

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

In the Matter of )
Promoting Diversification of Ownership in the ) MB Docket No. 07-294
Broadcasting Services )
Amendment of Part 1 of the Commission's Rules, ) MD Docket No. 10-234
Concerning Practice and Procedure, Amendment of )
CORES Registration System )

ORDER ON RECONSIDERATION

Adopted: April 20, 2017

Released: April 21, 2017

By the Commission: Chairman Pai and Commissioner O'Rielly issuing separate statements; Commissioner Clyburn dissenting and issuing a statement.

I. INTRODUCTION

1. This Order on Reconsideration (Order) grants in part, dismisses in part, and denies in part several petitions for reconsideration of the 323 and 323-E Order and provides noncommercial broadcasters with relief from the requirement that they must report a unique FCC Registration Number (FRN) for each attributable interest holder on ownership reports filed with the Commission. Currently, this requirement compels those with attributable interests in the licensee of a noncommercial educational (NCE) broadcast station—typically the officers and governing board members—to provide the Commission with identifying information, such as a social security number (SSN) or date of birth, or risk being subject to a Commission enforcement action. Because this requirement, and the prospect of enforcement action against individuals who choose not to provide their personal information to the Commission, may raise unique concerns for some noncommercial entities, today we expand the option for NCE filers to report Special Use FRNs (SUFNRs), which do not require submission of personal information, for attributable individuals.

1 Petition for Reconsideration of American Public Media Group (filed May 4, 2016) (APMG Petition); Petition for Reconsideration of the NCE Licensees (filed May 3, 2016) (NCE Licensees Petition); Petition for Reconsideration of the Public Broadcasting Parties (filed May 4, 2016) (Public Broadcasting Parties Petition); Petition for Reconsideration of Lisa S. Campo (filed May 3, 2016) (SUNY Petition) (filed on behalf of the State University of New York). The NCE Licensees are more than 60 noncommercial educational television and radio station licensees, including public and private universities, governmental entities, and local and regional nonprofit organizations. NCE Licensees Petition at 13-17. The Public Broadcasting Parties are 11 licensees of public radio and television stations and include nonprofit community organizations and public and private colleges and universities. Public Broadcasting Parties Petition at 1-2 & App. A.

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

3 See infra notes 37, 42. As discussed below, although our action today grants certain flexibility to NCEs, we retain the use of unique FRNs in the NCE context, to the extent attributable interest holders may already have, or will not object to obtaining, unique FRNs. To the extent the petitioners request that we completely eliminate unique FRNs in the NCE context, we deny the petitions for reconsideration. See infra note 37.

## II. BACKGROUND

2. Commercial and noncommercial broadcasters are required to submit ownership reports every two years and on other occasions specified in the Commission's rules.<sup>4</sup> These reports must include information about the individuals and entities that hold attributable interests in the station licensee, including officers and directors.<sup>5</sup> Commercial broadcasters submit ownership reports on FCC Form 323, and noncommercial broadcasters submit ownership reports on FCC Form 323-E.

3. The *323 and 323-E Order* revised Forms 323 and 323-E to address issues with the Commission's data collection process that were identified previously by the United States Government Accountability Office (GAO), by researchers who wish to study the Commission's ownership data, and by the Third Circuit as part of its review of the Commission's Quadrennial Review proceeding.<sup>6</sup> Among other things, the *323 and 323-E Order* revised Form 323-E to require that NCE filers provide a unique FRN generated by the Commission Registration System (CORES) for each attributable interest holder listed on Form 323-E, just as commercial broadcasters must do on Form 323.<sup>7</sup>

4. In the *323 and 323-E Order*, the Commission attempted to balance the importance of ensuring the integrity and usability of its broadcast ownership data through the use of unique identifiers

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<sup>4</sup> 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. See FCC Form 323, Instructions for Ownership Report for Commercial Broadcast Stations (Mar. 2013), <https://transition.fcc.gov/Forms/Form323/323.pdf>; FCC Form 323-E, Instructions for Ownership Report for Noncommercial Broadcast Stations (June 2002), <https://transition.fcc.gov/Forms/Form323-E/323e.pdf>; see also *Promoting Diversification of Ownership in the Broadcasting Services*, Sixth Further Notice of Proposed Rulemaking, 28 FCC Rcd 461, 463, n.13 (2013) (*Sixth Diversity Further Notice*) (discussing ownership reporting requirements for commercial broadcast stations).

