

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
)	
Amendment of Part 1 of the Commission’s Rules, Concerning Practice and Procedure, Amendment of CORES Registration System)	MD Docket No. 10-234
)	
)	

ORDER ON RECONSIDERATION

Adopted: January 4, 2017

Released: January 4, 2017

By the Chief, Media Bureau:

I. INTRODUCTION

1. We have before us petitions for reconsideration¹ of the *323 and 323-E Order*,² in which the Commission revised FCC Form 323, Ownership Report for Commercial Broadcast Stations, and FCC Form 323-E, Ownership Report for Noncommercial Broadcast Stations. Among other improvements to Forms 323 and 323-E, the Commission adopted a requirement that filers provide a unique FCC Registration Number (FRN) generated by the Commission Registration System (CORES)—either a Restricted Use FRN or a traditional CORES FRN—for each attributable interest holder that must be reported on the forms.³ The American Public Media Group (APMG), the NCE Licensees, the Public Broadcasting Parties, and the State University of New York (SUNY) filed petitions seeking reconsideration of the Commission’s decision to apply the FRN requirement to Form 323-E.⁴ As discussed below, we deny the petitions for reconsideration because they repeat arguments that the Commission fully considered and rejected in the *323 and 323-E Order* and they identify no material error, omission, or other reason warranting reconsideration. We take this action pursuant to delegated authority under Section 1.429(l) of the Commission’s rules.⁵

¹ Petition for Reconsideration of American Public Media Group (filed May 4, 2016) (APMG Petition); Petition for Reconsideration of NCE Licensees (filed May 3, 2016) (NCE Licensees Petition); Petition for Reconsideration of Public Broadcasting Parties (filed May 4, 2016) (Public Broadcasting Parties Petition); Petition for Reconsideration of Lisa S. Campo (filed May 3, 2016) (on behalf of the State University of New York) (SUNY Petition).

² *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 398 (2016) (*323 and 323-E Order*).

³ See generally *id.*

⁴ APMG Petition at 1, 4; NCE Licensees Petition at 1-2, 4; Public Broadcasting Parties Petition at 1-2, 10; SUNY Petition at 1-2, 8.

⁵ Section 1.429(l) of the Commission’s rules provides that the relevant bureau(s) or office(s) may dismiss or deny petitions for reconsideration of a Commission action if the petitions “[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding” or if they “[f]ail to identify any material error, omission, or reason warranting reconsideration.” 47 CFR § 1.429(l)(1), (3).

II. BACKGROUND

2. The Commission requires commercial and noncommercial broadcasters to submit ownership reports every two years and on other occasions specified in the Commission's rules.⁶ These reports must include information concerning the individuals and entities that hold attributable interests in the station licensee, including officers and directors.⁷ Commercial broadcasters submit ownership reports on Form 323, and noncommercial broadcasters submit ownership reports on Form 323-E. The revisions to Forms 323 and 323-E set forth in the *323 and 323-E Order* were a result of the Commission's sustained efforts to improve the quality, utility, and reliability of its broadcast ownership data, including data on minority and female ownership of broadcast stations.⁸ The Commission's efforts have addressed flaws in the data collection process that were identified by the United States Government Accountability Office (GAO) and by researchers who had attempted to use the data submitted on earlier versions of the forms.⁹

3. The Commission substantially revised Form 323 in 2009 to improve the accuracy and completeness of the ownership data it collects from commercial broadcast stations.¹⁰ With the subsequent adoption of the *323 and 323-E Order*, the Commission adopted additional enhancements to further improve the integrity and completeness of its broadcast ownership data collection.¹¹ Those improvements included modifications to Form 323-E to conform the reporting requirements for noncommercial educational (NCE) broadcast stations more closely to those for commercial stations.¹² Among other things, the *323 and 323-E Order* revised the NCE reporting obligations to require that filers provide a unique FRN generated by CORES for each attributable interest holder listed on Form 323-E, just as commercial broadcasters must do on Form 323.¹³ The Commission found that Section 257 of the Telecommunications Act of 1996 (the 1996 Act) and Section 309(j) of the Communications Act (the Act) authorize the Commission to collect this information from NCE stations.¹⁴

4. The Commission recognized previously that the traditional CORES FRN, which requires submission of a Taxpayer Identification Number (TIN) to the Commission, offers a unique identifier and therefore plays an important role in promoting the integrity of the Commission's ownership data.¹⁵ To

⁶ In addition to biennial submissions, licensees and permittees must submit broadcast ownership reports (i) within 30 days of a grant of an application for original construction permit, (ii) on the date the permittee applies for a station license, and (iii) within 30 days of consummating an authorized assignment or transfer of control of a permit or license. *Id.* §§ 73.3615, 74.797.

⁷ The attribution standards—set forth in Section 73.3555 of Commission's rules—seek to identify those interests that confer 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. *See id.* § 73.3555, Note 2; *see also infra* paras. 9-10.

⁸ The *323 and 323-E Order* provides a detailed discussion of the Commission's efforts to improve the data collected on Forms 323 and 323-E. *323 and 323-E Order*, 31 FCC Rcd at 400-11, paras. 4-23.

⁹ U.S. Gov't Accountability Office, GAO-08-383, *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* (2008) (GAO Report). GAO cited several shortcomings with the Commission's data collection process: (1) exemptions from the biennial filing requirement for certain types of broadcast stations; (2) inadequate data quality procedures; and (3) problems with storage and retrieval. *Id.* at 4, 20.

¹⁰ *323 and 323-E Order*, 31 FCC Rcd at 400, para. 4.

¹¹ *See generally id.*

¹² *Id.* at 399, para. 3.

¹³ *Id.* at 426-28, paras. 52-55.

¹⁴ *Id.* at 421, para. 44; *see also* 47 U.S.C. §§ 257, 309(j).

¹⁵ *323 and 323-E Order*, 31 FCC Rcd at 412, para. 25. An individual's TIN is his or her Social Security Number.

specifically address commenter concerns that mandatory reporting of TIN-backed CORES FRNs on Forms 323 and 323-E would require submission of individuals' full Social Security Numbers (SSNs) to the Commission, the *323 and 323-E Order* provided for a Restricted Use FRN (RUFNR) to provide an alternative means for obtaining a unique identifier for individual attributable interest holders without necessitating disclosure of their full SSNs.¹⁶ This accommodation balanced the goal of having a unique identifier for each individual attributable interest holder with the desire to minimize the collection of personal information from individuals. To obtain an RUFNR, the applicant must submit—via a secure Commission website—an individual's full name, residential address, date of birth, and the last four digits of his or her SSN.¹⁷ The Commission concluded that allowing filers to report RUFNRs for individuals listed on Forms 323 and 323-E properly balances the Commission's need to uniquely identify individual attributable interest holders with the security and privacy concerns raised in the record.¹⁸

5. Following the release of the *323 and 323-E Order*, APMG, the NCE Licensees, the Public Broadcasting Parties, and SUNY filed timely petitions for reconsideration.¹⁹ The petitioners request that the Commission reconsider its decision to apply the FRN requirement to Form 323-E.²⁰ Although the Commission did not receive any oppositions to the petitions, SUNY and the NCE Licensees nonetheless filed replies in which they repeat their requests that the Commission eliminate the FRN requirement in the NCE context.²¹ In addition, several public broadcasting organizations and the Board of Trustees of the University of Alabama each filed pleadings styled as "comments" in support of the petitions for reconsideration.²²

¹⁶ *Id.* at 412, para. 25.

¹⁷ *Id.* at 415, para. 33.

¹⁸ *Id.* at 412, para. 25.

¹⁹ Petitions for Reconsideration of Action in Rulemaking Proceeding, 81 Fed. Reg. 31223 (May 18, 2016).

²⁰ APMG Petition at 4; NCE Licensees Petition at 1-2; Public Broadcasting Parties Petition at 10; SUNY Petition at 4, 8.

