

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

In the Matter of)	
)	
Promoting Diversification of Ownership in the Broadcasting Services)	MM Docket No. 07-294
)	
Review of Media Bureau Data Practices)	MM Docket No. 10-103
)	
Amendment of Part 1 of the Commission's Rules, Concerning Practice and Procedure, Amendment of CORES Registration System)	MM Docket No. 10-234
)	

To: The Commission

PETITION FOR RECONSIDERATION

The Board of Trustees of Florida Gulf Coast University; Capital Community Broadcasting, Inc.; Florida West Coast Public Broadcasting, Inc.; New Hampshire Public Broadcasting; Northern California Educational Television Association, Inc.; Oregon Public Broadcasting; The Public Broadcasting Foundation of Northwest Ohio; Twin Cities Public Television, Inc.; Virgin Islands Public Broadcasting System; West Tennessee Public Television Council, Inc.; and WHYI, Inc., (Public Broadcasting Parties)¹, pursuant to Section 1.429 of the Rules, jointly file this Petition for Reconsideration of the Commission's *Report and Order, Second Report and Order, and Order on Reconsideration (Order)* in the above-referenced proceeding. In support thereof, the following is shown:

1. The Public Broadcasting Parties include governmental and private universities and colleges and nonprofit community organizations that are licensees

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

of public radio and television stations. They are well aware that the Commission has reached its decision in the docket after a decade of consideration. Nonetheless, they, along with what they anticipate will be many other public broadcast licensees, urge the Commission to reexamine its underlying assumptions and the premises for its conclusions herein with respect to application of new FRN/RUFNR procedures and requirements to public broadcasting licensees.

2. The stated purpose of this proceeding is “to analyze issues relevant to ownership and viewpoint diversity”² and consider “steps to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.”³ However the Commission’s analysis and conclusions throughout have not squarely addressed the operative differences between commercial and noncommercial ownership, resulting in a well-meaning but flawed decision on this score. In short, the decisions taken by the Commission with the intention of fostering diversity ignore the fact that ownership and operations of public broadcasting stations are already fundamentally structured so as to advance diversity. The organization of the television and radio public broadcasting systems in this regard contrasts with the structure of commercial broadcasting. With respect to participation in public broadcasting by “new entrants and small businesses”, the Public Broadcasting Parties, as is the case with most

² Report and Order, Second Report and Order, and Order on Reconsideration In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, 31 FCC Rcd 398 (2016).

³ Report and Order and Third Further Notice of Proposed Rule Making In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, 23 FCC Rcd 5922, 5924 (2008).

public broadcasters, have generally been licensees for many decades. The public broadcasting system is mature; there are virtually no new entrants. Moreover, the goal of introducing small businesses to broadcast ownership is obviously inapplicable to public broadcasting, where businesses cannot be licensees.

3. The governmental units among the Public Broadcasting Parties are expressly chartered by law, and the local institutions are organized to educate and to provide a noncommercial educational program service. The television station licensees, moreover, are specifically required by the Commission to have governing boards that are broadly representative of their communities. Governmental public broadcasting licensee boards are composed variously of elected officials; gubernatorial, mayoral, or other appointees; and *ex officio* members who serve by virtue of their governmental positions rather than based on their individual characteristics. Such board members change with changes in administrations, changes in office holders, and changes resulting from resignations and new appointments.

4. Nongovernmental licensees that receive Community Service Grants from the Corporation for Public Broadcasting, including almost all public television stations other than those licensed to religious organizations, as well the major public radio licensees that employ the vast number of public radio staff, are required by law to maintain diverse community advisory boards that meet regularly and advise licensees on programming. On the other hand, Congress has determined that governmental licensees, such as state public broadcast authorities, school boards, city governments, and state institutions of higher education are by their nature representative of their communities and need not

have community advisory boards. In other words, the Commission is, in the context of addressing an issue in commercial broadcasting, needlessly, although with the best of intentions, purporting to address what is in reality a nonexistent issue in the public broadcasting system. While the burdens imposed in the process may not seem to be significant to those outside of public broadcasting, the Public Broadcasting Parties believe that they will in practice raise significant issues.

