Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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
	)	
2002 Biennial 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. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	MM Docket No. 00-244
Definition of Radio Markets	)	MB Docket No. 04-228
	)	
Ways to Further Section 257 Mandate and To Build on Earlier Studies		

To The Commission and the Media Bureau

COMMENTS OF CATHERINE J.K. SANDOVAL, ASSISTANT PROFESSOR,
SANTA CLARA UNIVERSITY SCHOOL OF LAW AND
VICE PRESIDENT, BROADBAND INSTITUTE OF CALIFORNIA

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I. Introduction: The FCC's Collection and Dissemination of Media Ownership Data Must be Improved to Meet the Statutory Objectives Congress Established Regarding Media Ownership Diversity and to Serve the Public Interest

Since 1998, the Commission has required broadcast licensees to report ownership information by race, ethnicity and gender on its Form 323, as well as information on the positional, voting and equity debt plus percentage of persons or entities with an attributable interest in the licensee. The FCC's laudable goals in instituting this requirement were to:

> "(1) allow the Commission to determine accurately the current state of minority and female ownership of broadcast facilities, (2) determine the need for measures designed to promote ownership by minorities and women, (3) chart the success of any such measures that we may adopt, and (4) fulfill our statutory mandate under Section 257 of the Telecommunications Act of 1996 ("1996 Telecom Act") and Section 309(j) of the Communications Act of 1934 ("the Act") to promote opportunities for small businesses and businesses owned by women and minorities in the broadcasting industry."[1]

The Government Accounting Office (GAO) found in its 2008 analysis of factors influencing media ownership including minority media ownership that the FCC's form 323s "suffer from three weaknesses: (1) exemptions from filing for certain types of broadcast stations such as noncommercial stations; (2) inadequate data quality procedures; and (3) problems with data storage and retrieval."[2] These data flaws impede the FCC's ability to achieve the statutory goals Congress established and undermine attempts to analyze the effect of FCC policies on media ownership, diversity and concentration. This comment responds to the FCC's *Report and Order and Fourth Further Notice of Proposed Rulemaking in the Promoting Diversification of Ownership in the Broadcasting Services Proceeding* (*Promoting Diversification R&O and*

[1] *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, Report and Order, 13 FCC Rcd 23056, 23095 (1998).

[2] "Media Ownership: Economic Factors Influence the Number of Media Outlets in Local Markets, While Ownership by Minorities and Women Appears Limited and Is Difficult to Assess," Report to the Chairman of the Subcommittee on Telecommunications and the Internet, Energy and Commerce Committee, House of Representatives, GAO-08-383 (Mar. 2008) (hereinafter "*GAO Report*").

NPRM).[3] It suggests several concrete methods to improve the FCC's data collection and dissemination, increase government transparency and licensee accountability and serve the public interest.

II. The Public Interest and Data Collection, Dissemination and Transparency

Congress has long required that broadcasting be regulated in the public interest in light of broadcasting's important role in reporting and airing news and public affairs information and in fostering democratic debate.[4] The FCC has previously stated that the goals of promoting competition, diversity, and localism would drive its analysis of media ownership rules.[5] Those same goals should drive its data collection and dissemination process. In its 2009 "*Diversity Order*" the FCC reiterated that "the promotion of diversity of ownership of broadcast stations, including ownership by minorities and women, is a long-standing policy goal of the Commission," consistent the FCC's mandate under 309(j) of the 1996 Act.[6]

In its May 2009 *Promoting Diversification R&O and NPRM* the FCC adopted an order mandating that the Media Bureau improve the 323 form, filing and reporting process to better