²¹ Reply of the NCE Licensees (filed June 13, 2016) (NCE Licensees Reply); Reply of the State University of New York (filed June 13, 2016) (SUNY Reply). The Commission's rules authorize the filing of replies to oppositions within 10 days after the deadline for filing oppositions in response to a petition for reconsideration of a rulemaking order. 47 CFR § 1.429(g). The Commission's rules, however, make no provision for filing replies when no oppositions are filed, and as stated above, the Commission received no oppositions to the petitions of APMG, SUNY, the NCE Licensees, and the Public Broadcasting Parties. Nonetheless, we will consider the SUNY Reply and NCE Licensees Reply as informal comments because we believe that no party will be prejudiced by our doing so. These additional pleadings briefly summarize arguments that SUNY and the NCE Licensees raised in their petitions for reconsideration, and others had an opportunity to respond to those arguments during the period for filing oppositions.

²² Comments of the Board of Trustees of the University of Alabama (filed June 2, 2016) (Alabama Trustees Comments); Comments of America's Public Television Stations, Corporation for Public Broadcasting, National Public Radio, and the Public Broadcasting Service (filed June 13, 2016) (APTS et al. Comments). The Commission's rules do not provide for the filing of comments or responses in support of petitions for reconsideration in rulemaking proceedings. *See* 47 CFR § 1.429. In their supporting comments, the Alabama Trustees and APTS et al. urge the Commission to reconsider its decision to apply the FRN requirement in the NCE context. Alabama Trustees Comments at 2; APTS et al. Comments at 2. In addition, the Alabama Trustees also urge the Commission to eliminate the FRN requirement for all non-profit licensees, including those that operate commercial stations. Alabama Trustees Comments at 2. These supporting "comments" were filed after the deadline for filing petitions for reconsideration and were not accompanied by a motion to accept a late-filed pleading. 47 CFR § 1.429; *see Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986) (the Commission may not waive the deadline for seeking reconsideration absent extraordinary circumstances). Nonetheless, we will consider these pleadings as informal comments. We believe no parties will be prejudiced by our decision to do so, because these pleadings were filed within the time allotted by Section 1.429 for filing oppositions and replies and thus caused no delay in this proceeding.

III. DISCUSSION

6. Pursuant to Section 1.429 of the Commission's rules, parties may petition for reconsideration of orders in rulemaking proceedings.²³ Reconsideration is generally appropriate only where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond.²⁴

7. To allow the agency "to resolve certain petitions for reconsideration more efficiently and expeditiously," the Commission amended its rules in 2011 to delegate authority to the relevant bureau or office to dismiss or deny petitions filed in either rulemaking or non-rulemaking proceedings if the petition "plainly does not warrant consideration by the full Commission."²⁵ Among the kinds of petitions that the Commission found would satisfy this standard are those that fail to identify any material error, omission, or reason warranting reconsideration or those that rely on arguments that have been fully considered and rejected by the Commission within the same proceeding.²⁶ In this case, as discussed below, the petitions for reconsideration filed by APMG, SUNY, the NCE Licensees, and the Public Broadcasting Parties raise issues that the Commission fully considered and rejected in the *323 and 323-E Order*, and the petitioners fail to identify any material error, omission, or reason warranting reconsideration of those issues by the Commission.²⁷ Accordingly, we are exercising our delegated authority under Section 1.429(l) of the rules to address and deny the petitions for reconsideration of the *323 and 323-E Order*.

A. The Petitions Repeat Arguments that the Commission Previously Fully Considered and Rejected

8. The petitioners repeat earlier arguments that the FRN requirement would be burdensome for NCE broadcasters because it would discourage individuals from serving on the governing boards of NCEs.²⁸ As we discuss below, the Commission fully considered those arguments in the *323 and 323-E Order* and found, based on the record in this proceeding, that the FRN requirement would not serve as a serious disincentive to participation in the governing boards of NCE stations.²⁹

²³ 47 CFR § 1.429.

²⁴ See *Petition for Reconsideration by Acadiana Cellular General Partnership*, Order on Reconsideration, 20 FCC Rcd 8660, 8663, para. 8 (2006); 47 CFR 1.429(b), (l).

²⁵ *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594, 1606, paras. 27-28 (2011) (*2011 Part 1/Part 0 Rules Order*); see also 47 CFR § 1.429(l) (codifying delegation in rulemaking proceedings); *id.* § 1.106(p) (codifying same delegation in non-rulemaking proceedings).

²⁶ See 47 CFR § 1.429(l). These examples are drawn from the rule's illustrative list of petitions for reconsideration that would "plainly . . . not warrant consideration" and thus fall within the staff's delegated authority. See *id.* § 1.429(l)(1), (3). In adopting the rules, the Commission emphasized that this list is not intended to be exhaustive, as "it is difficult to foresee every circumstance in which staff appropriately should be allowed to exercise this authority," and such a limitation would thus "depriv[e] staff of the necessary flexibility to handle particular petitions." *2011 Part 1/Part 0 Rules Order*, 26 FCC Rcd at 1607, para. 29.

²⁷ See 47 CFR § 1.429(l). Because we are denying the petitioners' request to reconsider the Commission's decision to apply the FRN requirement in the NCE context as discussed herein, we also are denying the Alabama Trustees' request that the Commission eliminate the FRN requirement for non-profit licensees that operate commercial stations. See Alabama Trustees Comments at 2; see also *supra* note 22.

²⁸ See *323 and 323-E Order*, 31 FCC Rcd at 427, para. 55 ("Several commenters argue that the CORES FRN and RUFN requirements would be unduly burdensome and would discourage people from serving on the boards of NCE stations."); APMG Petition at 1, 3-4; NCE Licensees Petition at 4-8; Public Broadcasting Parties Petition at 4-6, 9-10; SUNY Petition at 2, 4-6; SUNY Reply at 2; see NCE Licensees Reply at 3. APTS et al. and the Alabama Trustees repeat this argument as well. APTS et al. Comments at 4-5; Alabama Trustees Comments at 2-5.

²⁹ See *infra* Section III.B.

9. Similarly, the petitioners echo earlier arguments that collecting additional ownership information from NCEs would not improve—and perhaps would even skew—the Commission’s assessment of broadcast ownership trends.³⁰ Like previous commenters, the petitioners attempt to support this claim by asserting that many NCE stations already strive to maintain boards that have diverse membership, that governing board members hold no equity interests in the NCE stations they serve, and that many board members are elected officials, political appointees, or *ex officio* members who serve by virtue of their positions in government.³¹ The Commission fully considered and rejected these arguments in the *323 and 323-E Order*.³² The Commission found that comprehensive, reliable broadcast ownership data are essential to effectively study and analyze ownership trends, assess the impact of existing Commission diversity initiatives, and provide a foundation for adopting new diversity measures, among other things.³³ The Commission concluded that collecting minority and female ownership data from

³⁰ See, e.g., *323 and 323-E Order*, 31 FCC Rcd at 422, para. 46 (“Other commenters argue that dissimilarities between the governance of commercial and NCE stations precludes [sic] any definition of ‘ownership’ in the NCE context.”); NCE Licensees Petition at 2 (“[T]he collection, retention and presentation of NCE board member information with commercial broadcast ownership information will actually taint the value of such information”); Public Broadcasting Parties Petition at 7 (“Lumping [NCE and commercial] broadcasters together would dramatically skew the ownership analysis of ‘diversity.’”); SUNY Petition at 3 (“Provision of [SSNs] of [University] Trustees and senior University leadership will do nothing to improve national statistics on ownership.”); see also Alabama Trustees Comments at 5 (“[T]he benefits which the Commission would obtain from this information are questionable at best.”). In the *323 and 323-E Order*, the Commission noted that researchers and other parties can download broadcast ownership data from the Commission’s website and study, search, and manipulate the data in a wide variety of ways. *323 and 323-E Order*, 31 FCC Rcd at 440-41, para. 87. Given this ability to access and manipulate the data, including information from NCE stations will not make the owners of commercial stations seem more diverse, as SUNY asserts. SUNY Petition at 3. Further, such claims are largely speculative because they appear to rely on unsupported assumptions about how data will be used and/or presented in the future.

