

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
)	
Review of Media Bureau Data Practices)	MB Docket No. 10-103
)	
Amendment of Part 1 of the Commission's Rules, Concerning Practice and Procedure, Of CORES Registration System)	MD Docket No. 10-234
)	

COMMENTS OF

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA

The Board of Trustees of the University of Alabama (the "Alabama Trustees"), by its counsel, hereby respectfully submits these Comments in response to the Commission's *Public Notice*, "Petitions for Reconsideration of Action in Rulemaking Proceeding," Report No. 3043, released May 9, 2016 ("*Public Notice*"), which requested comment on petitions for reconsideration submitted in the above-captioned dockets. With respect thereto, the following is stated:

Alabama Trustees hereby express their agreement with points raised in the petitions for reconsideration listed in the Commission's above-referenced *Public Notice*. Those reconsideration petitions point out the Commission's basic errors in adopting new rules requiring the use of FRN's or RUFN's in the *Report and Order*, *Second Report and Order*, and *Order on Reconsideration* ("*Report and Order*") in the above-captioned matter. In particular, Alabama Trustees note that the Commission summarily rejected substantial evidence provided by

commenters of the burdens that the proposed RUFNR scheme would impose, without providing any empirical support for its own position, thereby rendering its decision arbitrary and capricious. Furthermore, the Commission ignored fundamental differences between nonprofit and for-profit entities, in terms of both the underlying motivations of licensee board members and the way in which such board members are selected to serve. Both of these factors require that the Commission reconsider the *Report and Order* and reverse the improvident application of the FRN/RUFNR requirement to non-profit entities.

As noted in previously filed comments in this proceeding which included them, the Alabama Trustees are the licensee or permittee of both noncommercial radio stations and commercial television stations. Alabama Trustees submit that the critical distinction is the non-profit nature of the licensee rather than the commercial or noncommercial nature of the stations which it may happen to operate. The content of a station's programming does not affect the way in which it is governed or the methods by which its governing board is selected. Commercial stations are licensed to serve the public interest just as noncommercial stations are, and such service is required in order to justify continued licensure. The same considerations which impel someone to serve on the board of a non-profit licensee apply without regard to whether some of the stations operated by that licensee support themselves through commercial spots or through enhanced underwriting announcements. Thus, the arguments made in the petitions for reconsideration with regard to noncommercial stations are equally applicable to all non-profit licensees, regardless of whether the stations operated by such licensees are commercial or noncommercial.

As noted by the NCE Licensees in their Petition for Reconsideration, the Commission's dismissal without any countervailing evidence of the oft-repeated arguments that imposition of

the FRN/RUFRN scheme on non-profit licensees would cause harm to such non-profit licensees was arbitrary and capricious. Throughout the comment period in this proceeding, various NCE licensees, including Alabama Trustees, raised serious and substantial concerns about the ill-effects that were likely to be created by a requirement to supply the personally identifiable information necessary to obtain either an FRN or a RUFRN. In response, the Commission simply dismissed these showings out of hand, stating only that it “was not persuaded” and that it did not “believe that the FRN requirement would serve as a serious disincentive to participation in NCE stations.” *Report and Order* at ¶55. The Commission provided, however, no evidence to support its claimed disbelief, and it has no expert experience in putting together a board to govern a state university or other local, non-profit group. While the Commission apparently has become comfortable with the idea that the Federal government stores vast amounts of personally identifiable information about individuals, the same is hardly true throughout the nation.

Nor is such disquietude unreasonable. As noted in the Petition for Reconsideration filed by the State University of New York, news outlets have been rife with stories of data breaches affecting government agencies. In particular, the State University of New York noted the 2015 data breaches against the Office of Personnel Management, which compromised the sensitive private information of Federal employees and contractors, in particular those seeking the highest security clearances, as well as such information pertaining to the spouses of employees and contractors. <https://www.opm.gov/cybersecurity/cybersecurity-incidents/>. The information included Social Security Numbers, dates of birth, current and former home addresses, and telephone numbers, including otherwise unlisted numbers. In other words, that breach of a presumably well-guarded computer system just last year obtained all of the information that the Commission is proposing to keep in connection with the FRN/RUFRN system, plus some.

