

**Before the
Office of Management and Budget and the
Federal Communications Commission**

In the Matter of)	
)	
Public Information Collection Requirement)	OMB Control Number: 3060-0010
Submitted to OMB for Review and Approval,)	
Comments Requested)	
)	
Promoting Diversification of Ownership)	MB Docket No. 07-294
In the Broadcasting Services)	
)	
)	

To: Nicholas A. Fraser, Office of Management and Budget
Cathy Williams, Federal Communications Commission

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

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COMMENTS

I. INTRODUCTION AND SUMMARY

In response to the request of the Office of Management and Budget (“OMB”),¹ and pursuant to the Paperwork Reduction Act of 1995 (“PRA”),² the National Association of Broadcasters (“NAB”)³ hereby comments on the Federal Communications Commission’s (“FCC” or “Commission”) revised collection of information, FCC Form 323, the Commission’s biennial ownership reporting form.⁴ At the outset, NAB emphasizes its

¹ *Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested*, 74 Fed. Reg. 40188 (Aug. 11, 2009) (“OMB Notice”).

² 44 U.S.C. §§ 3501-3520.

³ The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

strong support for the Commission's goal of improving the quality and reliability of data on minority and female ownership of media outlets.⁵ We hope that this data will promote the kinds of regulatory and private sector initiatives to promote diversity and new entry that NAB has long supported.⁶

NAB submits, however, that the Commission's submission of the revised Form 323 for OMB approval is premature. The revised Form and associated instructions were not

⁴ The revision to this information collection is intended to implement the Commission's *Report and Order* revising several aspects of its broadcast ownership reporting requirements. See *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, MB Docket No. 07-294, FCC No. 09-33 (rel. May 5, 2009) ("*Report and Order*"). In the *Report and Order*, the Commission: (1) expanded the class of licensees required to file ownership reports biennially to include low power TV stations, including Class A stations, as well as commercial broadcast stations licensed to sole proprietors and partnerships composed of natural persons; (2) re-defined the classes of interests that are reportable so that certain attribution exemptions would not apply; (3) set a uniform biennial filing date in place of the filing date tied to stations' license renewal anniversaries; and (4) set an initial filing date of no later than November 1, 2009. *Id.* at ¶ 12. The Commission delegated authority to its staff to make appropriate revisions to Form 323 and instructions, as well as the electronic interface for filing and searching reports. Specifically, the Commission directed its staff to: 1) revise the FCC Form 323 according to the parameters adopted in the *Order*; (2) revise the electronic interface so that ownership data is part of a database, is searchable, and can be aggregated and cross-referenced; and (3) build additional checks into Form 323 to perform verification and review functions and to preclude the filing of incomplete or inaccurate data. *Id.*

⁵ See, e.g., *Petition for Reconsideration of the National Association of Broadcasters*, MB Docket No. 07-294 (Jun. 26, 2009) at 2 ("NAB Petition"); NAB Comments in MB Docket No. 07-294 (filed Jul. 30, 2008) at 8 ("NAB supports the Commission's goal of ensuring that its ownership reports generate data allowing accurate measurement of minority and female ownership...").

⁶ See, e.g., NAB Comments in MB Docket No. 07-294 (filed Jul. 30, 2008) at 4-6; NAB Comments in MB Docket No. 06-121 at 3-4 (filed Oct. 1, 2007)(advocating incentive-based rule changes that would stimulate investment in new entrant broadcast properties and urging FCC to seek Congressional reinstatement of the tax certificate program); NAB Reply to Opposition to Petition for Reconsideration in MB Docket No. 07-294 (filed Aug. 21, 2009)(discussing NAB's partnerships with the National Association of Broadcasters Education Foundation and the Broadcast Education Association, which provide professionals and students with access to employment in the broadcasting industry and tools for advancement in broadcast management and ownership).

available for public comment before submission to OMB, as required by the PRA and the OMB's rules.⁷ NAB and other interested parties were thus deprived of a meaningful opportunity to comment on the revisions.