³¹ See, e.g., *323 and 323-E Order*, 31 FCC Rcd at 422, para. 46 (“[Some commenters] note that board members do not have equity stakes in the stations they serve; are often governmental officials, governmental appointees, individuals elected by station members, or volunteers; and often are not involved in day-to-day station operations.”); *id.* at 426, n.195 (“Noncommercial stations are already required to implement numerous diversity initiatives . . . and . . . are also subject to political pressures to promote diversity, state[s] [one commenter].”); APMG Petition at 2-3 (“[P]ublic radio station boards are either (i) community volunteers with no financial interest in the organization; or (ii) appointees by state or university officials.”); NCE Licensees Petition at 2 (“[P]ersons reported on NCE ownership reports are not ‘owners’ of broadcast stations”); Public Broadcasting Parties Petition at 2 (“[O]wnership and operations of public broadcasting stations are already fundamentally structured so as to advance diversity.”); see also Alabama Trustees Comments at 5 (“As noted by all of the petitioners for reconsideration, non-profit entities do not have owners”).

³² See *323 and 323-E Order*, 31 FCC Rcd at 420-27, paras. 43-54.

³³ *Id.* at 399, para. 2; see also *2014 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules & Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Second Report and Order, 31 FCC Rcd 9864, 9961, para. 235 (2016), *pets. for recon. pending and pets. for review pending sub nom. Prometheus Radio Project v. FCC* (3d Cir. filed Nov. 3, 2016) (“*2014 Quadrennial Review R&O*”) (noting “the Commission’s ongoing initiatives to promote diversity of ownership among broadcast licensees and to expand opportunities for minorities and women to participate in the broadcast industry”); *id.* at 9975, para. 269 (ownership data has been used in studies “examin[ing] issues such as media quality, innovation, viewpoint diversity, local information programming, the provision of programming to minority audiences, and local television news.”). As the Supreme Court has recognized, “it has long been a basic tenant of national communications policy that the widest dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.” *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 663-64 (1994) (quoting *United States v. Midwest Video Corp.*, 406 U.S. 649, 668, n.27 (1972) (plurality opinion) (quoting *Associated Press v. United States*, 326 U.S. 1, 20 (1945))); see *2014 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 Rulemaking and Report and Order, 29 FCC Rcd 4371, 4418, para. 114 (2014). This Commission’s diversity goal is broad and is
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NCEs will enable it to construct a complete picture of minority and female participation in broadcasting in order to fully understand and analyze the ownership of broadcast stations and fulfil its statutory mandates, and that extending the FRN requirement to NCEs was necessary to help ensure the reliability of future data collections.³⁴ Thus, the possibility that some NCEs may already strive to maintain diversity with respect to their governing boards does not obviate the Commission's need for the data.³⁵ In addition, the Commission rejected claims that dissimilarities between the governance of commercial and NCE stations preclude any definition of "ownership" in the NCE context.³⁶ The Commission noted that, "[f]or Form 323 and Form 323-E purposes, the concept of ownership relies on the attribution standards set forth in Section 73.3555 of the Commission's rules, which generally do not depend on equity interests but instead 'seek to identify those interests . . . that confer . . . 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.'"³⁷ The Commission observed that officers and directors are therefore attributable owners of the stations they serve because they have a realistic potential to affect station programming or core operations, regardless of whether they have an equity interest in the station at issue.³⁸ The Commission noted that such individuals are already reported as attributable interest holders on both commercial and noncommercial broadcast ownership reports.³⁹

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not limited to diverse ownership of commercial broadcast stations. *See, e.g.*, 47 U.S.C. § 257 (directing the Commission to "promote the policies and purposes of [the Act] favoring diversity of media voices"); *id.* § 309(j) (directing the Commission to disseminate among a wide variety of applicants, including women- and minority-owned businesses, certain licenses that must be awarded by competitive bidding, including certain licenses for broadcast, wireless, and satellite services).

³⁴ *323 and 323-E Order*, 31 FCC Rcd at 421, 425-27, paras. 44, 51-54. Some petitioners disagree with the Commission's conclusion that applying the FRN requirement to Form 323-E is consistent with its statutory mandates under Section 309(j) of the Act and Section 257 of the 1996 Act. NCE Licensees Petition at 10-12; Public Broadcasting Parties Petition at 7, n.6. We address these arguments below. *See infra* Section III.B.

³⁵ *323 and 323-E Order*, 31 FCC Rcd at 399, para. 2. Contrary to what some petitioners assert, the Commission did not conclude that applying the FRN requirement to NCEs was necessary in order to enforce and monitor compliance with the multiple ownership restrictions in Section 73.3555 of the Commission's rules. *See* NCE Licensees Petition at 10 & n.23 (asserting that "there is no regulatory necessity to be able to cross reference individuals listed on NCE ownership reports, as their presence on such reports has no relevance to broadcasting compliance with multiple ownership rules"). Rather, the Commission concluded that the FRN requirement will help ensure that the broadcast ownership data the Commission collects is reliable, aggregable, and useful for studies and analyses of ownership trends in support of policy initiatives promoting diversity of ownership in broadcasting. *323 and 323-E Order*, 31 FCC Rcd at 412-16, 426-27, paras. 25-35, 52-54. The Commission specifically rejected assertions that the collection of ownership data from NCEs is unnecessary because NCE stations are not subject to the multiple ownership restrictions in Section 73.3555 of the Commission's rules. *Id.* at 421, para. 45 & n.161; *see also id.* at 426-27, paras. 53-54 (rejecting assertions that the ability to cross-reference based on a unique identifier "has little or no relevance to the NCE industry," where according to commenters, the existence of multiple broadcast interests is "quite rare" in the case of NCE board members and directors).

³⁶ *323 and 323-E Order*, 31 FCC Rcd at 422-24, paras. 44-50.

³⁷ *Id.* at 422-23, para. 47 (quoting *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12560, para. 1 (1999)).

³⁸ *Id.* at 423-24, paras. 48 ("[The Commission's] attribution standards apply to both commercial and noncommercial stations, and the individuals and entities these standards capture have the potential to exert influence over the licensee, regardless of whether the station at issue is commercial or noncommercial. Officers and directors therefore are attributable owners of the NCE licensees they serve.").

³⁹ *Id.* at 422-24, paras. 47 ("Officers and directors of NCE stations already are defined as attributable interest holders in NCE stations and they already are reported on Form 323-E.").

10. The Commission declined to reach a different conclusion based on the observation that NCE board members are often volunteers, individuals elected by station members, or governmental officials or appointees.⁴⁰ The Commission noted that “[o]ur attribution standards depend not on the manner in which an individual came to be a member of a station’s board of directors or other governing body, but rather on the ability to influence station programming or operations that his or her membership confers.”⁴¹ Similarly, the Commission also noted that its attribution rules do not depend on—or even reference—involvement in the day-to-day operations of a station because a party can still exert influence over a station even absent such involvement.⁴² The Commission recognized that “the extent to which NCE officers or directors are involved in day-to-day station operations may vary” but found that “this situation is not unique to NCE stations and does not provide a basis for different treatment” of NCE board members.⁴³

11. In addition to the arguments discussed above, the petitioners also repeat the privacy and security concerns that commenters raised previously in this proceeding⁴⁴ and that the Commission fully considered and addressed in the *323 and 323-E Order*.⁴⁵ Significantly, the Commission adopted the RUFNRN, which allows attributable individuals to obtain unique identifiers without submitting full SSNs to the Commission, and concluded that this alternative to the traditional CORES FRN properly balances the Commission’s need to uniquely identify attributable interest holders with the privacy and security concerns raised by commenters.⁴⁶ The Commission noted that “[n]o commercial entity contested our

⁴⁰ *Id.* at 424, para. 49 (“The observation that NCE board members are often governmental officials, governmental appointees, individuals elected by station members, or volunteers does not lead us to a different conclusion.”).