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[3] *Report and Order and Fourth Further Notice of Proposed Rulemaking in the Promoting Diversification of Ownership in the Broadcasting Services Promoting Diversification of Ownership in the Broadcasting Services*, FCC 09-33, __ FCC Rcd __ (rel. May 5, 2009) (hereinafter "*Promoting Diversification R&O and NPRM*).
[4] Federal Communications Commission v. League of Women Voters, 468 U.S. 364 (1984) ([W]e have long recognized that Congress, acting pursuant to the Commerce Clause, has power to regulate the use of this scarce and valuable national resource. The distinctive feature of Congress' efforts in this area has been to ensure through the regulatory oversight of the FCC that only those who satisfy the "public interest, convenience, and necessity" are granted a license to use radio and television broadcast frequencies); 47 U.S.C. § 309(a); *See also*, National Broadcasting Co., Inc. v. United States 319 U.S. 190 (1943) (The 'public interest' to be served under the Communications Act is thus the interest of the listening public in 'the larger and more effective use of radio'. § 303(g)…In each case that comes before it the Commission must still exercise an ultimate judgment whether the grant of a license would serve the 'public interest, convenience, or necessity).
[5] 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, Further Notice of Proposed Rule Making, 21 FCC Rcd 8834 paragraph 4 (2006) ([T]he Commission determined that its long-standing goals of competition, diversity, and localism would continue to guide its actions in regulating media ownership.); 18 FCC Rcd 13620 paragraph 41 (2002) (The rules we adopt to promote competition, diversity, and localism also will serve the public interest by ensuring that multiple owners control the broadcasting outlets in any market).
[6] Report and Order and Third Further Notice of Proposed Rulemaking, MB Docket No. 07-294, *et al*., 23 FCC Rcd 5922, 5942 ¶¶ 51-52 (2008).

serve the public interest and achieve the above-listed statutory goals.[7] It also requested comments on non-commercial entities required to file form 323-E and submission of information by low power FM licensees.

Gathering and publishing accurate data on control of the media is critical because radio and television continue to be important sources of news, public affairs and audio and visual programming for most Americans. Arbitron reported that in 2008 "more than 90% of all consumers 12+ years old listen to the radio each week—a higher penetration than television, magazines, newspapers or the Internet."[8] Nielsen reported that alongside increases in Internet usage, American viewership of television at home increased in 2008.[9]

In 2009 approximately 10.9 % of U.S. households relied on over-the-air television and did not subscribe to cable or satellite.[10] Rural, low-income, African-American and Hispanic-American households are more likely than other households to depend on over-the-air television.[11] While the transition to digital television encouraged many households to subscribe to cable or satellite as a way to receive service, some Americans cancelled their subscriptions in light of the economy. As of December 2008, only 3 percent of total viewers surveyed by Nielson had eliminated their cable or satellite subscription due to the recession, but 6% of

[7] *Promoting Diversification R&O and NPRM*, *supra* note 3.
[8] Arbitron, RADIO TODAY, How America Listens to Radio 3 (2008), http://www.arbitron.com/downloads/radiotoday08.pdf.
[9] Nielsen, TELEVISION, INTERNET AND MOBILE USAGE IN THE U.S., A2/M2 THREE SCREEN REPORT 2 (3RD QUARTER 2008).
[10] Nielsen, Household TV Trends Holding Steady: Nielsen's Economic Study 2008 (Feb. 24, 2009), http://blog.nielsen.com/nielsenwire/wp-content/uploads/2009/02/sportsquest.pdf.
[11] Comments of the National Association of Broadcasters, In the Matter of: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 07-269 at 4-5 (May 20, 2009) (citing Knowledge Networks/Statistical Research Inc., HOME TECHNOLOGY MONITOR OWNERSHIP SURVEY n. 5, 6 (Spring 2008) (reporting that in 2008, while 13.4% of households relied on over-the air broadcast only, 22.5% of African-American and 22% of Hispanic households and 21% of households with annual incomes under $30,000 relied exclusively on over-the-air television instead of cable or satellite)). MediaMark Research and Intelligence, Consumer Intelligence, MAJORITY OF AMERICANS WILL BE UNAFFECTED BY 2009 TRANSITION TO DIGITAL TV, GOVERNMENT CONVERTER BOX COUPON TO HELP MOSTLY LOWER ECONOMIC GROUPS (Oct. 15, 2008) (households with over-the-air television only are 15 times more likely to be in very rural counties).

African-Americans and 13% of Hispanic-Americans surveyed had cut their cable or satellite service.[12] These statistics demonstrate the importance of radio and television to American life and the significance of encouraging diversity in media ownership to serve the public interest.

Congress has long recognized that media ownership diversity serves the public interest.[13] The Telecommunications Act of 1996 codified the FCC's duty to promote broad access to the radio spectrum for all Americans. It required the FCC to regulate "so as to make available, so far as possible, to all people of the U.S., without discrimination on the basis of race, color, religion, national origin, or sex…a world-wide wire and radio communications service."[14] The 1996 Act also mandated that the FCC foster inclusion of minorities and women in the provision of spectrum-based services. Section 309(j) of the 1996 Act governs the use of competitive bidding as a mechanism to allocate licenses and requires that:

> (3)[T]he Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote…the following objectives:
> …(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating 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 prescribing regulations pursuant to paragraph (3), the Commission shall—
> …(D) ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures.[15]

Assuring that the FCC collects and disseminates data in a methodologically sound manner is critical to achieving the 1996 Act's objectives.