<sup>5</sup> 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 core operating functions of the station, including the programming decisions of licensees. See 47 CFR § 73.3555, Note 2; see also *infra* para. 14 (discussing availability of attribution exemptions for certain officers and directors).

<sup>6</sup> *323 and 323-E Order*, 31 FCC Rcd at 399, 421, paras. 2, 45. The *323 and 323-E Order* provides a detailed discussion of the Commission's sustained efforts to address these issues by improving the quality, utility, and reliability of the data collected on Forms 323 and 323-E. *Id.* at 400-11, paras. 4-23. See also *Promoting Diversification of Ownership in the Broadcasting Services et al.*, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896, 5900-02, paras. 7-10 (2009) (*323 Order and Fourth Diversity Further Notice*) (discussing issues identified by GAO and researchers); *Sixth Diversity Further Notice*, 28 FCC Rcd at 467-68, para. 10 (discussing issues identified by the Third Circuit). While the Third Circuit in *Prometheus II* criticized the Commission for its failure to obtain the data necessary to support policy-making efforts to promote minority and female ownership of broadcast stations, it did not specifically discuss data pertaining to NCE stations. See *Prometheus Radio Project v. FCC*, 652 F.3d 431, 469-72 (3d Cir. 2011); see also *Prometheus Radio Project v. FCC*, 824 F.3d 33, 48-49 (3d Cir. 2016).

<sup>7</sup> *323 and 323-E Order*, 31 FCC Rcd at 426-28, paras. 52-55. In doing so, the Commission found that Section 257 of the Telecommunications Act of 1996 and Section 309(j) of the Communications Act authorize the Commission to collect this information from NCE stations. *Id.* at 421, para. 44. Importantly, the *323 and 323-E Order* also updated Form 323-E to collect information about the race, gender, and ethnicity of NCE attributable interest holders as proposed in the *Fourth Diversity Further Notice*, allowing the Commission to construct a much more complete picture of minority and female participation in broadcasting. *Id.* at 425-26, para. 51. These revisions addressed issues previously identified by GAO and harmonized Form 323-E with Form 323, which was revised in 2009 to collect such data. The GAO previously criticized the Commission for its failure to collect race, gender, and ethnicity information from NCE stations. 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* at 4, 20, 22 (2008), <http://www.gao.gov/products/GAO-08-383>; see also *supra* note 6.

against concerns that requiring attributable individuals to obtain a CORES FRN or RUFNR could have negative impacts on NCE stations.<sup>8</sup> In response to concerns that mandatory use of a traditional CORES FRN on Forms 323 and 323-E would require submission of individuals' full SSNs to the Commission, the *323 and 323-E Order* provided for a Restricted Use FRN (RUFNR) establishing an alternative means for obtaining a unique identifier for individual attributable interest holders that does not require disclosure of a full SSN.<sup>9</sup> To obtain an RUFNR, the applicant must submit an individual's full name, residential address, date of birth, and the last four digits of his or her SSN.<sup>10</sup> The *323 and 323-E Order* required filers to "us[e] reasonable and good-faith efforts to obtain RUFNRs [or CORES FRNs] from individuals with reportable interests," including informing individuals of "the risk of enforcement action for failing to provide an RUFNR or CORES FRN or to permit an RUFNR or CORES FRN to be obtained on their behalf."<sup>11</sup> In dissent, then-Commissioner Pai stated that he "would give more credence to those public broadcasters across the country who run the day-to-day operations of their stations," who argued that the CORES FRN/RUFNR requirement might negatively impact their ability to recruit volunteers to serve on their licensee boards.<sup>12</sup> Because, in his view, the *323 and 323-E Order's* alternative approach did not give appropriate weight to the concerns of NCE broadcasters, then-Commissioner Pai objected to the requirement that the officers and directors of NCEs provide the Commission with the information needed to obtain a CORES FRN or RUFNR. Commissioner O'Rielly also expressed concerns about the requirement.<sup>13</sup>

