

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
)	
)	
2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996)	MB Docket No. 06-121 MB Docket No. 02-277 MM Docket No. 01-235 MM Docket No. 01-317 MM Docket No. 00-244 MB Docket No. 04-228

COMMENTS OF
OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST, INC.
NATIONAL ORGANIZATION FOR WOMEN FOUNDATION
MEDIA ALLIANCE
COMMON CAUSE
BENTON FOUNDATION

The Office of Communication of the United Church of Christ, Inc. (“UCC”), the National Organization for Women Foundation (“NOW”), Media Alliance, Common Cause, and the Benton Foundation (collectively, *UCC et al.*), by their counsel, the Institute for Public Representation, respectfully submit these comments in response to the Report and Order and Fourth Further Notice of Proposed Rule Making (“2009 Diversity Order”) in the above referenced proceeding.¹

In the *2009 Diversity Order* the FCC adopted a number of reforms to the collection of data on minority and female ownership of broadcast stations, including expanding filing requirements to all full power commercial broadcast stations, removing exemptions for sole

¹ *Promoting Diversification of Ownership In The Broadcast Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 09-33 (rel. May 5, 2009) (“2009 Diversity Order”).

proprietorships and partnerships of natural born persons, adopting a uniform filing date, and implementing data quality and accessibility procedures.²

UCC et al. applauds the Commission’s decision to increase the comprehensiveness, accuracy, and accessibility of Form 323 ownership forms for broadcast licensees. Such reforms are crucial (and long awaited) improvements. They will enable the Commission to better monitor trends in minority and female ownership, and develop policies consistent with the mandates of sections 257 and 309(j) of the Communications Act which direct the FCC to identify and eliminate “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services” and to do so in a manner “favoring diversity of media voices”³ and to “disseminate[] licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”⁴

In addition to the adoption of much needed data reforms, in the *2009 Diversity Order*, the Commission also seeks comment on whether, and how, to require reporting of race and gender information by non-commercial educational broadcasters (“NCEs”) and low power FM broadcasters (“LPFMs”).⁵ *UCC et al.* believe that race and gender reporting requirements should encompass all broadcast radio and television station licensees to ensure that both the public and the Commission have an accurate and comprehensive picture of the state of broadcast media diversity. Moreover, because NCE and LPFM stations can provide vital entry points for minorities and women broadcasters, collecting this information is imperative. Accordingly, *UCC et al.* make several recommendations designed to provide the Commission and the public

² *Id.* at ¶¶14-26.

³ 47 U.S.C. §257 (2007).

⁴ 47 U.S.C. § 309(j)(3)(B) (2007).

⁵ *2009 Diversity Order* at ¶¶27-30.

with necessary data on ownership diversity while minimizing the onus on those broadcasters who are typically constrained by limited resources and staff.

I. NCE And LPFM Licensees Should Report On The Race And Gender Composition Of Their Boards Of Directors Or Other Governing Entity

In the NPRM portion of the *2009 Diversity Order*, the Commission asks whether “looking at the composition of the board of directors or other governing entity of an NCE station would be adequate” to determine female and minority control of such stations.⁶ *UCC et al.* believe that requiring NCE and LPFM stations to report on the gender and race of the members of their board of directors or comparable governing body would be an effective and minimally burdensome method of determining female and minority control of a non-commercial station.

Boards of directors are cognizable authorities with legal duties and accountability to the organizations they serve. Thus, logically, they are an appropriate measure of control in the context of non-commercial stations. Additionally, the FCC already requires NCEs to report general information (i.e., name, address, citizenship, positional interest, and percentage of votes) on their board members in Form 323-E ownership reports.⁷ The FCC also requires LPFM stations to file virtually identical information in FCC Form 318 construction permit applications.⁸ Because NCE and LPFM stations already file information on the composition of their boards of directors, it would be efficient and effective to simply add race and gender information reporting to the existing requirement. Accordingly, *UCC et al.* suggest that the Commission continue to require NCE stations to file Form 323-E with the addition of race and

⁶ *2009 Diversity Order* at ¶29.

⁷ See FCC Form 323-E, *Ownership Report*, at Section II(7).

⁸ See FCC Form 318, *Application for Construction Permit for a Low Power FM Broadcast Station*, at Section II(3). Form 318 and 323-E vary in that Form 318 requires information on parties with more than a 5% interest and 323-E requires information on parties with more than a 1% interest.

gender information. We also propose that LPFM stations be required to file a Form 323-E reporting on the race and gender composition of their boards of directors or similar governing entities.

In addition to being efficient and relatively simple to implement, requiring non-commercial stations to report on the race and gender compositions of their boards is consistent with the type of information that the FCC already collects from commercial broadcasters regarding the race and gender of attributable interests in their stations.⁹ The collection of analogous information from noncommercial stations would have the attendant benefit of being comparable to information collection from commercial broadcasters and would facilitate use of the information for research and policy purposes.

To further facilitate consistency and comparability of reporting across all stations, *UCC et al.* propose that the Commission require NCE and LPFM station licensees to observe the same uniform filing date that the FCC adopted for commercial licensees in the *2009 Diversity Order*.¹⁰ As the Commission observed in the *Order*, “the current use of rolling filing dates has impeded the ability to perform time-related comparisons.”¹¹ Consequently, the FCC adopted a uniform filing date “[t]o make the data easier to work with, to address the problems created by the staggered ownership report filing deadlines currently in effect, and to facilitate the studies of ownership.”¹² Ensuring the utility of the data for policy and research purposes is a primary goal of the Commission’s data reforms, and we believe that a uniform filing date for all broadcast licensees would best serve these ends.

⁹ See Form 323, *Ownership Report*, at Section II(9).

¹⁰ *2009 Diversity Order* at ¶22.

¹¹ *Id.*

¹² *Id.*

II. *UCC Et Al.* Support Proposals To Reduce The Filing Burden For Non-Commercial Broadcasters That Also Preserve The Integrity Of Minority And Female Ownership Data Collection

UCC et al. support the collection of minority and female “ownership” data from all broadcast licensees, and encourage the Commission to adopt the above recommendations promptly. However, we are aware that NCE and LPFM stations often operate on shoe-string budgets and with skeleton crews. *UCC et al.* support proposals put forth by the National Federation of Community Broadcasters and Prometheus Radio Project (NFCB/PRP), which have the potential to significantly lessen the filing burden for smaller broadcasters while preserving the utility of this important information for the public and the FCC.¹³ In particular, we encourage the FCC to consider and adopt the following:

- *Reform the FCC’s Consolidated Data Base System (CDBS).* The current CDBS system is unwieldy for both licensees to manage and for the public to access. Accordingly, we support many of the reforms suggested by NFCB/PRP.¹⁴ In particular, the FCC should create online accounts that allow licensees to log into their 323-E Forms and update information rather than fill-out and resubmit a new form every biennial filing date. In the event that there is no change in ownership information, the FCC should allow broadcasters to check a box certifying that the data contained in the 323-E is correct and up-to-date as of the uniform biennial filing date.
- *Adopt proportional fines for non-compliance.* *UCC et al.* believe that filing responsibilities should not be taken lightly and broadcasters should be fined when

¹³ See *Joint Comments of National Federation of Community Broadcasters and Prometheus Radio Project*, filed MB Dkt. 07-294 (June 25, 2009).

¹⁴ *Id.* at 13-15.

they fail to comply with their duties as licensees. However, the current fee schedule is designed with for-profit, commercial stations in mind. *UCC et al.* believe that proportional fines for non-compliance that take into consideration the limited financial resources of NCEs and LPFMs should be sufficiently high to deter non-compliance, but should also be moderate enough to ensure that a single paperwork error would not cripple the finances of smaller stations. We support the NFCB/PRP proposal to reduce the base fine for LPFM stations to \$500 and to take into account a station's operating budget when assessing a fine on non-commercial stations.¹⁵

Dated: June 26, 2009

Respectfully Submitted,

_____/s/_____

Coriell Wright, Esq.

Jessica Gonzalez, Esq.

Institute for Public Representation

600 New Jersey Avenue, N.W.

Washington, D.C. 20001

(202) 662-9535

Counsel for

The Office of Communication of the United
Church of Christ, Inc.

The National Organization for Women
Foundation

Media Alliance

Common Cause

The Benton Foundation

¹⁵ *Id.* at 15-16.