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[12] Nielson, SPORTSQUEST STUDY 5 (2008) (Economy Survey Answers by Race/Ethnicity).
[13] *See* Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm., 412 U.S. 94, 136 (1973).
[14] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, (codified at 47 U.S.C. § 230(b), 47 U.S.C. § 151 (1996) [hereinafter *1996 Act*].
[15] *1996 Act*, 47 U.S.C. § 309(J)(3) (2000).

Section 257 of the 1996 Act also requires that the FCC conduct an inquiry into market entry barriers for telecommunications services that limit the access of small and minority owned businesses and rural telephone companies, and to take steps to eliminate those barriers to promote "diversity of media voices… the public interest, convenience, and necessity."[16] To meet these statutory directives, it is essential that the FCC track the data necessary to assess progress and make that data transparent and accessible to the public.

III. An Analysis of the FCC's Available Data on Minority Owned Radio Stations Demonstrates the Need to Improve FCC Data Collection and Dissemination

These comments are offered in the context of the filer's research analyzing the current state of minority radio ownership. Through a grant from the Social Sciences Research Council, Assistant Professor of Law Catherine Sandoval and Professor Allen Hammond, IV, both of Santa Clara University School of Law, in conjunction with the Minority Media and Telecommunications Council, are conducting research on minority radio ownership including a survey of minority radio owners. An analysis of publicly available FCC data on minority ownership reveals both trends in minority ownership and some of the difficulties caused by the design of the FCC's form 323s and the way the data is or is not made publicly available or searchable.

Professor Sandoval reviewed the data collected by S. Derek Turner and Mark Cooper on behalf of Free Press in 2007 and analyzed the list of radio stations identified in their report "Off the Dial: Female and Minority Radio Ownership in the United States, How FCC Policy and Media Consolidation Diminished Diversity on the Public Airwaves, Review of Current Status

[16] *1996 Act* , 47 U.S.C. § 257.

and Comparative Statistical Analysis."[17] Mr. Turner and Mr. Cooper analyzed ALL FCC 323s filed by the end of 2006, more than 10,000 323s for the 10,506 full power radio stations licensed by the FCC in February 2007, in order to identify stations where minorities reported that they controlled 50% of more of the voting shares of the licensee.[18] The FCC has no active definition minority ownership control so Free Press focused on voting control and Professor Sandoval's analysis agrees that voting control is the most appropriate method to measure control of a radio license, absent any FCC definition.

Free Press determined that in 2007, minorities controlled 776 stations using the 50% or more voting control definition.[19] Professor Sandoval reviewed the 323 Ownership reports and the Application database reports for each of the 776 stations the 2007 Free Press report identified as minority-owned to determine its status in 2009. She also reviewed the 323s and Applications for additional stations reported on the Ownership reports for the 776 stations included in Free Press' analysis to identify new stations acquired by those owners since 2007.

Professor Sandoval's analysis of the status of minority radio ownership in 2009 is ongoing because the FCC's current database makes it impossible to electronically search by race, ethnicity or gender of the owner. While those reported in the 2007 Free Press report can be tracked, in order to identify entry by *new* minority licensees, a researcher would have to review ALL 10,000 plus current 323s (and the corresponding 10,000 plus entries in the Application database) or the records of ALL change of control transactions since January 1, 2007 and review

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[17] *See* S. Derek Turner and Mark Cooper, OFF THE DIAL: FEMALE AND MINORITY RADIO OWNERSHIP IN THE UNITED STATES, HOW FCC POLICY AND MEDIA CONSOLIDATION DIMINISHED DIVERSITY ON THE PUBLIC AIRWAVES, REVIEW OF CURRENT STATUS AND COMPARATIVE STATISTICAL ANALYSIS (2007), http://www.freepress.net/files/off_the_dial.pdf (hereinafter "*Off the Dial*").
[18] E-mail between Professor Sandoval and Derek Turner (May 15, 2009) (on file with Professor Sandoval).
[19] *Off the Dial*, supra note 17, at 16.