5. Following the release of the *323 and 323-E Order*, the American Public Media Group (APMG), the NCE Licensees, the Public Broadcasting Parties, and the State University of New York (SUNY) (together, the Petitioners) timely filed petitions for reconsideration (Petitions).<sup>14</sup> The Petitioners request that the Commission reconsider its decision to apply the CORES FRN/RUFNR requirement to Form 323-E.<sup>15</sup> The Commission did not receive any oppositions to the petitions. However, SUNY and the NCE Licensees filed replies in which they again urge the Commission to eliminate the CORES FRN/RUFNR requirement in the NCE context.<sup>16</sup> In addition, several public broadcasting organizations

<sup>8</sup> *323 and 323-E Order*, 31 FCC Rcd at 412-420, 426-28, paras. 25-42, 52-55.

<sup>9</sup> *Id.* at 412, para. 25.

<sup>10</sup> *Id.* at 415, para. 33. By contrast, an applicant must submit a full taxpayer identification number (TIN) to obtain a traditional CORES FRN. Because an individual's TIN is generally his or her SSN, an individual must submit a full SSN to obtain a traditional CORES FRN. The applicant's name and CORES FRN/RUFNR are available publicly, but the underlying identifying information is stored confidentially within the CORES database. *Id.* at 415, para. 34.

<sup>11</sup> *Id.* at 428, para. 57.

<sup>12</sup> *Id.* at 517 (Statement of then-Commissioner Pai).

<sup>13</sup> *Id.* at 518 (Statement of Commissioner O'Rielly).

<sup>14</sup> Petitions for Reconsideration of Action in Rulemaking Proceeding, 81 Fed. Reg. 31223 (May 18, 2016).

<sup>15</sup> APMG Petition at 4; NCE Licensees Petition at 1-2, 4; Public Broadcasting Parties Petition at 2, 10; SUNY Petition at 2, 4, 8. In support of their request for relief from the CORES FRN/RUFNR requirement, petitioners claim, among other things, that NCE boards are already diverse and that NCE board members should not be treated as "owners." 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."). They also claim that mandatory submission of SSNs would violate the Privacy Act, and that the Commission lacks statutory authority to require the use of CORES FRNs or RUFNRs. SUNY Petition at 6-8 (Privacy Act bars mandatory submission of SSNs); NCE Licensees Petition at 10-12 (Commission lacks statutory authority to require submission of CORES FRN/RUFNR); Public Broadcasting Parties Petition at 7 n.6 (same).

<sup>16</sup> 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). As noted above, the Commission received no oppositions to the Petitions. Nonetheless, we consider herein the additional pleadings filed by SUNY and the NCE Licensees. The additional pleadings simply summarize arguments that SUNY and the NCE Licensees raised in their petitions.

and the Board of Trustees of the University of Alabama each filed pleadings styled as “comments” in support of the petitions for reconsideration.<sup>17</sup>

6. On January 4, 2017, the Media Bureau, acting on delegated authority, released the *323-E Order*<sup>18</sup> dismissing and denying the Petitions pursuant to Section 1.429(l) of the Commission’s rules.<sup>19</sup> Subsequently, the Bureau set aside the *323-E Order* pursuant to Section 1.113 of the Commission’s rules,<sup>20</sup> concluding that it was more appropriate for the Petitions to be addressed at the Commission level.<sup>21</sup>

### III. DISCUSSION

7. As set forth below, we find that the Petitions provide valid reasons to reconsider the *323 and 323-E Order*’s decision to require filers to report a CORES FRN or RUFNR for each attributable interest holder reported on Form 323-E. We therefore provide relief to NCE filers by allowing them discretion to report SUFRNs—which do not require disclosure of an SSN, date of birth, or other personal information—for individual attributable interest holders reported on Form 323-E in cases where the attributable individual has not obtained a CORES FRN or RUFNR. Currently, NCE filers are permitted to report an SUFRN for an attributable individual only if they have used reasonable and good-faith efforts to obtain the information needed to report a CORES FRN or RUFNR, including informing an individual about the risk of enforcement action in the event that the individual chooses not to provide his or her personal information to the Commission.<sup>22</sup> On reconsideration, however, we eliminate that requirement for NCE filers.

8. We find that the Petitioners and other NCEs participating in this proceeding have raised legitimate concerns that the CORES FRN/RUFNR requirement, and the prospect of enforcement action for failing to comply with this requirement, may hinder their efforts to recruit volunteers to serve on their licensee boards and pose other unique challenges. Unlike their counterparts in the commercial context and certain not-for-profit entities, NCE governing board members are, in many cases, unpaid volunteers.<sup>23</sup> Because unpaid NCE board members receive no fee or other remuneration for their services, they lack the

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<sup>17</sup> 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 et al. (filed June 13, 2016) (APTS et al. Comments). Section 1.429 of the Commission’s rules does not provide for the filing of comments in support of petitions for reconsideration in rulemaking proceedings. See 47 CFR § 1.429. Nonetheless, we consider these pleadings herein in the interest of developing a full record and because no party would be prejudiced thereby.

<sup>18</sup> See *Promoting Diversification of Ownership in the Broadcasting Services et al.*, Order on Reconsideration, 32 FCC Rcd 17 (MB 2017) (*323-E Order*).

<sup>19</sup> 47 CFR § 1.429(l). Then-Commissioner Pai and Commissioner O’Rielly objected to the Bureau’s decision, stating that “requir[ing] board members of NCE stations to report sensitive personal information . . . will only serve to discourage these volunteers from serving their communities.” Press Release, FCC, Statement of Commissioners Ajit Pai and Michael O’Rielly on Protecting Noncommercial Educational Broadcasters from Needless Regulation (Jan. 4, 2017), <https://www.fcc.gov/document/cm-pai-orielly-protecting-noncommercial-educational-broadcasters>.

<sup>20</sup> 47 CFR § 1.113.

<sup>21</sup> *Promoting Diversification of Ownership in the Broadcasting Services et al.*, Order, 32 FCC Rcd 1078 (MB 2017). The Bureau returned the Petitions to pending status, stating that they would be considered by the Commission. Prior to the Bureau’s action setting aside its *323-E Order*, the NCE Licensees and the University of Michigan filed applications for review of the *323-E Order*. Application for Review of the NCE Licensees (filed Feb. 1, 2017); Application for Review of the University of Michigan (filed Jan. 31, 2017). Because the Bureau set aside the underlying order, we dismiss the applications for review as moot.

<sup>22</sup> *323 and 323-E Order*, 31 FCC Rcd at 427-29, paras. 55-58.

<sup>23</sup> APMG Petition at 2-3; NCE Licensees Petition at 6-7, 12, n.27; Public Broadcasting Parties Petition at 4, 8; Alabama Trustees Comments at 2, 6; APTS et al. Comments at 4; see *323 and 323-E Order*, 31 FCC Rcd at 517 (Statement of then-Commissioner Pai).



financial incentive to serve on boards that paid directors or board members have.<sup>24</sup> In the *323 and 323-E Order*, the Commission affirmed its commitment to protecting the privacy and security of personally identifiable information that the Commission collects,<sup>25</sup> and we re-affirm that commitment here. However, we recognize that some NCE licensees may face unique circumstances with respect to their ability to recruit and retain qualified individuals to serve in governance positions. We share the Petitioners' concern that individuals who are reluctant to disclose personal information may then decline to serve as unpaid board members or, to the extent they are able to do so, those already serving as unpaid board members may resign rather than risk a Commission enforcement action for failure to provide the information needed to report a CORES FRN or RUFNR.<sup>26</sup> Further, the Petitioners assert that many licensee board members—particularly those associated with colleges, universities, and state or local public broadcasting entities—are individuals chosen by public election or political appointment, or are *ex officio* members who serve by virtue of the public office they hold, such as Governor or State Superintendent of Education.<sup>27</sup> The CORES FRN/RUFNR requirement and prospect of enforcement action could pose particular challenges in instances where a public official refuses to provide the information needed to obtain a CORES FRN or RUFNR but is unable to withdraw freely from the governing board.<sup>28</sup>

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<sup>24</sup> APMG Petition at 2-3; NCE Licensees Petition at 6; Public Broadcasting Parties Petition at 4-6, 9; SUNY Petition at 5; APTS et al. Comments at 4. Indeed, the record indicates that some public broadcasters have difficulty finding qualified, committed individuals to donate their time and attention to station governance. NCE Licensees Petition at 5-6; Public Broadcasting Parties Petition at 4; *see 323 and 323-E Order*, 31 FCC Rcd at 517 (Statement of then-Commissioner Pai).

<sup>25</sup> *323 and 323-E Order*, 31 FCC Rcd 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.”). Contrary to IPR’s supposition, our action here does not presume that Commission databases are insecure and that individuals who obtain a CORES FRN or RUFNR will expose themselves to identify theft, nor are such concerns the basis for the relief we grant today. *See* Letter from Angela J. Campbell, Institute for Public Representation, to Marlene H. Dortch, Secretary, FCC, at 2 (filed Apr. 10, 2017) (IPR *Ex Parte* Letter).

<sup>26</sup> APMG Petition at 2-3; NCE Licensees Petition at 4-8; Public Broadcasting Parties Petition at 5-6, 9; SUNY Petition at 4-5; APTS et al. Comments at 4-5; *see 323 and 323-E Order*, 31 FCC Rcd at 517 (Statement of then-Commissioner Pai). According to SUNY, the CORES FRN/RUFNR requirement “would place the University in an untenable position” if a Trustee refused to provide his or her SSN “due to the risk of a breach or discomfort with sharing such a private data point.” SUNY Petition at 5. According to SUNY, “[t]he University would be left with three awful choices: (1) ask the Trustee to resign and lose the invaluable experience and expertise . . . ; (2) pay the fines assessed by the Commission; or (3) withdraw from Licensing /Permitting our 20 stations . . . .” *Id.* at 5-6; *see also id.* at 4 (suggesting that attributable individuals may still have concerns about submitting the identifying information required to obtain an RUFNR).

<sup>27</sup> NCE Licensees Petition at 7; Public Broadcasting Parties Petition at 3-4; SUNY Petition at 2-3; Alabama Trustees Comments at 4-6; APTS et al. Comments at 4; *see 323 and 323-E Order*, 31 FCC Rcd at 517, n.5 (Statement of then-Commissioner Pai). The petitioners and other NCE commenters assert that governmental board members may be reluctant to submit their personal information to the Commission because they fear being targeted by critics of their actions if the information were to become publicly available due to a security breach. *See* Alabama Trustees Comments at 4-5; *323 and 323-E Order*, 31 FCC Rcd at 517, n.5 (Statement of then-Commissioner Pai).

<sup>28</sup> NCE Licensees Petition at 7; *see also* Alabama Trustees Comments at 5 (“Politicians in elected positions which entail state university or other non-profit board membership may worry about later political ramifications of their actions. The result would be to place a board member in an untenable dilemma, which requires the member to choose between the potential safety of himself/herself and his/her family and an enforcement penalty for either the individual or his/her organization.”); APTS et al. Comments at 4 (“NCE licensees explained that the new FRN/RUFNR burdens would . . . put board members who cannot decline to serve, such as state government officials, in a particularly unique and complex bind.”). The Petitioners allege that, under the circumstances

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9. We find that the *323 and 323-E Order* erred in rejecting the valid concerns raised by NCEs regarding the potential impact that the CORES FRN/RUFRN requirement, including the threat of possible enforcement action, could have in the NCE context.<sup>29</sup> As the Petitioners note, there is consensus among NCE commenters in this proceeding that requiring NCE filers to report CORES FRNs or RUFRNs for attributable individuals and inform such individuals about the risk of enforcement action could discourage volunteers from serving on the governing boards of NCE stations and pose unique challenges for board members who are politically elected or appointed.<sup>30</sup> No commenter in this proceeding has disputed these assertions.<sup>31</sup> The Petitioners contend that these assertions are based on the reactions of unpaid board members to the Commission's actions in this proceeding to date.<sup>32</sup> The *323 and 323-E Order* should have given more credence to the concerns raised by NCE broadcasters, particularly given their representations that these concerns were based on their experience with the day-to-day operations of their stations and interactions with volunteers serving on their governing boards.<sup>33</sup>