⁴¹ *Id.*

⁴² *Id.* (“Similarly, because a party can exert influence over a station without being involved in the day-to-day operations of that station, our attribution rules do not depend on—or even reference—such involvement.”).

⁴³ *Id.* In addition, the Commission noted that “[o]ur rules . . . allow officers and directors to be exempted from attribution in limited circumstances” and “reiterate[d] that our attribution standards, including the standards applicable to attribution exemptions for officers and directors, apply to both commercial and NCE stations.” *Id.* at 424, para. 50.

⁴⁴ *See, e.g., id.* at 418, para. 39 (“NCE commenters . . . continue to express concerns about identity theft . . .”); *id.* at 418-19, para. 39 (“NCE commenters also raise concerns regarding the potential disclosure of individuals’ residential addresses . . .”); *id.* at 419, para. 40 (“Even if the Commission’s systems have not been breached to date, NCE commenters argue, there is no assurance that a successful breach will not occur in the future.”); APMG Petition at 3 (“[G]overnment systems . . . have proven to be vulnerable recently.”); NCE Licensees Petition at 3 (“[T]he NCE Licensees . . . have argued that the . . . information . . . required . . . to obtain an FRN . . . causes board members to have serious concerns about identity theft, violations of privacy, and compromised personal security.”); SUNY Petition at 4 (“Allowing for the collection of [SSNs] . . . places . . . Board members . . . at significant risk for identity theft.”); SUNY Reply at 2 (“[E]ven the last four digits of a[n] [SSN] can lead to stolen identity and fraud.”); *see also* Alabama Trustees Comments at 3-5 (“As noted in the [SUNY Petition], news outlets have been rife with stories of data breaches affecting government agencies.”).

⁴⁵ *See, e.g., 323 and 323-E Order*, 31 FCC Rcd at 417-19, paras. 37-42.

⁴⁶ *Id.* at 420, para. 42 (“We believe that the RUFNRN as an alternative to a traditional CORES FRN is a reasonable approach that balances the Commission’s need to uniquely identify reportable individuals with the security and privacy concerns raised by the commenters.”). SUNY argues that the Privacy Act prohibits the Commission from requiring officers and directors of NCE licensees to disclose their SSNs. SUNY Petition at 7 (“[T]he Privacy Act . . . prevent[s] the forced disclosure of [SSNs] of Trustees and senior leadership of the University by the Commission.”); *see also* Alabama Trustees Comments at 6 (“Alabama Trustees . . . support the argument raised by [SUNY] regarding the Privacy Act . . .”). SUNY previously raised this issue in comments on the Commission’s proposal to require disclosure of an individual’s full SSN as the only means of obtaining an FRN. SUNY Feb. 14, 2013 Comments at 8 (“[T]he Privacy Act . . . prevent[s] the forced disclosure of [SSNs] of Trustees and senior leadership of the University by the Commission.”); *see also 323 and 323-E Order*, 31 FCC Rcd at 413-14, para. 30 & n.117 (“Commenters to the *Sixth Diversity Further Notice* strongly objected to the proposed Commission

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proposal to implement the RUFNR system for individual attributable interest holders in commercial broadcast stations” and that the record did not show that NCE attributable interest holders have greater system security needs or risks.⁴⁷ The Commission also affirmed its commitment to protecting the privacy and security of personally identifiable information that the Commission collects, noting that “the Commission’s systems currently safely house a significant amount of information that is the same, similar, or—in the case of full SSNs—even more sensitive than the information underlying the RUFNR.”⁴⁸ Additionally, the Commission discussed existing safeguards and improvements that have been implemented to assure the security of the Commission’s systems and noted that it was unaware of any breaches to CORES.⁴⁹

12. In short, the Commission fully considered and addressed these arguments in the *323 and 323-E Order*. To the extent the petitions for reconsideration merely repeat these arguments, the petitions are repetitious and therefore do not warrant consideration by the Commission.⁵⁰

B. The Petitions Identify No Material Error, Omission, or Reason Warranting Reconsideration

13. In addition to repeating arguments that the Commission fully considered and rejected in the *323 and 323-E Order*, the petitions for reconsideration also fail to demonstrate any other grounds warranting reconsideration. Specifically, we reject claims that the record did not support the

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mandate that all individual attributable interest holders submit an SSN to the Commission to obtain a traditional CORES FRN.” (citing, *inter alia*, SUNY Feb. 14, 2013 Comments at 6-8)). As noted above, the rule adopted in the *323 and 323-E Order* does not require individual attributable interest holders to disclose their full SSNs to the Commission but instead gives them the option of obtaining an RUFNR, requiring the submission of other limited personal information, including only the last four digits of the SSN. In the *323 and 323-E Order*, the Commission concluded that the availability of the RUFNR ensures that the FRN requirement is consistent with the Privacy Act and stated that no commenter argued otherwise. *See 323 and 323-E Order*, 31 FCC Rcd at 420, n.156 (“No commenters assert that the Privacy Act would bar the adoption of the RUFNR requirement for the reporting of attributable interest holders on ownership reports for either commercial stations or NCEs. We find that the RUFNR requirement described herein is consistent with the Privacy Act for Form 323 and Form 323-E.”). We dismiss this aspect of SUNY’s petition. In raising this argument, SUNY and Alabama Trustees do not even acknowledge that an individual can obtain an RUFNR without disclosing his or her full SSN. Further, SUNY and the Alabama Trustees did not raise a Privacy Act objection in their comments on the Commission’s proposal to adopt the RUFNR, and SUNY has not given any reason why it was unable to raise this argument earlier, nor has it provided any analysis or case law identifying a material error, omission, or reason warranting reconsideration of this conclusion.

Accordingly, they have not provided a basis for the Commission to revisit it. *See 47 CFR § 1.429(l)*. *See Expanding the Economic & Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, 30 FCC Rcd 6746, 6753-54, para. 18 (2015) (impermissible new argument dismissed); *Reporting Requirements for U.S. Providers of International Telecommunications Services*, Order, 30 FCC Rcd. 6318 (IB 2015) (same).

⁴⁷ *323 and 323-E Order*, 31 FCC Rcd at 420, para. 42; *id.* (“NCE commenters have offered no compelling reason why we must conclude that the system security needs or risks of NCE attributable interest holders are greater than those of commercial attributable interest holders.”).

⁴⁸ *Id.* at 419-20, para. 41; *id.* (“[T]he Commission agrees with commenters that privacy and security with respect to personally identifiable information are paramount, and we remain committed to protecting such interests.”); *id.* (“The Commission will continue to make the necessary upgrades to ensure the security of CORES and all of its systems, and protecting the personally identifiable information contained in its system will remain one of the Commission’s highest priorities.”).

⁴⁹ *Id.*

⁵⁰ *See 47 CFR 1.429(l)*. It is by now well settled that the Commission will not consider a petition for reconsideration that merely repeats arguments that the Commission has previously rejected. *See, e.g., Federal-State Joint Board on Universal Service*, Order, 19 FCC Rcd 22305, 22306, para. 4 (2004).

Commission's decision to apply the FRN requirement in the NCE context. Contrary to the petitioners' assertions, the *323 and 323-E Order* fully considered and rejected unsubstantiated claims that the FRN requirement would discourage participation in NCE station governance and concluded that, on balance, the record indicated that the requirement would not significantly inhibit individuals from serving as NCE board members.⁵¹ Similarly, we also reject assertions that the Commission failed to demonstrate that Section 257 of the 1996 Act and Section 309(j) of the Act support the FRN requirement in the NCE context. As discussed below, we find that the petitions fail to raise a material error, omission, or other reason warranting reconsideration of these findings.⁵²

14. *The Decision to Apply the FRN Requirement to NCEs Was Reasonable and Supported by the Record.* Some petitioners argue that the decision to apply the FRN requirement in the NCE context is arbitrary and capricious because they believe the decision runs counter to evidence in the record that the FRN requirement would discourage participation in NCE station governance.⁵³ These petitioners contend that the Commission offered no reasoned explanation in the *323 and 323-E Order* for its conclusion that the FRN requirement would not significantly inhibit individuals from serving on the boards of NCE stations.⁵⁴ According to the NCE Licensees, the Commission lacked the expertise to dismiss NCEs' claims that the FRN requirement would discourage many individuals from serving as board members; therefore, its conclusion that the requirement would not be a serious disincentive to participation in NCE stations would not be entitled to deference by a reviewing court.⁵⁵

15. NCE Licensees also assert that the Commission failed to consider a "less harmful" alternative proposal that they claim would satisfy the Commission's need to track minority and female ownership of broadcast stations and also be "fully responsive" to the criticisms in the GAO Report.⁵⁶ The NCE licensees cite a proposal offered previously by the University of Michigan, which recommended that certain public radio stations be required to report the race, gender, and ethnicity of attributable individuals listed on Form 323-E without providing unique RUFNRs or CORES FRNs for those individuals.⁵⁷ APMG and SUNY also favor this approach, asserting that it would alleviate concerns that individuals would decline to serve on NCE boards as a result of the FRN requirement.⁵⁸ SUNY adds that NCEs could

⁵¹ See *infra* paras. 14-19.

