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

In the Matter of	)	
Promoting Diversification of Ownership	)	MB Docket No. 07-294
in the Broadcasting Services	)	

Directed to: The Commission

REPLY COMMENTS

Alabama Educational Television Commission, the Board of Trustees of the University of Alabama on behalf of the University of Alabama and the University of Alabama at Birmingham, State Board of Education, State of Idaho, the Board of Trustees of Jacksonville State University, John Brown University, Spring Arbor University, and Weber State University (collectively "Commenters") hereby respectfully submit their Reply Comments with regard to the Commission's *Sixth Further Notice of Proposed Rule Making* in MB Docket No. 07-294, FCC 12-166, released January 3, 2013 (the "*Sixth FNPRM*"). With respect thereto, the following is stated:

As noted in the Commenters' Comments, the Commission's *Sixth FNPRM* advances three primary proposals. First, the Commission would eliminate the availability of "Special Use" FCC Registration Numbers ("Special Use FRNs"), which enable individuals required to be listed in an ownership report to include FRNs *without* having to provide the Commission with their social security numbers ("SSN"). Second, the Commission would revise the Ownership Report (FCC Form 323-E) required of noncommercial educational ("NCE") broadcast licensees to include a requirement that all attributable interest holders identify themselves with an SSN-based FRN. Third, the Commission's proposes to move the deadline for filing biennial Ownership Reports from November 1 to December 1.

An overwhelming majority of those submitting comments in response to the *Sixth NPRM* were in accord with the Commenters' contention that licensees of noncommercial stations should not be required to provide an SSN-based FRN. There was broad agreement that the concept of ownership as applied to NCE licensees is largely meaningless. Attributable interest holders in NCE licensees do not themselves derive any personal financial benefit as a result of holding that interest, nor is their participation in the governing structure of NCE licensees motivated by financial considerations.

The same rationale applies to ***any*** non-profit, public, or governmental entity regardless of whether that entity holds the license of a commercial or an NCE station. For example, a number of both state and private entities hold licenses of both commercial and noncommercial stations. The same considerations which lead an individual to serve as a trustee of a university or board member of a state agency apply whether or not some of the licenses held by the university or state agency might be commercial.

In either case, as virtually all of the comments reflect, the requirement that non-profit licensees provide their SSN's in order to obtain SSN-based FRN's is likely to reduce substantially the number of qualified individuals willing to serve on the board of a non-profit licensee. Persons who have already agreed to give substantial amounts of their time are unlikely to be willing also to provide private information to be stored in government databases. Furthermore, this negative impact would not be offset by any positive benefit. Indeed, as some comments have pointed out, the mixing of data from non-profit licensees with that of for-profit entities may well lead to misleading results that would not afford any meaningful insights.

Only one set of comments, that submitted by the Office of Communication of the United Church of Christ, Inc., Media Alliance, the National Organization for Women Foundation,

Benton Foundation, Common Cause, Communications Workers of America, Media Council Hawai'i, and Prometheus Radio Project (collectively "UCC, *et al.*") argued in favor of the Commission's proposal to eliminate the Special Use FRN and to require NCE licensees to provide SSN-based FRN's. While UCC *et al.* has claimed that an SSN-based FRN is needed in order to allow it to conduct proper research, an analysis of their claims shows that their logic does not hold water.

UCC, *et al.* first assert that they need to be able uniquely to identify individuals to enable longitudinal research. An examination of what is to be studied in such "longitudinal" research, however, shows that this claim is specious. According to UCC, *et al.*, "[l]ongitudinal research relies on tracking the same entity across time," (UCC, *et al.* Comments at 7), and that "'the term "longitudinal data" denotes repeated measurements of the *same* individuals over a time span *long enough to encompass a detectable change* in their developmental status...'" Id. at 7, n. 19, *quoting* Fernando Rajulton, *The Fundamentals of Longitudinal Research: An Overview*, 28 Can. Stud. Population (Special Issue on Longitudinal Methodology) 169, 170-71 (2001). It is clear that the entity to be studied over time is the licensee itself, and cannot be the individual interest-holders in the licensee. Only a licensee entity can change in any manner relevant to the information to be obtained from an ownership report; an individual interest-holder cannot change or develop in the areas of race, sex, or ethnicity. The presence or absence of a Special Use FRN, SSN-based FRN, or any other number does not, however, alter in any way the information provided with regard to each interest-holder's race, sex, or ethnicity. There is no logical connection between the use of any type of FRN and the question of whether race, sex, and ethnicity information has been correctly reported on an FCC form. Moreover, that information must be provided in order for a licensee or other respondent to file an ownership report, as the

electronic filing system will not otherwise allow a filing. UCC, *et al.* surely cannot mean to suggest that respondents, who must certify under penalty of perjury that the ownership report is true and correct, would suddenly falsify information if and only if not required to provide an SSN-based FRN.

Thus, the information that UCC, *et al.* seek would be readily available regardless of the presence or absence of an SSN-based FRN. Either way, each ownership report would contain information as to ownership, the percentage held by each listed individual, and each person's race, sex, and ethnicity. Therefore, by studying successive ownership reports, there would be no impediment to tracking the ebbs and flows of minority/female interests in the licensee over time. Accordingly, the longitudinal studies sought by UCC, *et al.* do not depend upon any form of FRN and can be accomplished just as well without them.

Taking a different approach, if the Commission is seeking to aggregate minority and/or female ownership throughout the broadcast industry, it may do that as well. As noted above, each ownership report provides information as to the percentage of minority and female ownership. Clearly, that information can be aggregated to reveal information about the industry as a whole. Assuming for the moment that UCC, *et al.* is correct in saying that it would be unable uniquely to identify interest-holders without SSN-based FRN's, an assertion which is questionable at best, the value of such identification is equally in doubt. Without a unique identifier in addition to an interest-holder's name, the only information about which the Commission might be in doubt would be the exact number of similarly-named minority or female individuals that have attributable interests in broadcast stations. Nonetheless, no matter whether there is one Asian-American female with an interest in two companies or two Asian-American females each with an interest in one company, the percentage of Asian-American

female broadcast ownership remains the same, as does the percentage of companies with such interest-holders.

Furthermore, the Commission has not explored any modification that could be made to the Special Use FRN to enable it to provide uniqueness in the same way that an SSN-based FRN does. For example, it could require interest-holders to use the same Special Use FRN in all ownership reports. Additionally, it should be noted that each FRN is used only in conjunction with a particular name and address. Taken together, all of this information would appear to provide a sufficient level of certainty as to unique identity. While UCC, *et al.* have complained about missing ownership reports or incomplete information, none of these defects would be cured or ameliorated in any way by a requirement to use an SSN-based FRN. Indeed, such a requirement might lead to more missing reports from respondents skeptical of the wisdom of entrusting their most private information to a government database.

The one activity which could be rendered more difficult by the lack of an SSN-based FRN would be the tracking of business activities of particular individuals over time. It must be remembered, however, that only the Commission could feasibly undertake this type of tracking, as many individuals and entities have multiple FRN's. It is for this reason that the Commission claims that it requires SSN-based FRN's, as it can determine all of the FRN's associated with a particular SSN. Public interest groups and others, however, presumably would not have access to the SSN's that would be essential to make such a determination. Thus, to the extent that private individuals wish to track a particular individual's interests over time, an SSN-based FRN alone would not enable them to do so.[1]

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[1] The idea of having a government agency pick out specific, named individuals and then track each and every acquisition or divestiture of a media interest over time raises uncomfortable

Moreover, the FRN was never, in any event, designed to be used to gather statistical data or following trends. The instructions to FCC Form 160, which is the form filed in order to obtain an SSN-based FRN, first note that an FRN is "required for anyone doing business with the Commission (feeable or nonfeeable)."[2] The instructions then go on to state that "[t]he information on this form is collected to ensure you receive any refunds due, to service public inquiries, and to comply with the Debt Collection Improvement Act of 1996." *Advice Reference Guide on How to Use FCC Form 160 - (CORES) Registration Form* at 2. There is nothing in this statement of uses that indicates that the data will be used for any statistical purposes or otherwise to amass information concerning the holders of FRN's. Furthermore, at the time that the FRN requirement was adopted, the Commission indicated that the "proceeding was instituted as a step in our efforts to better manage our financial systems, to improve compliance with various statutes that govern the financial operations of the Federal government, and to improve the efficiency of agency processes for the benefit of the public." *Amendment of Parts 1, 21, 61, 73, 74, and 76 of the Commission's Rules; Adoption of a Mandatory FCC Registration Number*, 16 FCC Rcd 16138 (2001). Clearly, the generation of statistical information about broadcast ownership or the tracking of an individual's business activities are far afield from the stated purpose of an FRN.

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images of Big Brother. Most reasonable investors and businesspeople would be squeamish about such an intense level of government scrutiny, which goes well beyond the merely statistical.

[2] A licensee's Assistant Secretary, appointed primarily for convenience in obtaining an officer's signature, or a five percent stockholder, both of whom hold attributable interests, can hardly be said to be doing business with the Commission in any meaningful way. Furthermore, the Commission elaborated that those required to obtain FRN's include "all businesses and individuals that file applications with the Commission..." *Adoption of a Mandatory FCC Registration Number*, 15 FCC Rcd 24370. It is not the Assistant Secretary or the five percent stockholder who files a licensee's application; it is the licensee entity itself. Thus, according to the Commission's own explanation, these small interest holders cannot be said to be "doing business with the Commission" and therefore should not be required to obtain an FRN.

Additionally, such goals depart widely from the stated uses to be made of the information collected in Form 160 as outlined in the "Notice to Individuals Required by the Privacy Act of 1974 and the Paperwork Reduction Act of 1995." There it states that:

> This form will be used primarily to capture information to maintain required accounts receivable, and collect fines and debts due the Commission. As part of the Debt Collection Improvement Act, agencies are authorized to refer specific Taxpayers Identification Information which includes Employers Identification Numbers and Social Security Numbers to the Department of Treasury for further investigation and possible enforcement of a statute, rule. Regulation or order. If we believe that there may be a potential violation of an FCC statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation, or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before the body or has an interest in the proceeding.

Advice Reference Guide: How to Use FCC Form 160 - (CORES) Registration Form at 3-4. Obviously, there is no mention here of any use of the FRN and the private SSN data associated with it for the purposes of compiling statistics on broadcast ownership or following trends in the industry. There certainly is no indication of using such data to identify particular individuals and track their business investments in broadcasting. Accordingly, relying on the SSN-based FRN in precisely these ways is contrary to both the purpose of the FRN and the Privacy Act and must be rejected.

As a result, if the Commission wishes to have an identifying number attached to a named individual for purposes of developing and tracking statistical information with regard to broadcast ownership, it is left with the tool of the Special Use FRN. This tool allows for machine searching and provides a sufficient level of identification. Moreover, the requirements

of the Special Use FRN can be modified to improve its utility, should the Commission so desire. Although there would still remain a risk of comparing unlike data between commercial and non-profit licensees, the Special Use FRN can be used without creating a disincentive for non-profit board members to serve. Accordingly, the Commission should retain the Special Use FRN for use in FCC Form 323. To the extent that any FRN is required of persons listed in ownership reports for non-profit entities, it should be a Special Use FRN.

Respectfully submitted,

ALABAMA EDUCATIONAL TELEVISION COMMISSION

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