The consequences of this lack of meaningful public input are significant. The *Supporting Statement* submitted by the Commission to OMB did not evaluate a number of clear problems with the revised Form 323. For instance, the *Supporting Statement* does not recognize that complying with the revised form will require many new licensees, investors and individuals to obtain an FCC Registration Number ("FRN"). That new requirement, among other problems, raises potential privacy concerns. Less intrusive and burdensome alternatives could be available and could have been discussed and considered with appropriate notice. For example, commenters could have pointed out that the revised Form 323 will require many entities to file duplicative, unnecessary reports, and could have provided information that would be useful in estimating various burdens.

In short, the Commission has not yet taken the steps necessary to ensure that its revised information collection minimizes the reporting burden on broadcast licensees and the individuals and entities that are part of the reportable ownership chain. Consequently, the Commission's proposed information collection does not meet the required statutory standards. In its current form, the new Form 323 is unduly burdensome and contains elements that are not necessary for the proper performance of FCC functions, will not have practical utility, and/or are unnecessarily duplicative.

⁷ *Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission*, 74 Fed. Reg. 27,549 (Jun. 10, 2009) ("*FCC PRA Notice*").

For these reasons, OMB should not approve the information collection in its current form. OMB should direct the Commission to fully evaluate public comment on the Form 323 and resubmit a revised information collection, thereby allowing the FCC to work with interested parties to reach its goal in a manner that complies with the PRA.

II. THE FCC NOTICE DID NOT COMPLY WITH THE STATUTORY OBLIGATION TO SEEK PUBLIC COMMENT ON THE PROPOSED INFORMATION COLLECTION

The *FCC PRA Notice* was published in the *Federal Register* on June 10, 2009, and set a 60-day period for public comment on the revised collection of information including: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.⁸ The *FCC PRA Notice*, however, did not include the revised Form 323 or the associated instructions, nor did it instruct the public on how to obtain a copy of the Form and instructions. As such, the Commission failed to comply with Section 1320.8(d)(2) of OMB's rules.⁹

⁸ *FCC PRA Notice*. See also 44 U.S.C. § 3506(c)(3). OMB now seeks comment on the same issues. See *OMB Notice*.

⁹ Section 1320.8(d)(2) of the OMB's rules provide: "(2) If the agency does not publish a copy of the proposed collection of information, together with the related instructions, as part of the Federal Register notice, the agency should—(i) Provide more than 60-day notice to permit timely receipt, by interested members of the public, of a copy of the proposed collection of information and related instructions; or (ii) Explain how and from whom an interested member of the public can request and obtain a copy without charge, including, if applicable, how the public can gain access to the collection of

On August 10, 2009, NAB filed comments pointing out that neither the revised Form 323 nor the instructions had been made publicly available and explaining that this omission rendered it impossible to provide meaningful comment on the burdens associated with the revised form.¹⁰ We also explained that, absent a meaningful opportunity for public comment, the requirements of the PRA could not be met.¹¹ Obtaining public comment on a proposed information collection is required by statute,¹² as well as OMB rules.¹³ It is an essential step in the PRA process and must be completed *before* a federal agency certifies to OMB that a collection of information meets the statutory PRA standards.¹⁴

One day later, on August 11, 2009, the Commission submitted the revised Form 323 to OMB for approval.¹⁵ It was only at this time that the draft revised Form 323 became available to the public. The Commission attempted to address NAB's concerns in its *Supporting Statement* filed with OMB, contending that "the basic substantive

information and related instructions electronically on demand." 5 C.F.R. § 1320.8(d)(2). A "collection of information" includes FCC forms and instructions. See *also* 5 C.F.R. § 1320.3(c)(1) (a "'collection of information' may be in any form or format, including the use of report forms" and "instructions").

¹⁰ See NAB Comments on FCC PRA Notice (filed via email and in MB Docket No. 07-294 on Aug. 10, 2009).

¹¹ *Id.*

¹² 44 U.S.C. § 3506(c)(2)(A)(i) (requiring federal agencies to "provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment" on PRA compliance issues).

¹³ 5 C.F.R. § 1320.8(d).

¹⁴ 44 U.S.C. § 3506(c)(3).

¹⁵ See *OMB Notice*.

changes” to the Form being submitted to OMB had already been disclosed.¹⁶ This is incorrect. As discussed below, many burdens imposed by the revised Form 323 could not have been apparent to anyone who wished to comment on them, in the absence of the draft Form. For these reasons, the Commission has not fulfilled its statutory obligation to obtain and address public comment on the proposed information collection. OMB should not approve the revised collection of information in its current form on this basis alone.