⁵² See *infra* paras. 20-23.

⁵³ NCE Licensees Petition at 1, 4-7; Public Broadcasting Parties Petition at 4-5; see SUNY Petition at 1-2 (supporting the NCE Licensees Petition); APMG Petition at 3 (asserting that "[b]road consensus among public media entities that [the FRN requirement] will be damaging is irrefutable"); see also Alabama Trustees Comments at 2-3 (asserting that the Commission dismissed NCE's claims "without any countervailing evidence"); APTS et al. Comments at 4-5 (supporting the NCE Licensees Petition).

⁵⁴ NCE Licensees Petition at 1, 4-6; Public Broadcasting Parties Petition at 5-6.

⁵⁵ NCE Licensees Petition at 7-8; see also APTS et al. Comments at 4-5 (supporting the NCE Licensees Petition).

⁵⁶ NCE Licensees Petition at 8-10.

⁵⁷ *Id.* at 9-10 (discussing Letter from Scott Blake Harris, Counsel to the University of Michigan, to Marlene H. Dortch, Secretary, FCC (filed Dec. 7, 2015) (Univ. of Mich. Dec. 7, 2015 *Ex Parte* Letter)); see Univ. of Mich. Dec. 7, 2015 *Ex Parte* Letter at 1 (suggesting that public educational institutions that own radio stations be allowed to provide demographic information about their governing board members without reporting a unique RUFNR or CORES FRN for those individuals). The NCE Licensees state that this proposal could be expanded to apply to other NCEs, including other public sector licensees (e.g., state public broadcasting commissions) and private non-profit/non-stock licensees (e.g., private educational institutions and charitable community organizations). NCE Licensees Petition at 9.

⁵⁸ APMG Petition at 4; SUNY Petition at 6.

certify the accuracy of the information reported on Form 323-E and, if necessary, the Commission could conduct random audits to verify that the information is accurate.⁵⁹

16. Contrary to petitioners' assertions, the Commission did not ignore record evidence that the FRN requirement would be unduly burdensome for NCE stations.⁶⁰ Rather, the Commission found that the record contained no evidence that the FRN requirement would significantly inhibit individuals from serving on the boards of NCEs,⁶¹ and the petitioners have failed to introduce such evidence. In particular, neither the petitioners nor any other participant in this proceeding have provided any facts or other information demonstrating that existing or potential NCE board members have resigned or declined to serve as a result of having to disclose the type of information required to obtain a CORES FRN or RUFNR.⁶² The petitioners merely point to earlier wholly unsupported assertions that the FRN requirement would discourage participation on NCE boards without providing any substantiating facts or other information to support their claims.⁶³ However, as discussed below, the Commission considered and rejected these assertions in the *323 and 323-E Order*. Such assertions amount to nothing more than allegations; the petitioners have failed to provide any supporting evidence in the form of declarations, surveys, or other documentation showing that their concerns are not merely speculative.⁶⁴ Absent any evidence demonstrating that NCE board members have resigned or declined to serve—or are likely to do so—as a result of having to disclose confidentially the type of information required to obtain an RUFNR, there is no record evidence that the requirement that licensees report a CORES FRN or RUFNR for individuals holding attributable interests would serve as a serious disincentive to participation in NCE station governance.

⁵⁹ SUNY Petition at 6.

⁶⁰ See APMG Petition at 3; NCE Licensees Petition at 1, 4-7; Public Broadcasting Parties Petition at 4-5; SUNY Petition at 1-2; see also Alabama Trustees Comments at 2-3 (asserting that the Commission dismissed NCE's claims "without any countervailing evidence"); APTS et al. Comments at 4-5 (supporting the NCE Licensees Petition).

⁶¹ *323 and 323-E Order*, 31 FCC Rcd at 429, n.207.

⁶² As stated in the *323 and 323-E Order*, an individual does not need to provide his or her personal information to anyone other than the Commission to obtain a CORES FRN or RUFNR. The individual can provide that information to the Commission alone and then provide the CORES FRN or RUFNR to the licensee for reporting purposes. The underlying identifying information will be stored confidentially and securely within CORES, and only the individual's name and FRN will be available publicly. *Id* at 416, 427-28, paras. 36, 55.

⁶³ As we discuss below, the Commission fully considered such arguments in the *323 and 323-E Order* and found that other information in the record indicated that the FRN requirement would not significantly inhibit individuals from serving on the boards of NCEs. See *infra* paras. 17-18. In addition, we note that the information required to obtain an FRN (CORES FRN or RUFNR) is similar to information already required to be a board member/regent at some universities. See, e.g., Office of Governor Edmund G. Brown, Jr., Appointments Application, <https://govnews.gov.ca.gov/gov39app/index.php> (last visited Dec. 20, 2016) (requiring the full name, date of birth, full SSN, and residential address of a person who applies for an appointment to a position in the California state government, including a regent of the University of California).

⁶⁴ See, e.g., NCE Licensees Petition at 5 (citing a commenter's earlier, unsubstantiated, claim that one NCE board member resigned in order to avoid having to disclose his full SSN to the Commission for purposes of reporting a CORES FRN on Form 323); *id.* at 6 (citing a commenter's earlier claim that he would not have served as an NCE board member had he been required to disclose "personal information"). As stated above, these claims are not supported by affidavits or declarations demonstrating that they are more than mere speculation. Moreover, the Commission has already addressed the concerns raised in these comments. In direct response to concerns regarding SSNs, the Commission adopted the RUFNR option for NCE board members and other attributable individuals, which will not require applicants to submit a full SSN to the Commission. *323 and 323-E Order*, 31 FCC Rcd at 427, para. 55. Also, as noted above, the attributable individual need not share any of the personally identifying information with anyone other than the Commission, and the Commission will store the personal information confidentially and securely. See *supra* note 62.

17. Based on the existing reporting requirements for NCEs and details about the RUFNRN system that the Commission provided when it initially proposed to adopt the RUFNRN, the *323 and 323-E Order* reasonably rejected unsubstantiated assertions that the FRN requirement would discourage individuals from serving as NCE board members.⁶⁵ Specifically, the Commission noted that officers and directors of NCE stations are already reported as attributable interest holders on the existing version of Form 323-E⁶⁶ and that registering for a new CORES FRN or RUFNRN will require applicants to complete once a short online form requiring only a few pieces of information.⁶⁷ The Commission also noted that “each attributable [individual] [will] ha[ve] the option of obtaining either a CORES FRN, requiring submission of an SSN to the Commission, or an RUFNRN, requiring submission of other limited personal information, including only the last four digits of the SSN.”⁶⁸ Further, the Commission noted that it “will house the [underlying FRN] information confidentially and securely”⁶⁹ and that attributable individuals will be able to provide their personal information directly to the Commission.⁷⁰ Attributable individuals will need to provide only the CORES FRN or RUFNRN to the licensee for reporting purposes.⁷¹ Furthermore, the Commission also noted that “[o]ur rules . . . allow officers and directors to be exempted from attribution in limited circumstances”⁷² and the standards for such exemptions apply in the NCE context,⁷³ which means that some NCE board members may not have to obtain a CORES FRN or RUFNRN in any event if they are exempt from attribution under the applicable standards.⁷⁴ Consistent with the Commission’s conclusion in the *323 and 323-E Order*, these facts indicate that registering for a CORES FRN or RUFNRN will be a one-time process that takes just a few moments to complete and will not require individuals to share personally identifying information with anyone other than the Commission.⁷⁵

⁶⁵ See *323 and 323-E Order*, 31 FCC Rcd at 427-28, para. 55 (“We are not persuaded that the [FRN] requirement will significantly inhibit individuals from serving on the boards of NCEs.”).