5. While most NCE licensees have a core professional staff that runs their operations, their governing boards are overwhelmingly populated either by governmental appointees or by volunteers who provide vital community service without remuneration or, often, recognition of any kind. Individuals who agree to serve include both well-known community leaders and those who lead otherwise private lives, as well as many board members who serve *ex officio* by virtue of their status as elected or appointed officials. Their service may fairly be characterized as a generous donation of substantial amounts of time, and many members of community group boards also provide important financial support to the licensee. Many NCE licensee boards consist of dozens of members whose terms typically extend for two or at most three years; under these circumstances, it is an ongoing challenge for community group licensees to find qualified, committed individuals to donate their time and attention to station governance, much less ask personal questions to register them with the FCC.

6. The *Order* determined, *inter alia*, that noncommercial educational (NCE) licensees filing an Ownership Report secure a unique identifier for each

board member reported on the form⁴, a process entailing forced disclosure of the last four digits of their Social Security Numbers (SSNs), and that they aggregate and disclose information regarding race, gender and ethnicity of their governing board members. *Order*, at paras. 43, 51. Furthermore, if an officer or director refuses to provide the required information, the licensee must demonstrate “reasonable and good faith efforts” to secure it, at the risk of FCC enforcement action against the licensee or the “recalcitrant individual” who refuses to provide it. *Order*, para. 57.

7. The Commission’s decision is predicated in large part on the conclusions that the new requirements (1) will not discourage board participation and (2) are needed to improve the accuracy of data regarding minority and female “ownership” with a view toward promoting media diversity. The decision is inherently flawed and does not reflect reasoned decision making.

8. In spite of evidence to the contrary proffered by NCE licensees⁵, the FCC concluded without support that the new identifier requirement would not discourage participation in NCE station governance. *Order*, paras. 51, 55. In this regard, the agency adverts to the collection of similar race, gender and ethnicity information by the Corporation for Public Broadcasting (CPB) in support of the claim that the provision of similar information to the FCC will not “have a significantly different impact.” *Order*, para. 51. However, as the FCC acknowledges, the CPB information collection process is essentially anonymous,

⁴ Known as a Restricted Use FCC Registration Number (RUFNRN), which would be generated by the Commission Registration System.

⁵ See, e.g., *Order* at fn. 183.

contains no RUFNRN type component and does not generate a breakdown of demographic information collected with respect to the board members of individual stations. *Ibid.* That generalized CPB collection process contrasts sharply with the identity-specific process adopted by the FCC and may not be relied upon for the proposition that the RUFNRN scheme will not discourage board participation by unpaid volunteers or refusal to cooperate by government officials.

9. Similarly, the Commission's conclusion (*Order*, para. 55) that the process for obtaining an RUFNRN is "quite simple" ignores the fundamental question of whether a members of the local community asked to volunteer substantial amounts of time to assist with NCE licensee governance will either (1) blithely agree to provide what they may regard as sensitive information as a condition of service or (2) refuse to provide such information at the risk of enforcement action against them as "recalcitrant individual". *Order*, paras. 56-57. The attitude displayed by the Commission toward the community of NCE volunteers is at the very least disturbing. The Commission does not provide a shred of evidence to support its assertion that individuals asked to volunteer their time will not decline to provide this information. The Public Broadcasting Parties submit that even a modest dampening of enthusiasm for public service on NCE licensee boards should be avoided as a matter of policy.

10. Perhaps more important, as noted above, the primary purpose of this proceeding has been to generate accurate information regarding commercial station ownership with a view toward encouraging diversity in the profit-making world of commercial broadcast ownership. In no way, shape or form should NCE licensee board members be considered station "owners" for the purposes of the

FCC's analysis of commercial broadcast industry trends. By conflating "ownership" with "attribution", the FCC's regulatory scheme will hopelessly skew any study of broadcast industry diversity. Indeed, the FCC concept of station "ownership" in this respect is not directly applicable to NCE licensees, who serve as proxies for community and governmental interests, and the information provided by NCE licensees manifestly will distort ongoing analysis of the issue. The Commission over the years has developed or contemplated various market-based incentives to promote minority and female ownership of commercial broadcast station. However, NCE licensee governing board membership is not susceptible to influence by FCC measures of the type that might affect commercial broadcasting ownership, such as modification of the attribution rule (the multiple ownership limits do not apply to noncommercial licensees), distress sales, tax certificates, or modified divestiture policies. Public broadcasting has been swept into this proceeding without detailed consideration of the differences in how commercial and public broadcasting stations are governed. The failure to analyze those differences carefully has resulted in a disconnect between the Commission's stated goals and the implementation of complex new requirements for public broadcasters. Lumping these very different types of broadcasters together would dramatically skew the ownership analysis of "diversity".⁶