III. THE PROPOSED INFORMATION COLLECTION IS UNDULY BURDENSOME, DUPLICATIVE, AND NOT NECESSARY FOR PERFORMANCE OF ANY FCC FUNCTION

Under FCC rules, the licensee of every commercial AM, FM and television broadcast station must file a biennial report on FCC Form 323 which publicly discloses extensive information on the licensee’s ownership structure.¹⁷ Among other things, the report identifies the licensee and all parties that hold attributable interests in the licensee, including officers, directors, and owners of five percent or greater stock interests in a licensee corporation; partners to a licensee that is a partnership; and members of a licensee that is a limited liability company.¹⁸ In addition to a report by

¹⁶ See *Supporting Statement* at 6.

¹⁷ 47 C.F.R. § 73.3615(a). Additionally, reports must be filed following issuance of an initial permit to construct and operate a broadcast station, issuance of a station license, or a license assignment/transfer. See 47 C.F.R. 73.3615(b)-(c).

¹⁸ The Commission's attribution policies and standards are fully detailed in the Notes to 47 C.F.R. Section 73.3555. As a general matter, “attributable” interests in broadcast licensees are those interests (or relationships) that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.

every licensee, additional reports must be filed by entities that are part of the licensee's ownership chain.¹⁹

Several of the proposed changes to Form 323 will make filing ownership reports significantly more burdensome. These burdens will affect a wide variety of licensees, investors and individuals. In several instances, the Commission has underestimated the burden, neglected to estimate a burden, or failed to seek OMB approval for new information collections connected to other FCC forms. Additionally, several aspects of the proposed information collection are not necessary for proper performance of agency functions, and do not otherwise have practical utility. NAB discusses these problematic changes to the Form 323 below.

A. The Supporting Statement Does Not Evaluate the Impact of the Unnecessary and Unduly Burdensome FCC Registration Number Obligation

In a departure from the past practice of requiring parties filing a Form 323 to enter only the licensee's FRN, the Commission indicated in its *Report and Order* that future reports would "require each attributable *entity* above the licensee in the ownership chain to list on Form 323, the [FRN] of the entity in which it holds an attributable interest. In other words, each filing *entity* must identify by FRN the *entity* below it in the chain."²⁰ The instructions for revised Form 323 further expand this requirement, stating that each respondent in a licensee's chain of ownership must

¹⁹ See 47 C.F.R. § 73.3615(a)(3)(iv)(B).

²⁰ *Report and Order* at ¶ 21 (emphases added). The Commission proffered a specific example as guidance for the public and FCC staff, stating that: "For example, Licensee A is wholly owned by Corp. B, and Corp. B is wholly owned by Corp. C. Corp. C is required to include on its Form 323, Corp. B's FRN. Corp. B is required to include on its Form 323 the Licensee's FRN." *Id.* at n.60.

supply “the FCC FRN of *any person or entity* which holds a direct attributable or reportable interest in the Respondent that is also attributable to the Licensee.”²¹ If NAB’s analysis of the draft Form and instructions is correct, this would mean that FRNs are needed not only for *entities* in the ownership chain, as specified by the *Report and Order*, but also for *individuals* that are listed on ownership reports because of their attributable interests in licensees.

Never before has the Commission mandated that individuals obtain or supply FRNs in connection with ownership reports. Nothing in the *Report and Order* suggested that there was even a possibility that individual natural persons who are officers, directors, owners of five percent or greater stock interests, partners, and limited liability company members would have to obtain and provide FRN numbers in connection with the revised reporting requirement. Had the Commission intended for every single attributable interest holder to obtain and provide an FRN in connection with an ownership report, the *Report and Order* would have included, pursuant to the Administrative Procedure Act, a rational explanation based on record evidence in support of this change because it is a change of policy and practice.²²

In short, the requirement that individuals provide FRNs springs entirely from the draft Form and the associated instructions. The requirement was not discussed in the *Report and Order*. Moreover, the Commission did not provide any explanation or

²¹ See FCC Information Collection Review Submission, *FCC 323 Instructions for Ownership Report*, available at: http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200908-3060-001#section2_anchor (“*Draft Form 323 Instructions*”) at 9 (instructions for non-biennial reports, Section II–A, Question 3(a)) and 14 (instructions for biennial reports, Section II–A, Question 3(a)).

²² See *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983).

justification for this requirement in the *Supporting Statement*, nor can NAB identify any Commission function or practical use that this information collection would support. Thus, the new individual FRN requirement cannot be “necessary for the proper performance of the functions of the Commission.”

The proposed information collection also fails to consider or address privacy issues associated with the new FRN obligation. The *Supporting Statement* states that the revised Form 323 raises no issues under the Privacy Act because the collection “does not affect individuals or households; thus, there are no impacts under the Privacy Act,”²³ and that it “does not address any private matters of a sensitive nature.”²⁴

The premise here is factually incorrect. In fact, the revised Form 323 and instructions do affect numerous individuals, requiring them to disclose sensitive information such as their names, addresses and SSNs.²⁵ To obtain the FRNs that must be included on the revised Form 323, individuals will now, for the first time, be required to file an FCC Form 160 and supply their SSNs to the Commission.²⁶ The FCC, however, has not considered the potential impact on these filers’ privacy or whether and how privacy

²³ *Supporting Statement* at 2.

²⁴ *Supporting Statement* at 8.

²⁵ Indeed, changes to the Form 323 itself raise privacy issues. The Privacy Act requires federal agencies to publish a system of records notice (“SORN”) before establishing a system of records, to update that SORN when certain changes to the system are made, and to make certain disclosures about how the information will be used to affected parties. 5 U.S.C. § 552a(e)(3)-(4). By changing the functionality of Form 323 to make name and an identifying number plus additional data collected from individuals available for searching, tracking, and aggregation, the Commission has created a system of records and triggered several Privacy Act obligations that have not yet been considered or addressed.

²⁶ See FCC, *FRN Registration Web Site*, available at: <https://fjallfoss.fcc.gov/coresWeb/publicHome.do>.

concerns could be ameliorated, as the agency is required to do under the PRA and the Privacy Act.

The *Supporting Statement* also neglects to discuss or attempt to estimate the significant burden of the new FRN requirement. Each licensee must: (a) explain to each individual reportable interest holder that this new requirement exists; (b) describe how to apply for an FRN; and (c) ensure that every affected party obtains only one FRN and shares it with any other entities in which it holds an attributable interest. Merely obtaining FRNs before the next ownership report filing would be a challenge because of the sheer volume of FRNs needed.²⁷ Far from evaluating “ways to minimize the burden of the collection of information on the respondents,” the *Supporting Statement* does not even address the burden of the new FRN obligation.

Indeed, the current form used to apply for FRN numbers, FCC Form 160, has its own OMB control number indicating past OMB approval of that form. Based on NAB’s review of Federal Register notices and the OMB website, the last action concerning the OMB control number for the FRN form was an “approval without change” on March 26,

²⁷ For example, one NAB member that owns and operates 10 television and 13 radio stations in small and mid-sized markets has calculated that 39 new FRN requests would be required for its next ownership report filing. Another NAB member estimates that it will need 102 new FRNs for both entities and individuals in connection with this requirement. The licensee of a *single FM broadcast station* reports that it would have to obtain 23 FRNs. The licensee’s parent company is a non-profit foundation with a board of volunteer trustees. Several of the volunteer trustees strongly object to the idea of providing their SSNs to the FCC, and the licensee is concerned that it will lose trustees because of this new reporting obligation. Individuals holding attributable interests in NAB member stations have expressed concerns about the safety of their sensitive information, including the possibility of identity theft and whether the CORES system is sufficiently secure.

2007.²⁸ No public comment has been requested nor any approval sought for any changes to FCC Form 160 since that time. In its supporting statement for the most recent OMB approval, the Commission estimated that there would be 103,448 Form 160 filers per year.²⁹ With thousands of individuals who hold attributable or other reportable interests in every commercial broadcast licensee now required to obtain FRN numbers, this estimate may need to be multiplied many times over to get an accurate count.

In light of the privacy issues and burdens raised by the new FRN obligations, NAB urges OMB to deny the information collection request in its current form. This will allow the FCC to undertake the required analysis and submit a revised information collection request that reflects the benefit of public comment and otherwise complies with the PRA and the Privacy Act.³⁰

B. The Revised Form 323 Would Require Duplicative, Unnecessary Reports and Data Entry

Although the *Supporting Statement* states that the FCC has “considered and adopted a number of measures designed to minimize the burden on all respondents,” the existing Form 323 allows for a less burdensome, more streamlined approach to filing in a number of respects, without sacrificing any of the substantive information or impeding the examination and/or aggregation of ownership data.

²⁸ The OMB control number history for FCC Form 160, the FRN form, is available at: <http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3060-0917>.

²⁹ See *Supporting Statement*, CORES Registration Form, FCC Form 160, OMB Control No. 3060-0917 (Feb. 2007), available at: http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=200701-3060-008.

³⁰ If the FCC does not modify the draft Form 323 instructions to remove the unnecessary new FRN burden, it should first seek and obtain OMB approval for the concomitant changes to the burdens associated with FCC Form 160.

First, the proposed Form 323 will require the filing of *numerous additional reports* by the parent companies and intervening holding companies of broadcast licensees. Previously, an ownership structure involving one or more parent companies would allow for cross-referencing of a single report filed by each parent. Based on NAB's review of the draft Form and instructions, it appears that every single entity that has an indirect interest (i.e., intervening holding companies and parent companies) in more than one licensee would have to file multiple reports, rather than associating a single report with multiple broadcast station call signs.³¹ As a result, even simple broadcast ownership structures involving a relatively small number of stations are faced with the prospect of filing multiple additional duplicative reports. For example, suppose that a five-station radio group is structured so that there is one corporation holding each license (five reports) and one parent corporation that owns 100 percent of voting and equity shares of each of the licensee corporations (one more report). Using the existing Form 323 and instructions, this five-station group would file a total of six reports, because a single report would cross-reference all of the holdings of the ultimate parent company. Under the draft Form 323, such a broadcaster would have to file nearly twice as many reports, because five duplicative reports would be filed for the single parent company.³²

This problem is magnified many-fold for licensees with more complex ownership structures—which are not necessarily large group owners. Complex ownership

³¹ This requirement conflicts with yet another PRA standard – that the information collection “is not unnecessarily duplicative . . .” 44 U.S.C. § 3506(c)(3)(B).

³² One NAB member has determined that the draft Form and instructions would require it to file an *additional 92 reports*, for a total of 130 ownership report filings. The biggest jump stems from the repetitive filings for parent companies associated with each licensee. In addition to the new burden of multiple parent company ownership reports, an additional 22 FRNs would be needed for parent companies, plus approximately 80 new FRNs for individual officers and directors.

structures can be found among smaller, newer broadcast businesses as well as long-established station groups with a large market presence.³³ NAB and other parties would be willing to work with the FCC to identify and consider alternatives that would eliminate these duplicative, burdensome filings by parent companies and other entities with indirect interests in broadcast licensees. For example, the current system of cross-referencing call signs does not make minority and female ownership data any more difficult to search or aggregate.³⁴ The Form 323 and the FCC's Consolidated Database System ("CDBS") for electronic filing and public access to filings should continue to allow cross-referencing.

Other significant new burdens are imposed by the obligation to enter extensive data into text boxes and menus where attachments previously were used. For example, in response to Form 323 questions about other media interests, parties with other media holdings generally file attachments listing these holdings and relevant details. These attachments can be edited, reviewed, and corrected with word processing programs and then uploaded into CDBS for filing with a click of a mouse. The FCC's draft Form 323 would require all of this information to be entered into text boxes in CDBS, requiring many hours of data entry.³⁵ The same is true with regard to disclosure of information on

³³ See note 27, *infra* (discussing owner of single FM station with large nonprofit volunteer board).

³⁴ The existing system allows anyone searching under a particular call sign to retrieve every report associated with that call sign, including direct and indirect owners' reports in the chain. Conversely, retrieving a report for a parent company yields data about all of the entities in which that company holds an attributable interest. It is not clear how more reports could provide any additional or better quality information for anyone to analyze.

³⁵ *Draft Form 323 Instructions* at 9 (instructions for non-biennial reports, Section II–A, Question 3(c)) and 15 (instructions for biennial reports, Section II–A, Question 3(c)). One station group has multiple entities in its ownership chain holding other media

familial relationships among attributable interest holders, which also is currently included in attachments rather than requiring extensive data entry as proposed in the draft Form 323.³⁶ Respondents should be permitted to continue to include this information in an exhibit. The *Supporting Statement* offers no explanation of why these changes are necessary for any Commission functions, and the burdens imposed will add hours to every filing involving other media interests or familial relationships without any countervailing benefit.

Finally, the *Supporting Statement* offers no explanation of the proposed requirement for licensees to include a “flowchart or similar document showing the licensee’s ownership structure.”³⁷ The current Form 323 allows respondents to exercise their discretion about whether to create and file a chart reflecting ownership structure. Some licensees include them, although not all choose to do so. Nothing in the *Report and Order* mentions such a requirement, and the practical utility of requiring such charts of every single licensee is uncertain at best. The FCC should solicit and consider public comment about whether mandating the filing of charts is duplicative or overly burdensome before certifying that the information collection requirement meets PRA standards.

interests. For each ownership report filed by a respondent in the ownership chain, the licensee, call sign, community of license, and facility ID number for 182 stations would have to be entered into the electronic Form 323.

³⁶ *Draft Form 323 Instructions* at 9 (instructions for non-biennial reports, Section II–A, Question 3(d)) and 15 (instructions for biennial reports, Section II–A, Question 3(d)).

³⁷ *Draft Form 323 Instructions* at 15 (instructions for biennial reports, Section II –B, Question 5).

C. The Commission Significantly Underestimates the Annual Burden

Although NAB has not assessed the number of hours that would be needed to complete the draft Form 323,³⁸ we have determined that the *Supporting Statement* underestimates the number of filers as well as the annual cost to filers. Based on changes to the filing methods and the expansion of the filing obligation to numerous new entities, NAB believes that the number of respondents will be at least double the number estimated in the FCC's *Supporting Statement*. Correcting the hourly rates and FCC filing fees alone would require an upward adjustment of nearly \$10 million per year.

The Commission's *Supporting Statement* states that the estimated number of filers of biennial reports will be 7,500 per year.³⁹ NAB's review of the FCC's CDBS system shows that 12,189 biennial reports were filed in 2008; 30,656 biennial reports in 2007; and 11,784 reports in 2006.⁴⁰ This means that the average number of biennial report filings per year over the last three years is approximately 18,209 filings per year. We recognize that this figure reflects more reports than actually were filed during each of those years because multiple file numbers are assigned to certain reports that are filed only once by entities with an indirect interest in more than one licensee. However, as discussed above, the revised Form and instructions would create a new obligation for parent companies and intervening holding companies to file multiple reports, rather

³⁸ The amount of preparation time is likely to vary widely among licensees depending upon the complexity of their ownership structures, making this difficult for NAB to estimate.

³⁹ *Supporting Statement* at 9.

⁴⁰ To search for the number of filings, NAB staff queried the CDBS database for biennial ownership reports containing the specified year in the file number.

than associating a single report with multiple licenses. With more reports now being filed by these indirect interest holders, the CDBS counts are more reflective of the actual number of reports that would have to be filed under the proposed Form 323.

The FCC's estimate also does not reflect other important changes to the filing obligations. Specifically, the *Report and Order* expanded the filing requirement to several new classes of filers, including low power television stations, commercial broadcast stations licensed to sole proprietors and partnerships composed of natural persons, and certain non-attributable interest holders. NAB does not know how many licensees are sole proprietors or partnerships comprised of natural persons, nor can we estimate how many reports will be generated by the new obligation for certain non-attributable interests to be reported. However, the *Supporting Statement* indicates that there are 2300 LPTV stations and 554 Class A stations.⁴¹ At a minimum, additional reports must be filed by another 2854 licensees. While we recognize that this does not necessarily equate to exactly 2854 more reports, the estimate should be more reflective of: (1) the fact that many more licensees and investors must now file reports; and (2) under the draft Form 323, entities with an indirect interest in more than one licensee would have to file multiple reports, rather than associating a single report with multiple call signs. The estimated number of filings of non-biennial ownership reports also must be revised upward to reflect these changes. We believe that, conservatively, the Commission should double the estimated number of filings.