their corresponding 323s and Applications. The FCC's data collection and reporting system causes this laborious and inefficient process and stifles efforts to gather meaningful data on trends in minority or female media ownership and media ownership in general. While the analysis of new minority entrants is being conducted, Professor Sandoval's 2009 analysis of the minority owners identified in 2007 by Free Press revealed several trends in minority ownership and highlighted flaws in the 323 form, reporting and search process that are relevant to the *Promoting Diversification R&O and NPRM*.[20]

First, the FCC should be lauded for its decision to require sole proprietorships, partnerships comprised of natural persons and low power television station ("LPTV") licensees, including Class A stations, to file biennial ownership reports.[21] Professor Sandoval's analysis of 323s available between March and June 2009 showed that of those owners identified in the 2007 "Out of the Picture Report" there were 296 distinct minority owners in mid-2009, defined as having one or more minority persons (as indicated by the FCC race and ethnicity categories) having 50% of more voting control of the licensee. Those 296 owners controlled 765 radio stations, a decline from the 776 radio stations the *Off the Dial* report found in 2007. Some of those changes were due to voluntary transfers of control but thirteen minority-owned radio stations were transferred to bankruptcy trustees between 2007 and 2009. Other minority owners acquired new stations in 2007 or 2008, while few transactions have been reported in 2009, likely due to the lack of financing available in the current economic climate.

[20] Professor Sandoval's full analysis of the status of minority radio ownership in 2009 will be published in a chapter of a book by the Social Sciences Research Council reporting on several of its research grantee's projects by Fordham University Press, forthcoming, 2010.

[21] *Promoting Diversification R&O and NPRM*, *supra* note 3, at 2.

One hundred eighty five (185) of those 296 owners controlled one radio station. Thirty-eight of the 296 owners indicated that they were sole proprietors or the sole owner, not counting LLCs who filed as the sole member of a licensee. The number of minority-controlled sole proprietors who filed 323s demonstrates the importance of gathering information on all who control radio stations including sole proprietors or natural persons, regardless of the form in which the license is held.

In 2000 the National Telecommunications and Information Administration (NTIA) identified 82 minority-owned low-power television (LPTV) stations out of 2,366 licensed by the FCC that year.[22] Yet the FCC did not require those licensees to file 323 ownership forms. The Community Broadcasters Association's 2009 report "Diversity Defined" survey of LPTV and Class A television licensees revealed that 45% of respondents reported that they were wholly or partially minority owned and 60% were female-owned.[23] Thirty-four percent of LPTV and Class A respondents reported that they aired non-English language programming, while 83% of respondents aired local programming.[24] Their contributions to ownership and content diversity and localism emphasize the importance of gathering information on LPTV and Class A television ownership.

The FCC also announced in the *Promoting Diversification R&O and NPRM* that "for purposes of defining the class of interests that are reportable, we will not apply two attribution exemptions — the single majority shareholder exemption and the exemption for interests held in

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[22] The Minority Telecommunications Development Program, National Telecommunications and Information Administration, United States Department of Commerce, CHANGES, CHALLENGES AND CHARTING NEW COURSES: MINORITY BROADCAST OWNERSHIP IN THE UNITED STATES 48 (Dec. 2000).
[23] Community Broadcasters Association, DIVERSITY DEFINED, A REPORT ON THE DIVERSITY AND LOCALISM PROVIDED BY CLASS A AND LOW POWER TELEVISION STATIONS at 9, 12 (2009), http://www.dtvnow.org/cbasurvey.pdf.
[24] *Id.* at 14, 18.

eligible entities that would be attributable but for the higher Equity/Debt Plus ("EDP") thresholds adopted in the *Diversity Order*."[25] The FCC declared that "this decision will provide more information on the ownership of all stations and will be helpful in assessing the success of FCC policies that encourage investment in small, minority or women-owned businesses."[26]

In the *Promoting Diversification R&O and NPRM*, the FCC directed the Commission staff "to modify Form 323 so that the class of interests that are reportable and the entities that are required to file Form 323 will include entities subject to these two attribution exemptions" including the single majority shareholder exemption.[27] The single majority shareholder exemption provides, as the FCC explained, "that a minority shareholder's voting interests will not be attributed where a single shareholder owns more than 50 percent of the outstanding voting stock."[28] The FCC also explained that "shareholders holding voting stock interests of 5 percent or more in corporations with a single majority shareholder are required to be reported."[29] The FCC stated that it believes "it is important to collect information from holders of equity interests in a licensee that would be attributable but for the single majority shareholder exemption."[30]

Professor Sandoval's analysis of the 323s filed by minority owners as described above emphasizes the importance of this rule change. Approximately 230 of those 296 minority owners reported that one person or entity controlled 50% or more of the outstanding voting stock of the company. Thus the single majority shareholder exemption would have applied to the overwhelming majority of minority owned radio stations. Increasing information about the

[25] *Promoting Diversification R&O and NPRM*, *supra* note 3, at ¶ 12.
[26] *Id.*
[27] *Id.* at ¶ 17.
[28] *Id.* at n. 50 (citing former 47 C.F.R. § 73.3555 Note 2(b)).
[29] *Id.*
[30] *Id.* at ¶ 17.

ownership of those stations will be helpful and should not create a great burden as many of those stations have voting structures where one person controls 100% of the voting shares or two people each control 50% of the voting shares.

IV. Suggestions on How to Improve the 323 Forms and Reporting Requirements

A. Data Quality Issues; Licensees Must Clarify Control of Legal Entities by Natural Persons

As the FCC recognized in its 2009 *Promoting Diversification R&O and NPRM*, many stations are controlled by a variety of corporate or legal entities in addition to natural persons. The FCC also noted that the GAO strongly recommended "that the Commission adopt internal administrative processes to verify and review the submitted data."[31] To address additional quality control issues, the Commission directed its staff "to build additional checks into Form 323 to perform verification and review functions and to preclude the filing of incomplete or inaccurate data."[32]

To implement this directive, it is critical that the FCC require licensees to CLEARLY report the ownership structure for a station license, revealing *each natural person* who controls a corporate or legal entity that has a reportable interest in a station. The FCC must require that the licensee reveal who, whether another person or corporation, controls the corporate or legal entity or entities that have a reportable interest in the license AND require that they reveal the natural person or persons who control any LLCs, corporate or legal entities with an interest in a license.

Professor Sandoval's research found that in 2008 one entity with an attributable interest (under the FCC's rules) in an FCC license described its ownership information in an exhibit

[31] *Id.* at ¶ 23.
[32] *Id.*

attached to the form 323 which provided the following information about the ownership of the listed stations. For purposes of this comment the corporate names have been changed so as not to single out one licensee but to highlight the type of problem seen in many ownership reports. The exhibit stated:

> XYZ Corp. is the sole member and owner of XYZ LLC which has a membership interest in VR Communications LLC (VRC). VRC, in turn, is (1) the sole member of VRL Licensees, LLC, (2) the sole shareholder of Broadcasting Corp., (3) the sole shareholder of Triad Broadcasting Corp., and (4) the sole member of VR Broadcasting Inc. (VRB). VRC is the licensee of the following stations: (Stations listed).

This exhibit does not disclose the members of VRC other than XYZ LLC. The statement that XYZ LLC has "membership interest in VR Communications LLC (VRC)" implies that there may be other members of VRC. Information about control of VRC is critical to determining ownership and control of the FCC license because VRC is the sole member of the entity that controls the FCC license and the licensee's assets.

Two different entities filed ownership reports for the stations controlled by these entities in 2008, as did two different entities in 2007 and six different entities in 2005. A 2005 form 323 reveals the control of VRC but no updated filing has since confirmed the persons or entities with an attributable interest in VRC other than XYZ Corp's 2008 reference to its membership interest in VRC.

The FCC concluded that it is "not convinced that requiring licensees to obtain and report all ownership data for parent corporations and attributable entities on a single form would be less burdensome than the current practice."[33] While the current practice makes the 323s filed by different entities relevant to control of one station available by searching several records, this

[33] *Id.* at ¶ 21.

division of filing and reporting responsibility makes omissions regarding control of key legal entities more likely as the above VRC example illustrates above. It also makes determining ownership a cumbersome process that becomes indecipherable when critical information about the structure and control of the entities and persons who control the license is simply missing or not reported.

The FCC delegated authority "to the staff to revisit this issue if additional modifications of the form are determined to be necessary."[34] Relevant to the Media Bureau's exercise of that delegated authority, this comment suggests that when more than one entity is required to file a report of its interests in a license they should do so immediately after acquiring that interest (within the timeline provided by the FCC rules) and update that filing at the same time as all other entities with an attributable interest in that licensee. The 323 report form should also require disclosure of ALL persons or entities which have filed or are required to file a 323 report concerning a current attributable interest in a license. Such a disclosure would state, for example, that XYZ Corp., XYZ LLC, VR Communications LLC (VRC), Broadcasting Corp., Triad Broadcasting Corp. and VR Broadcasting Inc. (VRB) have filed or are required to file a form 323 regarding their interest in that station(s) license(s) and provide cross-references to those filings.

Each form 323 report should make it clear who controls ALL corporate or legal entities reported as having an interest in the licensee, or provide an electronic cross-reference to a current 323 that clearly provides that information. In the above example, XYZ Corp.'s 2008 form 323 filing leaves the control of VRC unclear, a particularly significant omission since VRC effectively controls the license and assets of the listed stations and has not submitted an updated form 323 since 2005. The FCC rules should require clear disclosure of control of ALL corporate or legal entities with an attributable or reportable interest in the license AND require disclosure

[34] *Id.*

of the natural persons who control those entities. In accordance with the Commission's directive to increase data quality control to prevent inaccurate or incomplete filings, the Media Bureau should review and reject filings that do not clearly disclose control of interests in a legal or corporate entity required to report their interest in a licensee.

These reports should be made within the body of the form 323. If any ownership or structural information is reported in attachments the FCC must make them available electronically and make them searchable through its database. Since broadcast licenses are required to operate in the public interest and the licensee is accountable to the public,[35] the public is entitled to know which corporate and legal entities and ultimately which natural persons control the public airwaves.

B. Reporting Voting Control and Equity Interests for Non-Commercial Entities

As the Commission noted in its *Promoting Diversification R&O and NPRM*, the reporting of equity interests is problematic for non-profit, religious or tribal organizations which may not hold a license in a legal form that encompasses the concept of equity or shares. The FCC noted that its "Form 323-E filed by Non-commercial entity (NCE) licensees of AM, FM and TV broadcast stations does not ask gender, race, or ethnicity data questions."[36] Of the 296 minority-owned radio companies Professor Sandoval analyzed, 10 indicated that they were non-profits including several religious organizations and seven indicated that they were tribal governments. None of those entities used the FCC form 323-E.

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[35] 47 U.S.C. § 309 (a) requires the FCC to determine whether "the public interest, convenience and necessity will be served" by the granting or renewal of a broadcast license. See, Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 383, 390 (1969) (broadcast licenses are a public trust wherein the rights of the viewers and listeners are paramount); In the Matter of Broadcast Localism, 19 F.C.C.R. 12425, 12425 (July 1, 2004); In re: Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, 15 F.C.C.R. 19816 (Oct. 5. 2000) (standardized disclosure forms will make broadcasters more accountable to the public and facilitate analysis of whether they are meeting their public interest obligations).
[36] *Promoting Diversification R&O and NPRM*, *supra* note 3.

The FCC's rules and reporting requirements regarding NCEs should apply to commercial and non-commercial licenses and to both the form 323 and the 323-E. NCE reporting of minority and female ownership data on these 323s demonstrates that the burden is reasonable for NCEs in light of the benefit of increased information.

Both forms should, however, recognize the distinctions in equity interest associated with different type of owners. A non-profit or Tribal director may have a vote or shares of votes regarding the conduct of the licensee but does not typically own "equity" or "stock" in that licensee. The non-profit or the Tribe may own 100% of the "equity/debt plus" in the licensee and should indicate who controls the licensee's assets. Most NCEs who filled out the 323 marked the equity/debt section as not applicable or left it blank for the individual directors whose voting interests were reported. The forms should make it clear that NCEs must disclose information on persons with voting interests in the licensee and information on equity or debt control should be revealed if applicable.

C. Cross-reference 323s and the Application Database

In its *Promoting Diversification R&O and NPRM*, the Commission directed its staff "to modify Form 323 so that ownership data is incorporated into the database, is searchable, and can be aggregated and cross-referenced electronically."[37] In carrying out the Commission's order, the Commission and the FCC staff are respectfully requested to consider the following suggestions. Using the current CDBS database, in order to determine whether control has changed for a license, one must currently search BOTH the 323 Ownership database through CDBS AND the CDBS Application database to determine if an application to change control has

[37] *Id.*

been filed or approved, but not yet reported in the Ownership database. Just as Lexis or Westlaw flag cases to note significant subsequent history, the FCC should link the 323 Ownership and the Application databases to flag when an application to change control has been FILED, approved or consummated. The change of control approval process may take months, especially for complex transactions, and the FCC's approval process, financing issues or the time needed to satisfy the deal's conditions may delay the transaction's consummation. The FCC currently allows licensees a period of time after consummation of a change in control to file a new 323, leaving the old 323 in place until that date is triggered.

The FCC's current system leaves the researcher no choice but to go through the cumbersome process of reviewing EACH station TWICE, once in the Ownership database and again in the Application database, to find out whether any material change in control application has been filed, approved or consummated and a corresponding 323 has not yet been filed. The FCC should enable the capability to electronically cross-reference applications for a change of control, linking the Application and Ownership databases.

D. The FCC Search Engine Should Consistently Allow Searches by Station Call Letters and Facility Identification Number

Though the CDBS Ownership database contains search terms that enable the researcher to search by a number of criteria including station call letters, facility identification number (facility ID) or AM or FM service, a search using those terms (or even just facility ID and AM or FM service) often comes up with a message that no record was found. Switching to either the Application database or the Station Search database in CDBS will often reveal information about that station including ownership information, but not minority or female ownership information or details about equity or voting control that would be contained in a form 323. No explanation is given for this omission such as that the entity was exempted from filing the 323. While it is not clear why this is occurs, the FCC should ensure that a search for ownership information in the Ownership database should produce a retrievable, searchable record in that database.

E. Make the CDBS Database SEARCHABLE by Ownership Characteristics

The *Promoting Diversification R&O and NPRM* also directs the staff to make the 323 database electronically searchable and capable of aggregation and cross-reference."[38] Although the FCC has mandated that most licensees file 323s including information on the race, ethnicity and gender of owners and voting and equity control, the FCC does not currently make those criteria searchable through the CDBS database. While the CDBS database contains search terms on other fields such as station call letters, facility ID or community of license, the entire category of ownership information is not searchable. As a result, to determine the status of minority or female ownership researchers must either rely on the FCC's occasional reports on minority or female ownership or analyze ALL 323s filed, more than 10,000 records (really more than 21,000 since a diligent researcher also has to search the Application database to make sure that control has not changed). This results in a tremendous burden to the public which could be easily remedied by making the portion of the 323s in which ownership information is reported electronically searchable through a field in CDBS, as are other terms such as community of license. Alleviating this burden on public disclosure emphasizes the importance of the FCC's order to make the data filed electronically searchable and capable of analysis, aggregation and cross-reference.

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[38] *Id.*.

Not only does the FCC currently make it impossible to do an electronic search on CDBS for Hispanic, Native-American, Pacific Islander, Native Alaskan, African-American, Asian or women owners, it does not allow searches by other ownership characteristics. For example, the CDBS database does not allow a search by corporate form such as LLCs, sole proprietorships or corporations. Nor does it allow a search to identify licenses held by non-profits, Native American tribes or religious organizations. This is all data the FCC collects and reports on each of the more than 10,000 individual form 323s. Enabling the public to search by these terms will increase transparency and accountability. It will also facilitate assessment of the FCC's success in enabling participation by a variety of groups, organizations, for-profit, governmental, tribal and non-governmental forms in media ownership and service.

Similarly, the FCC does not allow searches by voting or equity control. Although many of the minority-owned sole proprietors whose 323s Professor Sandoval reviewed controlled 100% of the voting and equity in the licensee, the FCC does not enable a researcher to use its search engine or CDBS database to identify firms in which one person holds 100%, 51% or any other portion of voting or equity control. Enabling the public to electronically search these terms would yield insights into media ownership and which structures facilitate ownership in different media markets.

V. Conclusion

The *Promoting Diversification R&O and NPRM* is a step in the right direction to improve the FCC's data collection and reporting. The comments submitted herein are intended to improve transparency, FCC and licensee accountability and to better serve the public interest.

June 29, 2009

Sincerely,

Catherine J K Sandoval

Catherine J.K. Sandoval
Assistant Professor of Law,
Santa Clara University
Vice-President, Broadband Institute of California