⁶⁶ *Id.* (“[T]he individuals at issue are already attributable interest holders in NCE stations and they are already identified as such on Form 323-E.”).

⁶⁷ *Id.* (“[T]he process for obtaining a CORES FRN or RUFNRN is quite simple and will only need to be done once.”); see also *id.* at 417, para. 36 (“An individual need only fill out a short online form requiring just a few pieces of information: a name, address, birth date, and the last for digits of the SSN.”).

⁶⁸ *Id.* at 427, para. 55.

⁶⁹ *Id.*

⁷⁰ *Id.* (“The attributable individual need not share any of the personally identifying information with anyone other than the Commission; he or she may obtain the FRN number directly from the Commission and provide only the FRN to the licensee and the public.”).

⁷¹ *Id.*

⁷² *Id.* at 424, para. 50.

⁷³ *Id.* (“We reiterate that our attribution standards, including the standards applicable to attribution exemptions for officers and directors, apply to both commercial and NCE stations.”).

⁷⁴ See 47 CFR § 73.3555, Note 2(g).

⁷⁵ *323 and 323-E Order*, 31 FCC Rcd at 417, 427-28 paras. 36, 55. Contrary to some petitioners’ assertions, the Commission did not rely on the Corporation for Public Broadcasting (CPB)’s collection of demographic information to conclude that the FRN requirement will not be burdensome in the NCE context. Rather, the Commission referenced the CPB’s collection of demographic information as evidence refuting the assertion that requiring NCEs to provide similar information regarding race and gender on Form 323-E would be burdensome or discourage participation in NCE governance. The Commission noted further that the record did not indicate that the CPB reporting was burdensome or discouraged participation. *Id.* at 425, para. 51. With respect to the FRN requirement, as discussed above, the Commission concluded that the process for obtaining a CORES FRN or RUFNRN is quite simple and will only need to be done once, and that the lead time between the release of the *323 and 323-E Order* and the 2017 biennial filing window should be sufficient for NCE filers to coordinate with attributable interest holders for purposes of obtaining the information needed to report a valid CORES FRN or RUFNRN as required. *Id.*

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Further, this evidence suggests that there are at most *de minimis* costs or burdens associated with obtaining an FRN, and a mechanism exists for excluding any individuals that are exempt from attribution.⁷⁶ Thus, contrary to what some petitioners contend, the Commission offered a reasoned explanation for its conclusion that the FRN requirement (including the option to use an RUFN) would not significantly inhibit individuals from serving on the boards of NCE stations.⁷⁷ Because the petitioners and supporting commenters have introduced no evidence indicating otherwise, they have failed to identify a material error, omission, or other reason warranting reconsideration of this issue.⁷⁸

18. In addition, contrary to what some petitioners suggest,⁷⁹ the *323 and 323-E Order* did not conclude that all NCE attributable interest holders would voluntarily provide the information needed to report a valid CORES FRN or RUFN and that no board member would decline a filer's request for such information. While the Commission noted its expectation that individuals and entities will comply with the Commission's rules,⁸⁰ the Commission also confirmed that Special Use FRNs (SUFNRs)⁸¹ will be available for use on Form 323-E where an attributable individual still refuses to provide a means of reporting a valid CORES FRN or RUFN even after the filer has used reasonable and good-faith efforts as discussed in the *323 and 323-E Order*.⁸² The Commission decided to retain the availability of the SURFN specifically for the limited purpose of allowing filers to submit reports in situations where a board member flatly refuses to provide a means of reporting a valid CORES FRN or RUFN. Thus, the Commission considered and made allowance for the possibility that some attributable interest holders might decline to provide the information needed to report a valid CORES FRN or RUFN; therefore,

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The Commission also concluded that the use of CORES FRNs and FRNs on Forms 323 and 323-E will enable the Commission to make certain modifications to the forms that will reduce the burdens on all filers. *See id.* at 417, para. 36.

⁷⁶ *Id.* at 417, para. 36. We note that the Commission has significant expertise and experience regarding the FRN registration process. As discussed above, the Commission considered facts about the CORES registration process in the *323 and 323-E Order* and found that those facts indicated that the FRN requirement would not be a serious disincentive to participation in NCE station governance. Thus, those who assert that the Commission had no basis in its expertise and experience to reject commenters' unsupported claims to the contrary are wrong. *See* NCE Licensees Petition at 7-8 (arguing that the burdens imposed on NCEs by the FRN requirement is not a matter within the Commission's expertise and therefore the decision to apply the FRN requirement to NCEs would not be entitled to deference by a reviewing court); *see also* APTS et al. Comments at 4-5 (supporting the NCE Licensees' argument that the Commission lacks the expertise to reject assertions that the FRN requirement would be burdensome in the NCE context).

⁷⁷ *323 and 323-E Order*, 31 FCC Rcd at 417, 427-28 paras. 36, 55; *see* NCE Licensees Petition at 1, 4-6; Public Broadcasting Parties Petition at 5-6.

⁷⁸ 47 CFR § 1.429(l).

⁷⁹ *See, e.g.*, Public Broadcasting Parties Petition at 6.

⁸⁰ *323 and 323-E Order*, 31 FCC Rcd at 416, para. 35 (“[W]e expect that individuals and entities will comply with our rules and provide accurate information during the CORES registration process to the greatest extent possible.”).

⁸¹ The SUFRN is “a computer-generated number [that] [is] created [when a filer] click[s] a button within Form 323 . . . and [is] not backed by any identifying information.” *Id.* at 413, para. 29.

⁸² *Id.* at 428-29, para. 57 (“We confirm that SUFRNs will remain available for the limited purpose of protecting the position of filers in the case of interest holders that refuse to obtain an FRN or provide the licensee with the information necessary to generate an FRN for the interest holder.”). In such circumstances, the filer will be exempt from enforcement action if the filer substantiates that it has used reasonable and good-faith efforts to comply with the reporting requirements as described in the *Order*. *Id.* In response to concerns about identity theft, the Commission noted that its systems currently safely house a significant amount of information that is the same, similar, or—in the case of full SSNs—even more sensitive than the information underlying the RUFN. The Commission also discussed existing safeguards and improvements that have been implemented to assure the security of the Commission's systems and noted that it was unaware of any breaches to CORES. *Id.* at 419-20, para. 41.

petitioners have failed to identify a material error, omission, or other reason warranting reconsideration by the Commission.⁸³

19. We also reject assertions that the Commission failed to consider an alternative proposal for collecting data from NCE stations that would fully satisfy the Commission's need for comprehensive data on minority and female ownership of broadcast stations.⁸⁴ The petitioners cite a proposal put forward by the University of Michigan that the Commission allow public educational institutions that own radio stations to report demographic information about their governing board members without providing unique CORES FRNs or RUFNRNs for those individuals, arguing that this approach should also apply to other NCEs.⁸⁵ In the *323 and 323-E Order*, the Commission considered and rejected this approach and the expanded version that the petitioners continue to advocate in their requests for reconsideration.⁸⁶ The Commission specifically dismissed claims that the use of CORES FRNs and RUFNRNs on Form 323-E is not necessary to help ensure the reliability of the Commission's broadcast ownership data.⁸⁷ The Commission concluded that having "a unique identifier for each individual attributable interest holder is necessary to make the NCE data aggregable, machine readable, and searchable in the same manner as [the ownership information the Commission collects from] commercial broadcast station[s]."⁸⁸ The Commission also concluded that the prescribed use of CORES FRNs and RUFNRNs "enable[d] the Commission to make certain modifications to broadcast ownership reporting that will reduce the burdens on all filers" and thereby "further improve the quality of the ownership data submitted to the Commission."⁸⁹ Because the petitioners' "alternative" approach omits the unique identifier requirement, which the Commission has concluded is crucial to the quality and usability of its broadcast ownership data, their approach would not satisfy the Commission's need for complete and reliable broadcast ownership information.⁹⁰ Accordingly, we reject assertions that the Commission failed

⁸³ 47 CFR § 1.429(l); *see, e.g.*, NCE Licensees Petition at 7; Public Broadcasting Parties Petition at 6-7. As noted above, while filers may require additional time and effort to coordinate with attributable interest holders the first time they file revised Form 323-E, the Commission found that the lead time between the release of the *323 and 323-E Order* and the 2017 filing window should be sufficient for this purpose. *See supra* note 75.