Additionally, even if preparation time estimates are accurate, the estimated costs are inaccurate. Among other things, the estimate does not reflect the current filing

⁴¹ *Supporting Statement* at 4.

ownership report filing fee of \$60.00.⁴² Based on this error, the FCC tallied \$220,000 in filing fees, rather than \$240,000 in filing fees.⁴³ The estimated attorneys' fees of \$200 per hour also are not reflective of current standards.⁴⁴ For example, the Laffey Matrix used by the Department of Justice and federal courts to determine appropriate payments in connection with fee-shifting "loser pays" statutes,⁴⁵ estimates that even a lawyer with a single year of experience costs \$225 per hour, while the estimates for lawyers with four or more years of experience range from \$270 – \$465 per hour. A more appropriate estimate could draw from the Laffey Matrix and apply an estimated rate of \$330 per hour, the median rate for lawyers in the most current version of the Matrix. If revised consistent with this rate estimate, the cost burdens would total \$19.8 million/year for attorneys' fees in preparing biennial reports (rather than the current \$12 million) and \$4,042,500/year for attorneys' fees to prepare non-biennial reports (rather than the current \$2,450,000). Thus, correcting the filing fee error and making a conservative adjustment to estimated attorneys' fees would increase the annual respondent burden by nearly ten million dollars (from \$14,670,000 to \$24,082,500).

⁴² See *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, FCC 08-209 (rel. Sep. 22, 2008) at Appendix A. The *Supporting Statement* makes calculations based on a fee of \$55.00. See *Supporting Statement* at 9.

⁴³ *Supporting Statement* at 9.

⁴⁴ *Id.*

⁴⁵ See Laffey Matrix, available at: http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_8.html. We note that even these rates are likely below market because the Laffey Matrix is assessing legal fees for general litigators, rather than for the smaller pool of attorneys with specialized experience in communications law.

D. The Commission Should Seek to Minimize Burdens on New Filers Including Sole Proprietors and Holders of Non-Attributable Interests

The *Supporting Statement* gave little or no consideration to the proposals NAB incorporated by reference from its Petition for Reconsideration in MB Docket No. 07-294, which included proposals for minimizing burdens on sole proprietors and newly reportable holders of certain non-attributable interests.⁴⁶ NAB urged the Commission to explore ways to make available the data previously filed by sole proprietor licensees so as to keep new burdens on these small entities as minimal as possible, which is particularly important in today's economic climate.⁴⁷ This approach would "minimize the burden of the collection of information" by using "information technology," consistent with the PRA. The FCC also should consider NAB's proposal that it allow respondents to disclose general demographic data and ownership shares in identifying reportable, but non-attributable investors rather than mandating disclosure of granular information on their names, addresses, familial relationships, and other media interests.⁴⁸ Although this approach would still require some additional data-gathering and disclosure, it would be less burdensome and less likely to deter broadcast investment, while still providing the Commission and the public with the particular information on minority and female ownership sought by the *Report and Order*.

⁴⁶ See NAB Comments on FCC PRA Notice (filed via email and in MB Docket No. 07-294 on Aug. 10, 2009) at 4, n.9.

⁴⁷ *Id.* Specifically, NAB urged the Commission to consider whether its updated ownership database could "link back to the most recent report filed by each sole proprietor who is a current licensee." NAB Petition at 3-4.

⁴⁸ See NAB Comments on FCC PRA Notice (filed via email and in MB Docket No. 07-294 on Aug. 10, 2009). As explained previously, such a disclosure would make clear that, for example, a licensee with a single majority shareholder also has an African-American male investor holding seven percent of the company's shares. NAB Petition at 9-10.

IV. CONCLUSION

For the reasons discussed above, the FCC's information collection request should be denied. The request and accompanying draft FCC Form and instructions do not reflect the benefit of public comment, as required by the PRA. The result is a proposed information collection that is, in multiple respects, unduly burdensome, duplicative and disconnected from the purposes of the *Report and Order* that mandated Form 323 revisions. The FCC should allow parties 60 full days to comment on the draft Form and instructions as required by statute, and should submit a revised information collection request that meets applicable standards set forth in the statute and OMB rules.

Respectfully submitted,

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