⁶ As a matter of fact, the Commission's statutory basis (Order, para. 3) for the identical treatment of NCE and commercial broadcasters is simply unsupported. Section 257 of the Telecommunications Act of 1996 requires the FCC to evaluate broadcast market entry barriers to entrepreneurs and small businesses with a view toward promoting opportunities for women and minorities. FCC reports issued pursuant to the mandate of Section 257 do not now and have never addressed entry barriers in the context of NCE broadcasting. That is because Section 257 was never intended to do so. The Public Broadcasting Parties submit that the Commission may not now twist the substance of Section 257 to serve its new and novel approach to NCE ownership analysis.

11. The Commission's *Order* struggles to justify the collection of data regarding NCE licensee board composition as a measure of broadcast station "ownership". Toward this end, it holds that the attribution standards currently applicable to NCE station officers and directors are indistinguishable from "ownership" and, as such, warrant the collection of NCE licensee data as part of the analysis of broadcast station ownership and diversity. At the bottom line, the Commission has constructed a regulatory scheme that confuses attribution with ownership and confuses the connection of NCE boards with their stations with that of commercial owners over operation of a for-profit commercial broadcast enterprise.

12. 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. 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 personally have an ownership interest in the facilities and, like the licensees they serve, they have no pecuniary interest in revenues or income from 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 inapposite.

13. Moreover, contrary to the Commission's conclusion (*Order*, para. 49), while NCE board members set policy for the stations they serve and exercise oversight over station operations, in many instances they are not involved in

operations in the same manner as a commercial broadcast owner may be. For example, membership on the board of a licensee state university is directly related to core university educational and administrative functions and only secondarily related to NCE licensee broadcasting. The relationship of such individuals to NCE station operations is important and is attributable, but is substantially different from the business relationship of a commercial broadcast company owner to a station. Such board composition certainly has little bearing on the Commission's laudable goal of promoting television and radio station ownership by small businesses, women and minorities.

14. At the bottom line, 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 that 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. Volunteer NCE board members do not secure benefits by virtue of their service; it seems axiomatic that the Commission's RUFNR scheme on balance could result in non-participation or grudging participation by otherwise well-qualified people solicited by NCE licensees to provide community service.

15. 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 a challenging environment. Further, the basis of the proposal – diversity analysis – is simply inapposite in the case of governmental

licensees. Moreover, despite its conclusion to the contrary, 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. In short, the Commission should "bestow upon those volunteering their time to NCE stations across our country not the burden of unnecessary regulations, but our gratitude."⁷

For the foregoing reasons, the Public Broadcasting Parties urge the Commission to grant reconsideration consistent with the views expressed herein and reverse its decision to adopt the FRN/RUFNR requirement for members of the boards of NCE licensees.

Respectfully submitted,

PUBLIC BROADCASTING PARTIES

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⁷ Order, Statement of Commissioner Ajit Pai, dissenting in part.

APPENDIX A

Board of Trustees of Florida Gulf Coast University

WGCU(TV), Fort Myers, Florida
WGCU-FM, Fort Myers, Florida
WMKO(FM), Marco Island, Florida

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

New Hampshire Public Broadcasting

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

Northern California Educational Television Association, Inc.

KIXE-TV, Redding, California

Oregon Public Broadcasting

KOAC-TV, Corvallis, Oregon
KTVR-TV, LaGrande, Oregon
KOAB-TV, Bend, Oregon
KOPB-TV, Portland, Oregon
KEPB-TV, Eugene, 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

The Public Broadcasting Foundation of Northwest Ohio

WGTE-TV, Toledo, Ohio
WGTE-FM, Toledo, Ohio
WGBE(FM), Bryan, Ohio
WGDE(FM), Defiance, Ohio
WGLE(FM), Lima, Ohio

Twin Cities Public Television, Inc.

KTCA-TV, St. Paul, Minnesota
KTCI-TV, St. Paul, Minnesota

Virgin Islands Public Broadcasting System

WTJX-TV, Charlotte Amalie, USVI
WTJX-FM, Charlotte Amalie, USVI

West Tennessee Public Television Council, Inc.

WLJT-DT, Lexington, Tennessee

WHYY, Inc.

WHYY(TV), Wilmington, Delaware
WDPB(TV), Seaford, Delaware
WHYY-FM, Philadelphia, Pennsylvania
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