⁸⁴ *See* APMG Petition at 4; NCE Licensees Petition at 8-10; SUNY Petition at 6. APTS et al. contend that the Commission has no need to apply the FRN requirement in the NCE context given the availability of general race, ethnicity, and gender information from CPB regarding the board members of CPB-funded stations. APTS et al. Comments at 6-7. The Commission considered and rejected this approach in the *323 and 323-E Order*, concluding that, for various reasons, the CPB data collection cannot be used as a substitute for the data collected on Form 323-E. *See 323 and 323-E Order*, 31 FCC Rcd at 425-26, n.188; *id.* ("For example, CPB does not collect information from all NCE stations; CPB data does not contain the same level of detail necessary to provide the snapshot of ownership data to effectively study and analyze ownership trends together with Form 323 data; there is no way to incorporate CPB's data into LMS to create a searchable and aggregable database; and there is no public access to CPB's underlying data to permit analysis and study.").

⁸⁵ *See supra* para. 15 & note 57.

⁸⁶ *See 323 and 323-E Order*, 31 FCC Rcd at 426, para. 53 ("While some commenters support our conclusion that RUFNRNs are essential to allow analysis of the data, other commenters dispute that position." (citing, *inter alia*, Univ. of Mich. Dec. 7, 2015 *Ex Parte* Letter at 1-2)); *id.* at 427, para. 54 ("We believe a unique identifier for each individual attributable interest holder is necessary to make the NCE data aggregable, machine readable, and searchable in the same manner as commercial broadcast station information.").

⁸⁷ *See supra* note 86.

⁸⁸ *323 and 323-E Order*, 31 FCC Rcd at 427, para. 54.

⁸⁹ *Id.* at 417, para. 36.

⁹⁰ We note that the existing versions of Forms 323 and 323-E already require respondents to certify the accuracy and completeness of the information they report on the forms. FCC Form 323-E, Ownership Report for Noncommercial Broadcast Stations (June 2002), <https://transition.fcc.gov/Forms/Form323-E/323e.pdf>; FCC Form 323, Ownership Report for Commercial Broadcast Stations (March 2013), <https://transition.fcc.gov/Forms/Form323/323.pdf>.

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to consider an alternative approach that would fully satisfy its need for comprehensive ownership data and find that petitioners have failed to identify a material error, omission, or other reason warranting reconsideration by the Commission.⁹¹

20. *The Petitioners Have Identified No Reason Warranting Reconsideration of the Commission's Conclusion that Sections 257 and 309(j) Support the FRN Requirement in the NCE Context.* Some petitioners argue that the Commission erred in concluding that Section 257 of the 1996 Act and Section 309(j) of the Act support the Commission's decision to apply the FRN requirement to NCEs.⁹² They assert that the Commission cannot plausibly interpret Section 257 as authorizing an FRN requirement in the NCE context for purposes of fulfilling the statute's mandate to report to Congress on certain market entry barriers for entrepreneurs and other small businesses.⁹³ The petitioners question whether this mandate applies to NCE broadcasting.⁹⁴ They contend that none of the Commission's Section 257 reports has discussed market entry barriers to NCE broadcasting and that it would be inconsistent for the Commission to find that Section 257 applies in the NCE context.⁹⁵ In addition, the NCE Licensees argue that Section 309(j), which authorizes the Commission to award certain licenses and construction permits by competitive bidding, does not apply to NCE stations because Section 309(j)(2)(c) exempts such stations from competitive bidding.⁹⁶

21. As the Commission explained in the *323 and 323-E Order*, Section 257 directs the Commission, in identifying and eliminating market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services, to "promote

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Despite this certification requirement, Commission staff still found inaccuracies in the biennial ownership data submitted on Form 323 in previous years. *See 323 and 323-E Order*, 31 FCC Rcd at 406-07, para. 15 ("In preparing the[] [2012 and 2014 323 Reports], Commission staff observed difficulties with, and errors within, the broadcast ownership data submitted to the Commission."); *id.* at 427, para. 54 ("As described above, the Commission's experience with the commercial biennial ownership reports from 2009, 2011, and 2013 revealed that use of SUFRNs is not workable to create data reliability and the record of this proceeding offers no reason to believe that use of SUFRNs in broadcast ownership reports for NCE stations would likely be any more successful."). Therefore, contrary to SUNY's assertion, requiring filers to certify the accuracy of the ownership information they report—without also providing unique identifiers for their attributable interest holders—is not sufficient to ensure the reliability and utility of the Commission's ownership data. *See supra* para. 15 & note 59.

⁹¹ 47 CFR § 1.429(l); *see* APMG Petition at 3-4; NCE Licensees Petition at 1, 4-10; Public Broadcasting Parties Petition at 4-6; SUNY Petition at 1-2, 6.

⁹² NCE Licensees Petition at 10-12; Public Broadcasting Parties Petition at 7, n.6; *see also* APTS et al. Comments at 3-4 (arguing that the Commission "erred" in citing Sections 257 and 309(j) as authorizing the FRN requirement in the NCE context).

⁹³ NCE Licensees Petition at 11-12; Public Broadcasting Parties Petition at 7, n.6. In addition to the reporting obligation, Section 257 directs the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services." 47 U.S.C. § 257; *see 323 and 323-E Order*, 31 FCC Rcd at 412, para. 26.

⁹⁴ NCE Licensees Petition at 12; Public Broadcasting Parties Petition at 7, n.6; *see also* APTS et al. Comments at 4 (arguing that Section 257 provides no basis for regulating NCEs).

⁹⁵ NCE Licensees Petition at 12; Public Broadcasting Parties Petition at 7, n.6. On the other hand, the NCE Licensees contend that, in the event Section 257 applies to NCE stations, the record in this proceeding demonstrates that extending the FRN requirement to NCEs is a "regulatory barrier" that should be eliminated. NCE Licensees Petition at 12, n.27.

