

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)	MB Docket No. 06-121
)	
2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules)	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
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	
Ways to Further Section 257 Mandate and To Build on Earlier Studies)	MB Docket No. 04-228
)	

OPPOSITION TO PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Federal Communications Commission’s rules, 47 C.F.R. § 1.429, the Office of Communication of the United Church of Christ, Inc., Benton Foundation, Common Cause, Media Alliance and National Organization for Women Foundation (collectively, “UCC *et al.*”) oppose the National Association of Broadcasters (“NAB”) petition for reconsideration of the *Diversity Order*¹ in the above-captioned proceeding. NAB requests that the Federal Communication Commission (“FCC” or “Commission”) overturn its recent

¹ *Promoting Diversification of Ownership in the Broadcasting Services*, FCC 09-33 (rel. May 5, 2009) (“*Diversity Order*”).

decision to extend biennial ownership reporting to sole proprietors and certain non-attributable interest holders.² The FCC should deny NAB’s petition for reconsideration for the reasons set forth below.

I. UCC *et al.* Support The Commission’s Decision Requiring That Sole Proprietors File Biennial Ownership Reports

In the *Diversity Order*, the Commission “enlarge[d] the class of licensees required to file ownership reports biennially to include ... sole proprietors.”³ This decision was based on information provided from “commenters, study authors, and the GAO that the data [the FCC had] collected in the past using Form 323 are not sufficiently reliable and comprehensive to form the basis for effectively assessing ownership diversity and whether additional measures to promote it are necessary.”⁴

NAB asserts that “[t]his requirement will not further the FCC’s goal of having a complete picture of the state of minority and female ownership” because the “race and gender of a sole proprietor is [already] reported at the time (s)he obtains a license” and that information does not change in the same way as “demographic data for entities with multiple investors, officers and directors.”⁵ NAB thus suggests that filing the biennial form is unduly burdensome on sole proprietors because it requires time and money.⁶

NAB previously raised this argument in comments and the FCC addressed NAB’s concerns in the *Diversity Order*,⁷ concluding “that the most effective way to obtain

² Petition for Reconsideration of the National Association of Broadcasters at 1-2, MB Dkt. No. 07-294 *et al.*, filed Jun. 26, 2009 (“NAB Recon.”).

³ *Diversity Order* at ¶12.

⁴ *Id.*

⁵ NAB Recon. at 2-3.

⁶ *Id.* at 3 & n.7.

⁷ See *Diversity Order* at ¶14.

comprehensive, up-to-date ownership data is to require all commercial broadcast licensees to file the revised 323 Form biennially.”⁸ The Commission noted that exempting sole proprietors from filing prevents the FCC from “obtaining information resulting from ownership changes that do not require FCC approval,”⁹ and that “relying on transfer or assignment applications to collect minority and female ownership data as to these entities will not suffice.”¹⁰ The Commission provided that “collecting minority and female ownership data for these stations is essential if we are not to overlook a substantial reservoir of minority and female owners of broadcast facilities, and we believe the benefits of collecting this information outweigh any additional filing burdens imposed on these stations.”¹¹

UCC *et al.* support the Commission’s decision to collect ownership data from sole proprietors. The reporting system adopted in the *Diversity Order* is necessary to ensure that the Commission has a complete picture of minority and female broadcast ownership, and does not present any substantial time or record-keeping burdens for sole proprietors. Sole proprietors file this exact ownership report when they obtain their licenses,¹² and as NAB acknowledges, sole proprietors’ demographic data does not change.¹³ Thus, sole proprietors can simply resubmit their initial report, which as it stands is only four pages, contains step-by-step instructions, and is largely self-explanatory.¹⁴ Non-commercial broadcasters and tiny low power FM stations – who

⁸ *Id.* at ¶15.

⁹ *Id.* at ¶16.

¹⁰ *Id.* at n.45.

¹¹ *Id.* at ¶15.

¹² NAB Recon. at 2.

¹³ *Id.* at 3.

¹⁴ See FCC Form 323, *Ownership Report for Commercial Broadcast Stations*.

have even fewer resources than commercial sole proprietors – have voluntarily agreed to submit the same biennial reports, suggesting that such filings are not burdensome.¹⁵

As an alternative, NAB proposes that the FCC develop a tracking system by which it can “link back to the most recent report filed by each sole proprietor who is a current licensee” to make ownership data available to “researchers, analysts, or any member of the public interested in diversity of broadcast ownership.”¹⁶ As explained in the *Diversity Order*, this piecemeal data collection process is insufficient.¹⁷ *UCC et al.* would not be opposed to such a system if it would in fact result in equal or superior data quality, accuracy, accessibility and ease of use as the biennial filing requirement adopted in the *Diversity Order*. At a minimum, this would require that sole proprietors certify the accuracy of the information on file as of the biennial filing date, and that the Commission develop a way to make all stations’ ownership information available in the same manner in one place.

II. UCC et al. Support The Commission’s Decision Requiring That Certain Non-Attributable Interests Be Reported

For purposes of defining which ownership interests must be reported, the Commission decided to use the current attribution rules with two exceptions. The Commission explained that

to measure the extent of minority and female ownership of broadcast outlets and assess the need for and effectiveness of any policies designed to promote minority and female ownership, it is important to obtain information on holders of certain

¹⁵ See Comments of National Federation for Community Broadcasters & Prometheus Radio Project at 5, MB Dkt. 07-294 *et al.*, filed Jun. 26, 2009; Comments of Native Public Media at 3, 7, MB Dkt. 07-294 *et al.*, filed Jun. 26, 2009; Comments of Educational Media Foundation at 1-2, MB Dkt. 07-294 *et al.*, filed Jun. 26, 2009

¹⁶ NAB Recon. at 3-4.

¹⁷ *Diversity Order* at ¶16 & n.45.

nonattributable interests as well as on holders of attributable interests.¹⁸

Thus, the Commission decided to require reporting by ownership that would otherwise be exempt under the single majority shareholder exemption or the “Equity/Debt Plus (“EDP”) thresholds. Not only is such information necessary to obtain a comprehensive assessment of minority and female ownership but, its collection would not cause “an adverse effect on capital investment,” and would not be unreasonably burdensome because broadcasters are already “accustomed to keeping records in accordance with the Commission’s existing attribution rules.”¹⁹

NAB argues that “[t]his requirement will not yield useful information about minorities or women with a meaningful role in broadcast station operations because ... only the holders of attributable interests have such influence” and that “the new reporting obligation would significantly burden licensees and their investors.”²⁰ NAB suggests that the reporting requirement will deter investment in the broadcast industry²¹ and that many hours “*can* be spent performing just the due diligence required to make the requisite certifications on the forms and to fully describe the ownership structure.”²²

¹⁸ *Id.* at ¶17.

¹⁹ *Id.*

²⁰ NAB Recon. at 4.

²¹ *Id.* at 5. NAB also argues that it did not have notice that the Commission “was considering extending the reporting obligation to non-attributable investors,” NAB Recon. at 6, however, such reporting is the logical outgrowth of the Commission’s request for comment on whether to expand “the scope of parties required to file the biennial ownership report” and its tentative conclusion to “make changes to Form 323 to increase the accuracy of the data collected and the potential uses for the form.” *Promoting Diversification of Ownership in the Broadcasting Services*, 23 FCC Rcd. 5933, 5955 (2008).

²² NAB Recon. at 7 (emphasis added).

UCC *et al.* endorse the Commission's decision to require that licensees include these non-attributable investors in their ownership reports. This information will help provide a more complete picture of minority and female involvement in the broadcast industry. It will also enable the Commission to determine whether certain patterns of non-attributable ownership raise policy questions, and to analyze investment in the broadcast industry and the barriers thereto.

Contrary to NAB's claims, collecting this data will not impose any significant burden on licensees. Broadcasters' attorneys and banks already keep data on all of their investors, attributable and non-attributable alike. Thus the filing requirement would merely compel licensees to transfer that information to Form 323, and if necessary, update it every two years. Nor will this data collection deter legitimate investment; the Commission has already made this determination in the *Diversity Order*²³ and NAB offers no concrete evidence to disprove the FCC's analysis. Instead NAB predicts that investors will select investment vehicles that do "not involve extensive reporting obligations."²⁴ But, as explained above, Form 323 is hardly extensive: it is only four pages, contains step-by-step instructions, is largely self-explanatory and only has to be filed once every two years. Moreover, assuming that the FCC maintains the same Form 323 filing instructions, only entity investors will be responsible for filing the report.²⁵

CONCLUSION

In light of the foregoing, UCC *et al.* request that the Commission deny NAB's petition for reconsideration.

²³ *Diversity Order* at ¶17.

²⁴ NAB Recon. at 8.

²⁵ See Form 323, General Instructions, 6. Licensees are responsible for filing ownership information on behalf of non-entity investors.

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Respectfully submitted,

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