Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington DC 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	)	MB Docket No. 10-234

JOINT REPLY COMMENTS OF
THE UNIVERSITY OF UTAH AND THE UTAH STATE BOARD OF REGENTS,
VALLEY PUBLIC TELEVISION, INC.,
WGBH EDUCATIONAL FOUNDATION, AND
NASHVILLE PUBLIC TELEVISION, INC.

The University of Utah and the Utah State Board of Regents, Valley Public Television, Inc., WGBH Educational Foundation, and Nashville Public Television, Inc. (together, the "Joint NCE Commenters") respectfully comment in response 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.[1] Each of the Joint NCE Commenters is the licensee of one or more NCE television and/or NCE radio stations.

The Joint NCE Commenters agree with the comments filed by other NCE broadcast organizations, including the joint comments of the Association of Public Television Stations, the Corporation for Public Broadcasting, National Public Radio, and the Public

[1] 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*, MB Docket No. 10-234, FCC 15-19 (rel. Feb. 12, 2015).

Broadcasting Service, and urge the Commission not to adopt the proposed changes to the FCC Form 323-E. Like these organizations, we believe that these regulations would not achieve the Commission's stated objectives and would deter people from serving on the boards of NCE broadcast stations.

I. THE PROPOSED REGULATIONS WOULD NOT ACHIEVE THE STATED OBJECTIVE

In the Notice, the Commission proposes to eliminate the Special Use FRN that has historically been available for individuals reported in commercial station ownership reports, and proposes to replace it with a Restricted Use FRN (or RUFRN). The Commission has previously sought comment on imposing a new requirement that individuals listed in NCE ownership reports obtain FRNs. It asks here whether, if it adopts such a requirement, it should permit individuals identified in NCE ownership reports to obtain RUFRNs instead, and "whether there are unique considerations with respect to NCE stations that would lead to a different conclusion for NCEs than for commercial stations with regard to the information proposed to be included to obtain an RUFRN."[2]

The Joint NCE Commenters do not see a need for the Commission to make the NCE ownership report process more burdensome. The Commission's primary justification for proposing to require that NCE station board members obtain FRNs (or RUFRNs) appears to be that obtaining identifying information from individuals with attributable interests in NCE stations would "promot[e] ownership diversity" and "ensure that diverse viewpoints" are broadcast to the public.[3] While this is a laudable objective, the Joint NCE Commenters fear it

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[2] *Id.*at ¶ 28.

[3] *Id.* at ¶ 1.

will not be furthered by the proposed regulations. The answer to the question of "whether there are unique considerations with respect to NCE stations that would lead to a different conclusion for NCEs than for commercial stations with regard to the information proposed to be included to obtain an RUFRN" is a resounding yes.

As a preliminary matter, these regulations would not aid the Commission in promoting "ownership diversity" because, as numerous commenters pointed out in this proceeding, board members of noncommercial educational television and radio stations are not the "owners" of the stations they serve. Unlike their commercial counterparts, board members of NCE broadcast stations have *no* financial stake in the operation of the station.[4] As the Public Radio Regional Organizations stated, "[t]he roles and motivations of board members of public or private nonprofit entities are not the same as those of owners of for-profit corporations operating commercial broadcast stations. No NCE board member has an investment stake in his or her NCE broadcast station, and board members are not motivated by a desire to obtain any financial return to themselves."[5] Rather, board members are often volunteers or, in the case of NCE stations owned by state or governmental bodies, elected or politically appointed.[6] As explained

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[4] *See, e.g.*, Joint Comments of Public Broadcast Licensees, MB Docket No. 07-294 (March 30, 2015), at 3–4 ("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."). *See also* Comments of the Association of Public Television Stations, Corporation for Public Broadcasting, National Public Radio, and Public Broadcasting Service ("Public Broadcasting Comments"), MB Docket Nos. 07-294 and 10-234 (March 30, 2015), at 5.

[5] Comments of Public Radio Regional Organizations (PRROs), MB Docket Nos. 07-294 and 10-234 (March 30, 2015), at 6.

[6] *See, e.g.*, *id.* ("Governing board members of NCE broadcast stations are (1) unpaid volunteers who support… the educational and public service of the public broadcasting station in their community or region, (2) unpaid volunteers who serve on the board of an educational institution to which the station is licensed, or (3) elected or appointed public officials, including some who (continued…)

in the Public Broadcasting Comments, "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*."[7]

Further, in the noncommercial context, the FCC has not identified a diversity problem that additional reporting requirements would help to solve. The Notice gives no suggestion that women or minorities are underrepresented in the management of noncommercial broadcast stations and presents no evidence to this effect. Indeed, noncommercial stations are already required to implement numerous diversity initiatives in order to receive funding from the Corporation for Public Broadcasting. Specifically, recipients of Television Community Service Grants are required to establish diversity goals for their governing boards, which are reviewed annually, and publish a diversity statement on their websites explaining, *inter alia*, "the extent to which Grantee's staff and governance reflect . . . diversity[,] progress Grantee has made to increase its diversity in the last two to three years[, and] Grantee's diversity plans for the coming year."[8]

Diversity is also identified as an explicit goal in the governing documents of many NCE broadcast stations. The WGBH Educational Foundation, for example, vows in its

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serve on station governing boards by virtue of their holding other positions in state or local government….").

[7] Public Broadcasting Comments at 8.

[8] Corporation for Public Broadcasting, FY 2015 Television Community Service Grant General Provisions and Eligibility Criteria § 6 (Oct. 1, 2014), *available at http://www.cpb.org/stations/grants/tv/generalprovisions/FY-2015-TV-General-Provisions.pdf*.

mission statement to "[r]eflect the diversity of [its] audience"[9] and its by-laws state that an institutional purpose is to educate and serve "persons of all ages, origins and beliefs."[10] Similarly, the Utah State Board of Regents promises in its governance and its programming "to value ethnic and cultural differences" and to "promote cultural awareness and appreciation for diversity,"[11] and Valley Public Television pledges to "educate[] and strengthen[] [its] diverse Valley Community."[12]

Non-commercial licensees also feel political pressures to promote diversity that commercial stations do not. For example, unlike commercial stations, many NCE broadcast stations are community licensees that rely on community advisory boards to ensure that programming is meeting the diverse needs and interests of their communities.[13] Further, as previously mentioned, NCE broadcast stations that are owned by state or local governmental bodies are often served by board members that are elected or politically appointed.

Additionally, if the Commission seeks to monitor diversity in the governing boards or programming of these stations more closely, it may do so without imposing the

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[9] WGBH Educational Foundation, Mission and Commitments, *available at http://www.wgbh.org/about/mission.cfm* (last accessed Apr. 10, 2015).

[10] WGBH Educational Foundation By-Laws, Preamble, *available at https://stations.fcc.gov//collect/files/72099/Ownership%20Reports/Contracts%20and%20Agreements/BYs%20Laws%202011%20(13584527537988)_.pdf*.

[11] Utah Board of Regents, System-Wide Vision and Mission Statements, Policies § R-310, *available at http://higheredutah.org/policies/policyr310/*.

[12] Valley Public Television, Inc., ValleyPBS Mission and Vision, *available at http://www.valleypbs.org/about/index.php*.

[13] *See, e.g.*, WGBH Community Advisory Board, *available at http://www.wgbh.org/about/communityadvisoryboard.cfm*, Valley Public Television, Inc., Community Ambassador/Advisory Board, *available at http://www.valleypbs.org/about/cab.php*, Nashville Public Television, Inc., Community Advisory Board, *available at http://www.wnpt.org/about/advisory-board/*.

burdensome requirements associated with requiring individuals to secure FRNs or RUFRNs. For example, the Commission can often obtain information about board members through a station's website, and can obtain information about a station's programming from its quarterly issues and programming lists. Thus, whatever additional benefit could be obtained by imposing the proposed reporting requirements would be marginal, at best.

Finally, even assuming these new reporting requirements enabled the Commission to identify a diversity problem, it is unclear what remedial measures the Commission could undertake in the noncommercial context. As the PRROs noted, the Commission's remedial strategies "would presumably rely on market-based incentives to lower the economic or regulatory cost of ownership," which "would be irrelevant to NCE stations, as NCE board membership is not determined by the cost of investment in broadcast properties or prospective financial gain from such ownership."[14] Nor, given equal protection concerns, could the Commission impose some sort of diversity quota—which, in any event, would be difficult to implement given that many of these board members are political appointees.

In sum, there is little justification for imposing these new requirements in the noncommercial reporting context.

II. THE PROPOSED REGULATIONS WOULD IMPOSE AN UNDUE BURDEN ON BOARD MEMBERS OF NCE BROADCAST STATIONS

That the proposed regulations would not achieve their stated goal is reason enough for the Commission to refrain from implementing them. But the proposed regulations would be worse than simply ineffective—they would cause serious harm to NCE broadcast stations. The Joint NCE Commenters agree with the Public Broadcasting Comments and other

[14] PRRO Comments at 6–7.

commenters who showed that the proposed regulations would unduly burden board members of NCE broadcast stations, or deter them from service altogether, by forcing them to disclose sensitive personal information and expose themselves to a heightened risk of identity fraud.

For many individuals that serve on the boards of NCE stations, the risk of identity theft and fraud is a serious concern. As noted in the Public Broadcasting Comments, over 85 public broadcasting licensees opposed a similar requirement proposed in 2013, due largely to privacy concerns.[15] This concern is deepened by a number of cyber-attacks suffered by the federal government in recent years. The Public Broadcasting Comments explain that the federal government was plagued by nearly 61,000 cyber-attacks and security breaches in 2013 alone—a 35% increase from 2010.[16] Since that time cyber criminals have successfully targeted both the White House and the State Department in a series of especially high-profile attacks.[17] And although the Commission's recent improvements to its data security are certainly a step in the right direction, the quantity and visibility of these attacks will give many prospective board members considerable pause.

This is especially true given that board members of NCE stations receive no financial upside in exchange for their service. These board members are more likely to be deterred by the threat of identity theft than are individuals with attributable interests in commercial stations, who are compensated financially for taking the risks associated with station ownership.[18] And often, these stations are drawing from a very limited pool of eligible

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[15] Public Broadcasting Comments at 6.

[16] *Id.* at 9.

[17] *Id*.

[18] *See, e.g.*, PRRO Comments at 9 ("NCE station board members obtain no personal financial benefits by virtue of their participation on a station's governing board, and thus it will be all too (continued…)

candidates. WGBH Educational Foundation, for example, must draw five board members from a limited list of persons occupying specific leadership positions in the community—a task that is difficult enough without having to ask these persons to place their identity at risk.[19] NCE broadcast stations cannot afford to lose valuable board members who may forego service out of a reasonable fear that their sensitive personal information will be compromised.

III. THE RESTRICTED USE FCC REGISTRATION NUMBER WILL NOT ALLEVIATE THESE CONCERNS

In order to address the privacy concerns discussed above, the Commission proposes to allow individuals with an attributable interest in NCE stations to provide other identifying information (*i.e.*, their date of birth, home address, and the last four digits of their Social Security number) rather than their full Social Security number. This proposal, however, does not alleviate the privacy concerns cited by the public broadcasting commenters in this proceeding.

First, cyber-criminals can still use this personal information to hijack a victim's identity. Many services require only the last four digits of a Social Security number, along with other basic identifying information, to verify a user's identity. Alternatively, this information could simply be a backdoor to obtaining the victim's full Social Security number. The preliminary digits in Social Security numbers are generated based on when and where an

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easy, and unfortunately all too common, for the FCC's insistence on collection of private to cause volunteer board members and prospective board members to decline participation on NCE station boards").

[19] *See, e.g.*, WGBH Educational Foundation By-Laws art. III, *available at https://stations.fcc.gov//collect/files/72099/Ownership%20Reports/Contracts%20and%20Agreements/BYs%20Laws%202011%20(13584527537988)_.pdf*.

individual was born. A recent study shows that an identity thief armed with a victim's birth date and place of birth is well equipped to guess the victim's complete Social Security number.[20]

Second, the disclosure of a board member's home address and date of birth implicates other more basic privacy interests. As noted in the Public Broadcasting Comments, "many individuals, especially prominent ones, go to great lengths to keep their residential address private" because of concerns of personal security or privacy.[21]

Simply put, many current and/or prospective board members likely will not accept these privacy risks, particularly when they will receive no financial compensation in return. We agree with the Joint Comments of Public Broadcast Licensees, who stated that:

> 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.[22]

IV. CONCLUSION

For the reasons stated above, as well as those explained in the Public Broadcasting Comments and comments from other NCE broadcast organizations, we urge the Commission not to require NCE board members to obtain FRNs or Restricted Use FRNs. The

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[20] *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 April 8, 2015). *See also* Joint Comments of Public Broadcast Licensees at 5 ("[A]n 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.").

[21] *See* Public Broadcasting Comments at 10.

[22] Joint Comments of Public Broadcast Licensees at 6.

FCC has not identified a serious issue with diversity on the boards of NCE broadcast stations, and these stations have committed themselves to diverse leadership. These stations already provide diverse programming, receive input from community advisory boards, and serve their communities all without the financial resources possessed by their commercial counterparts. And in exchange for the funding they do receive from the Corporation for Public Broadcasting, they are already required to implement, and publish, diversity initiatives, although in many cases the pool from which they can recruit board members is limited by their charters or bylaws. We do not see evidence of a problem that needs solving, and even if one exists it can surely be solved using methods that are less burdensome than those the Commission has currently proposed. The Joint NCE Commenters believe that this proposal will create real difficulty in attracting and retaining board members. And those board members that agree to supply the necessary details will be exposed to unnecessary risks with respect to their sensitive, personal information.

Respectfully submitted,

The University of Utah and the Utah State Board of Regents,

Valley Public Television, Inc.,

WGBH Educational Foundation, and

Nashville Public Television, Inc.

By:

Eve R. Pogoriler
David M. Parker*
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street N.W.
Washington, DC 20001
202-662-6000

Counsel for the Joint NCE Commenters

* Not admitted in the District of Columbia; supervised by principals of the Firm.

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