⁹⁶ NCE Licensees Petition at 11 (citing *Nat'l Pub. Radio, Inc. v. FCC*, 254 F.3d 226 (D.C. Cir. 2001)); *see also* APTS et al. Comments at 3 & n.9 (arguing that Section 309(j) exempts NCEs from the competitive bidding authority it grants the Commission).

the policies and purposes of [the Act] favoring diversity of media voices.”⁹⁷ Similarly, Section 309(j) directs the Commission, in resolving mutually exclusive applications for commercial broadcast licenses by competitive bidding, to promote the public policy of “avoiding excessive concentration of licenses” by “disseminating licenses among a wide variety of applicants, including . . . businesses owned by members of minority groups and women.”⁹⁸ The statute further requires that the Commission “ensure that . . . businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.”⁹⁹ In the *323 and 323-E Order*, the Commission concluded that it must have information about minority and female ownership in broadcasting as a whole—including “the entire universe of NCE stations”—to fulfill its statutory mandates under Sections 257 and 309(j).¹⁰⁰ The Commission noted that GAO and outside researchers have criticized the Commission specifically for its failure to collect race, gender, and ethnicity information from NCE stations, and that many have described its prior broadcast ownership data collections as incomplete.¹⁰¹ The Commission concluded that NCE stations must be included in the ownership data the Commission collects to enable the Commission to construct a complete picture of minority and female participation in broadcasting in order to effectively study and analyze ownership trends in support of policy initiatives that further the diversity mandates of Sections 257 and 309(j).¹⁰²

22. In addition to concluding that it must collect comprehensive ownership data in order to fulfill its statutory mandates, the Commission further concluded that it is imperative that these data also be reliable, aggregable, and usable for study and analysis.¹⁰³ Noting GAO’s observation that “more accurate, complete, and reliable [broadcast ownership] data would allow [the Commission] to better assess the impact of its rules and regulations,”¹⁰⁴ the Commission concluded that it must be able to uniquely identify individuals and entities reported on broadcast ownership reports for purposes of creating reliable and usable data in support of Commission policy initiatives to promote diversity to further the

⁹⁷ *323 and 323-E Order*, 31 FCC Rcd at 412, para. 26 (quoting 47 U.S.C. § 257(b)); *see also* 47 U.S.C. § 257.

⁹⁸ *323 and 323-E Order*, 31 FCC Rcd at 412, para. 27 (quoting 47 U.S.C. § 309(j)(3)(B)); *see also* 47 U.S.C. § 309(j).

⁹⁹ *323 and 323-E Order*, 31 FCC Rcd at 412, para. 27 (quoting 47 U.S.C. § 309(j)(4)(D)); *see also* 47 U.S.C. § 309(j). In addition, it is well established that the Commission has wide latitude to collect information necessary to discharge its functions. *See, e.g., 2014 Quadrennial Review R&O*, 31 FCC Rcd at 10015, para. 356 (citing *Stahlman v. FCC*, 126 F.2d 124, 128 (D.C. Cir. 1942)); 47 U.S.C. §§ 303(j), 303(r), 308(b), 309(a)); *see also* 47 U.S.C. § 403 (“The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing . . . concerning which any question may arise under any of the provisions of this chapter . . .”).

¹⁰⁰ *323 and 323-E Order*, 31 FCC Rcd at 421, para. 45 (“The Commission has previously found that, in order to adopt policies or regulations to promote minority and female ownership of broadcast stations, it is imperative to have information about female and minority ownership in broadcasting as a whole—specifically including the entire universe of NCE stations.” (internal quotations omitted)). The Commission explained this rationale in 2009 when it revised the Form 323 and first proposed adopting similar revisions for the Form 323-E. *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896, 5897, para. 1 (2009) (“Unfortunately, the Commission currently does not possess reliable data on the precise status of minority and female ownership—data that we will need to establish and maintain effective policies over time. . .”).

¹⁰¹ *323 and 323-E Order*, 31 FCC Rcd at 425, para. 51 (citing GAO Report at 4); *id.* at 421, para. 45 & n.163.

¹⁰² *See id.* at 425, para. 51 (“As a result of our commitment to obtaining robust and complete ownership data concerning minority and female participation in broadcasting, we believe that the collection of [race and gender] information about the NCE station category is necessary.”).

¹⁰³ *Id.* at 413, para. 28.

¹⁰⁴ *Id.* at 400, para. 4 (quoting GAO Report at 5).

mandates of Sections 257 and 309(j).¹⁰⁵ Because CORES FRNs and RUFNRs are unique identifiers that can be cross referenced easily, the Commission concluded that those identifiers must be used on Forms 323 and 323-E to ensure that the broadcast ownership data the Commission collects is not only comprehensive but also reliable and usable for studies and trend analyses.¹⁰⁶ The Commission concluded that collecting such comprehensive, reliable ownership data “enables the Commission not only to assess the current state of minority and female ownership of broadcast stations but also to determine the success of programs that are designed to [further the Commission’s statutory mandates to] facilitate opportunities for women- and minority-owned businesses and to promote a diversity of media voices.”¹⁰⁷

23. The petitioners have failed to identify grounds warranting reconsideration of the Commission’s conclusion that Sections 257 and 309(j) support its decision to apply the FRN requirement to NCEs.¹⁰⁸ While some petitioners assert that Section 257 does not address entry barriers in the NCE context,¹⁰⁹ the petitioners do not identify anything in the statute that would bar the Commission from collecting the comprehensive, reliable data it needs to effectively study and analyze ownership trends in support of policy initiatives that promote a “diversity of media voices.”¹¹⁰ Similarly, although Section 309(j) exempts NCE stations from the competitive bidding authority that provision grants the Commission,¹¹¹ the petitioners identify nothing in the statute that would preclude the Commission from collecting complete and reliable information about minority and female ownership of broadcast stations—including NCE stations—in order to fulfill its mandate to “avoid[] excessive concentration of licenses” and “disseminat[e] licenses among a wide variety of applicants, including . . . businesses owned by members of minority groups and women.”¹¹² By failing to identify anything in the statutes or any other relevant authority that would prohibit the Commission from collecting ownership information from NCE stations, the petitioners fail to identify a material error, omission, or other reason warranting reconsideration of the Commission’s conclusion that collecting such data is necessary “to effectively study and analyze ownership trends, to assess the impact of the Commission’s existing rules, and to provide a foundation for adopting new rules” that further the diversity mandates of Sections 257 and 309(j).¹¹³

¹⁰⁵ *Id.* at 412, para. 25.

¹⁰⁶ *See id.* at 427, para. 54 (“We believe a unique identifier for each individual attributable interest holder is necessary to make the NCE data aggregable, machine readable, and searchable . . .”).

¹⁰⁷ *Id.* at 412-13, para. 28.

¹⁰⁸ *See* NCE Licensees Petition at 11-12; Public Broadcasting Parties Petition at 7, n.6; *see also* APTS et al. Comments at 3-4.

¹⁰⁹ NCE Licensees Petition at 11-12; Public Broadcasting Parties Petition at 7, n.6; *see also* APTS et al. Comments at 4.

¹¹⁰ 47 U.S.C. § 257; *see also* NCE Licensees Petition at 11-12; Public Broadcasting Parties Petition at 7, n.6; APTS et al. Comments at 4. We reject the NCE Licensees’ contention that in the NCE context the FRN requirement is a regulatory barrier that should be eliminated pursuant to Section 257. *See* NCE Licensees Petition at 12, n.27. This argument was not raised previously in this proceeding, and the petitioners have failed to make any showing that this argument is due to changed circumstances, or was unknown or could not have been discovered through the use of ordinary diligence prior to issuance of the *323 and 323-E Order*, or that its consideration would serve the public interest, as provided by Section 1.429(b) of the Commission’s rules. 47 CFR § 1.429(b). Notwithstanding our decision to dismiss this argument pursuant to Section 1.429(b), we note that the Commission concluded that there are at most *de minimis* costs or burdens associated with the requirement as discussed above. *See supra* paras. 16-18.

¹¹¹ *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Memorandum Opinion and Third Order on Reconsideration, 23 FCCR 17423, 17425-26, para. 8 (2008).

¹¹² 47 U.S.C. § 309(j)(3)(B); *see also* NCE Licensees Petition at 11; APTS et al. Comments at 3 & n.9.

¹¹³ *323 and 323-E Order*, 31 FCC Red at 399, para. 2; *see also* NCE Licensees Petition at 11-12; Public Broadcasting Parties Petition at 7, n.6; APTS et al. Comments at 3-4.

IV. ORDERING CLAUSES

24. ACCORDINGLY, **IT IS ORDERED**, pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.429(*l*) of the Commission's rules, 47 CFR § 1.429(*l*), that the petitions for reconsideration filed by the American Public Media Group, the NCE Licensees, the Public Broadcasting Parties, and Lisa S. Campo on behalf of the State University of New York, **ARE DISMISSED to the extent stated in footnotes 46 and 110 AND OTHERWISE ARE DENIED** for the reasons stated herein.

25. **IT IS FURTHER ORDERED** that this Order on Reconsideration **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau