this situation, an enterprising individual could use the residence/date-of-birth information provided by an individual in tandem with the four arbitrary digits also supplied by that individual to effectively identify his or her SSN. While many people relocate to other states over time after entering the SSN system, many do not. At the bottom line, the Commission's modified proposal makes it more difficult but by no means impossible to discover an individual's SSN.

8. In light of the fact that persons who serve on noncommercial licensee boards do so as a service to the community, the Commission's modified proposal as it applies to noncommercial licensees remains an unwarranted intrusion and will likely discourage individuals from serving. Moreover, the Commission's proposal could well cause current volunteers to step down rather than submit to a requirement that serves no useful purpose in the context of public broadcasting. When the Commission announced earlier that SSNs would be required, some of the Joint Parties were faced with direct refusals both by high-ranking government officials and by volunteers who served on their boards. The stand-offs were resolved with the adoption of the temporary procedures that permitted generation of an FRN without providing an SSN. If current and prospective volunteers were informed of the continuing risk of SSN disclosure associated with the Commission's modified plan, the Joint Parties are unfortunately confident that they would face the same reluctance to participate in public service.

³ See <http://www.ssa.gov/employer/randomization.html>. For a fuller explanation of SSN decoding, see, e.g., <http://www.stevemorse.org/ssn/ssn.html>.

9. It is well established that, despite efforts by governmental agencies to protect individuals' personal information, substantial breaches occur often enough that people are apprehensive when asked to provide SSNs.⁴ The Joint Parties believe that they would be equally concerned if they knew that even the disclosure of truncated SSN information could lead to full SSN disclosure. Whether or not the risks of disclosure are high in a particular instance, the perception of vulnerability is critical, and it is fair to surmise that the willingness of an individual to risk disclosure of his or her SSN may be directly proportional to whatever benefit or privilege may be secured thereby. For prospective volunteers for service on uncompensated community boards, the balance will, often enough, favor non-participation by otherwise well-qualified people who could perform a community service.⁵

10. The Commission continues to suggest that an RUFNRN requirement for individuals serving on noncommercial licensee boards might be necessary to "ensure the accuracy of the data submitted" (FNPRM, para. 27). But public broadcasting licensees have been submitting accurate information regarding the composition of their boards for decades. The historical presumption of good faith

⁴See in this regard, Joint Comments, paras. 8-9, fn. 5-7.

⁵ The Commission has suggested (Sixth FNPRM, fn. 6) that concern about disclosure may be allayed by having individuals obtain their RUFNRNs directly from the agency. That may in some cases reduce the problem, but would by no means eliminate either the risk of SSN disclosure or the disincentive to participate on a volunteer board. Moreover, this course seems certain to create administrative headaches as a whole new series of hundreds, perhaps thousands, of RUFNRNs have to be procured and tracked by individuals and licensees. Further, the ongoing suggestion that Special Use FRNs backed by enforcement authority could assist licensees in complying with the requirements in the case of recalcitrant interest holders simply has no application in an NCE world predicated on volunteer service. In this environment, well-qualified individuals whose service is desired will simply decline the offer, resulting in a shrinkage of the pool of qualified candidates for a cause that is not directly germane to the Commission's goals.

by licensees underlies every submission to the Commission, and is buttressed by clearly stated enforcement sanctions for willful false statements. The Commission has cited no evidence in this proceeding that public broadcasters provide inaccurate or incomplete information in response to this or other information requirements.

11. The Commission's conclusion that its RUFNRN proposal is minimally burdensome (FNPRM, para. 32), while possibly true when applied to the commercial broadcast industry, is unsupported by the reality of NCE operations, which is characterized by regular and sometimes frequent changes in board membership. This circumstance will entail extensive ongoing responsibilities for NCE licenses to maintain complete and accurate rosters of the RUFNRNs of governing board members who were willing to volunteer their time and expertise. This is not a simple administrative task in the case of NCE licensees with large and changing governing boards, and there is no attendant public benefit in view of the limited utility of the information that would be generated by the RUFNRN system.⁶

12. The public broadcast industry has faced extraordinary financial challenges in recent years. In an era of constrained funding, licensees depend more than ever upon the ability to find competent, qualified people to volunteer on

⁶ In this regard, the agency's finding (NFPRM, para. 27) that an individual's one-time registration for an RUFNRN will reduce burdens associated with various filings by allowing cross-referencing based on this unique identifier has little or no relevance to the NCE industry. In contrast with the commercial broadcast industry, where individuals often have multiple commercial broadcast interests, the existence of such interests is in fact quite rare in the case of NCE board members and officers. It should also be noted that the FCC in its current proposal to move radio broadcast local public files on line has recognized that significant administrative duties may indeed impose undue burdens on NCE licensees and in fact has suggested that NCE licensees might be exempt from the online scheme. See Notice of Proposed Rulemaking, MM Docket 14-127, FCC 14-209, released December 18, 2014, para. 69.

their governing boards. However well-intentioned the Commission's overall goals may be in this proceeding, its proposals are inappropriate for the noncommercial sector and if implemented would have a negative effect on the ability of noncommercial licensees to assemble effective and competent boards that are critical to successful operation in the current environment. Further, the basis of the proposal – diversity analysis – is simply inapposite in the case of governmental licensees. Moreover, despite its tentative conclusion to the contrary (FNPRM para. 18), the Commission's proposal will entail substantial administrative burdens on NCE licensees to the extent that their governing boards are typically characterized by large numbers of individuals and relatively rapid turnover, with no countervailing public benefit.

For the foregoing reasons, the Joint Parties urge the Commission not to adopt the proposed RUFNR requirement for members of the boards of NCE licensees.

Respectfully submitted,

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CAPITAL COMMUNITY BROADCASTING, INC.

KTOO-TV, Juneau, Alaska
KTOO(FM), Juneau, Alaska
KRNN(FM), Juneau, Alaska
KXLL(FM), Juneau, Alaska

FLORIDA WEST COAST PUBLIC BROADCASTING, INC.

WEDU(TV), Tampa, Florida

GREATER NEW ORLEANS EDUCATIONAL TELEVISION FOUNDATION

WYES-TV, New Orleans, Louisiana

MARYLAND PUBLIC BROADCASTING COMMISSION

WMPB(TV), Baltimore, Maryland
WCPB(TV), Salisbury, Maryland
WFPT(TV), Frederick, Maryland
WGPT(TV), Oakland, Maryland
WMPT(TV), Annapolis, Maryland
WWPB(TV), Hagerstown, Maryland

MID-SOUTH PUBLIC COMMUNICATIONS FOUNDATION

WKNO(TV), Memphis, Tennessee
WKNO-FM, Memphis, Tennessee
WKNP(FM), Jackson, Tennessee

NEW HAMPSHIRE PUBLIC BROADCASTING

WENH-TV, Durham, New Hampshire
WEKW-TV, Keene, New Hampshire
WLED-TV, Littleton, New Hampshire

OREGON PUBLIC BROADCASTING

KOPB-TV, Portland, Oregon
KEPB-TV, Eugene, Oregon
KOAB-TV, Bend, Oregon
KTVR(TV), La Grande, Oregon
KOAC-TV, Corvallis, Oregon
KETP(FM), Enterprise, Oregon
KHRV(FM), Hood River, Oregon
KOAB-FM, Bend, Oregon
KOAC(AM), Corvallis, Oregon
KOAC-FM, Astoria, Oregon
KOAP(FM), Lakeview, Oregon
KOBK(FM), Baker City, Oregon
KOBN(FM), Burns, Oregon
KOGI(FM), Gleneden Beach, Oregon
KOJD(FM), John Day, Oregon
KOPB(AM), Eugene, Oregon
KOPB-FM, Portland, Oregon
KOTD(FM), The Dalles, Oregon
KRBM(FM), Pendleton, Oregon
KTMK(FM), Tillamook, Oregon
KTVR-FM, La Grande, Oregon

SOUTH TEXAS PUBLIC BROADCASTING SYSTEM, INC.

KEDT(TV), Corpus Christi, Texas
KEDT-FM, Corpus Christi, Texas
KVRT(FM), Victoria, Texas

WESTERN NEW YORK PUBLIC BROADCASTING ASSOCIATION

WNED-TV, Buffalo, New York
WBFO(FM), Buffalo, New York
WNED(AM), Buffalo, New York
WNED-FM, Buffalo, New York
WNJA(FM), Jamestown, New York
WOLN(FM), Olean, New York
WUBJ(FM), Jamestown, New York

WHYY, INC.

WHYY-TV, Wilmington, Delaware
WHYY-FM, Philadelphia, Pennsylvania
WDPB(TV), Seaford, Delaware
WNJB-FM, Bridgeton, New Jersey
WNJM(FM), Manahawkin, New Jersey
WNJN-FM, Atlantic City, New Jersey
WNJS-FM, Berlin, New Jersey
WNJZ(FM), Cape May Courthouse, New Jersey