Anecdotal, but consistent, evidence shows that since that time, Federal employees and their families, some with unlisted phone numbers, have noticed a significant increase in telephone calls for the purposes of marketing or attempting fraud. The use of private information from data breaches is not confined to those interested in commercial use or identity theft, and a breach can take on a more sinister aspect if the data reaches terrorists who might wish to attack government personnel, political figures, or others. <http://www.judicialwatch.org/blog/2014/09/facts-counter-govt-s-denial-isis-threat-reported-jw/>

As previously noted by Alabama Trustees and others, many non-profit governing boards, especially those of state universities and other state instrumentalities, include members who serve on the board as a result of a political or governmental office held. By virtue of their quite public offices, and the decisions and actions which they must take in their governmental positions, these officials are likely to be especially protective of their privacy. The inadvertent release of such an official's home address could be downright dangerous, not only for the official, but also for his or her family. While Alabama Trustees do not mean to imply that the FCC's computer security system is in any way lax or faulty, but it has been repeatedly demonstrated that determined hackers can make their way into what appear to be even the most well-protected databases. A listing of a large number of names, residence addresses, phone numbers, dates of birth, and even partial Social Security Numbers of persons spread throughout the country is bound to create a very attractive target for potential hackers. Such a risk is not inconsequential, and it is one that a rational person would consider long and hard before handing over the information currently required to obtain an FRN or RUFNRN.

Furthermore, as noted by the Public Broadcasting Parties in their Petition for Reconsideration, terms of board members typically do not last more than a few years, after

which new board member assume the positions. Once a board member obtains an FRN or RUFNR, however, that information is stored in a Commission database. There appears to be no provision for deleting it when the board member is replaced. Even if there were, however, it is common knowledge that even deleted information can be retrieved for a significant period of time. Thus, a board member's period of vulnerability to potential harmful breaches would extend well beyond his period of service.

While some non-profit board members are unable to refuse to serve as such due to the requirements of their offices, they may refuse to provide the information. The question then arises of what consequences they would face personally or would be faced by their organizations for the refusal to provide the information? Politicians in elected positions which entail state university or other non-profit board membership may worry about later political ramifications of their actions. The result would be to place a board member in an untenable dilemma, which requires the member to choose between the potential safety of himself/herself and his/her family and an enforcement penalty for either the individual or his/her organization.

Moreover, the benefits which the Commission would obtain from this information are questionable at best. As noted by all of the petitioners for reconsideration, non-profit entities do not have owners, as such. Often, university and other non-profit board members are focused on the primary mission of the institution rather than on the broadcast stations licensed to the institution. While the board serves to provide valuable general guidance and oversight, they members are generally not involved in day-to-day station operation. They often do not make selections of particular programs to be aired or dictate the news stories to be covered. Accordingly, being able to track individual board members is of even less significance for non-profit licensees than for for-profit licensees.

Additionally, such persons are not in any significant way doing business before the Commission. Those who serve on the boards of non-profit entities are either unpaid volunteers or serve involuntarily, as an adjunct to another office. They do have a fiduciary obligation to ensure sound management of the station(s) licensed to their organization, but their obligation is to the organization and the people it serves. There is no personal profit motive involved. This fact lessens the justification for requiring a non-profit board member to acquire either an FRN or RUFNR.

Finally, Alabama Trustees wish to support the argument raised by the State University of New York regarding the Privacy Act, 5 U.S.C. § 552a. That statute protects citizens from being required to disclose social security numbers. While the Commission attempts to draw a distinction between a person acting in an individual capacity, as opposed to one acting in an entrepreneurial capacity, Alabama Trustees agree that the language of the statute supports no such distinction. Even if it did, however, Alabama Trustees and other similarly situated persons may not act as individual entrepreneurs. Rather, as noted above, they are bound by a fiduciary duty and are precluded from considering any motivations for personal gain. Instead, such board members are bound to consider the welfare of their institution as a whole. Further, as noted above, these necessary motivating factors do not change even if a particular station is licensed as a commercial station airing advertising as opposed to a noncommercial station airing underwriting announcements.

For the reasons stated above and in the petitions for reconsideration listed in the *Public Notice*, Alabama Trustees submit that the Commission must reconsider and modify the *Report and Order* to eliminate any FRN/RUFRN requirements for non-profit entities.

Respectfully submitted,

THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ALABAMA

By: 
M. Scott Johnson
Anne Goodwin Crump

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street - Eleventh Floor
Arlington, Virginia 22209
(703) 812-0400

June 2, 2016