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discussed above, the CORES FRN/RUFRN requirement could increase tension between NCE stations and their board members, cause the quality of board leadership to decrease for NCEs, and undermine NCE station operations. NCE Licensees Petition at 3, 5-8; Public Broadcasting Parties Petition at 4, 9-10; SUNY Petition at 2, 5-6 & n.9; Alabama Trustees Comments at 5; APTS et al. Comments at 4-5.

<sup>29</sup> See *323 and 323-E Order*, 31 FCC Rcd at 517 (Statement of then-Commissioner Pai). In discussing the availability of SUFRNs for both commercial and noncommercial ownership reports, the *323 and 323-E Order* went so far as to state that the Commission may take enforcement action against the filer and/or the “recalcitrant individual” in the event an SUFRN is used. *Id.* at 428-29, para. 57.

<sup>30</sup> APMG Petition at 3; NCE Licensees Petition at 4-8; Public Broadcasting Parties Petition at 5-6; SUNY Petition at 1-2, 8; APTS et al. Comments at 4-5; Alabama Trustees Comments at 2-5; see NCE Licensees Reply at 3.

<sup>31</sup> See *323 and 323-E Order*, 31 FCC Rcd at 427-28, para. 55; NCE Licensees Petition at 4-5; SUNY Reply at 2; see also *supra* para. 5 (noting that the Commission received no oppositions to the Petitions).

<sup>32</sup> NCE Licensees Petition at 3, 5.

<sup>33</sup> See *323 and 323-E Order*, 31 FCC Rcd at 517 (Statement of then-Commissioner Pai); NCE Licensees Petition at 4-8; Public Broadcasting Parties Petition at 5-6; SUNY Petition at 1-2; Alabama Trustees Comments at 2-3; APTS et al. Comments at 4-5. For example, in dismissing these assertions, the *323 and 323-E Order* did not adequately consider claims that some noncommercial entities that hold commercial station licenses previously encountered difficulties when attempting to obtain similar identifying information from board members. Compare *323 and 323-E Order*, 31 FCC Rcd at 427-28, para. 55 (concluding that the CORES FRN/RUFRN requirement would not significantly inhibit individuals from serving on the boards of NCEs), with NCE Licensees Petition at 5 (“[T]here are examples of strong objection by a senior government official serving on an NCE board and the actual resignation of a prominent NCE board member.”). Moreover, the *323 and 323-E Order* did not adequately consider whether, when faced with the prospect of a Commission enforcement action against the individual interest holder, current or prospective board-member volunteers would decline to participate on the board. Compare *323 and 323-E Order*, 31 FCC Rcd at 429, n.207 (“The commenters have offered no evidence in the record that the prospect of enforcement action for failing to comply with the RUFRN requirements adopted herein will have a chilling effect on participation in public broadcasting.”), with Public Broadcasting Parties Petition at 6 (asserting that the *323 and 323-E Order* did not consider whether unpaid board members would provide what they may regard as sensitive information as a condition of service or refuse to provide such information at the risk of enforcement action). As noted above, no party opposed the petitions for reconsideration. Parties filing as UCC et al. submitted an *ex parte* filing belatedly arguing that concerns about the chilling effect of the FRN requirement are speculative. Letter from Angela J. Campbell, Counsel for Office of Communication, Inc., of the United Church of Christ, et al., to Marlene H. Dortch, Secretary, FCC, at 3-4 (filed Apr. 13, 2017) (UCC et al. *Ex Parte* Letter). In effect, the *ex parte* is an untimely opposition to the petitions for reconsideration, and we reject it for that reason. 47 CFR 1.429(f) (oppositions to a petition for reconsideration must be filed no later than 15 days after public notice of the petition). Alternatively and independently, we reject this claim on the merits for the reasons set forth above.

10. While use of unique identifiers improves the integrity and usability of the Commission's broadcast ownership data,<sup>34</sup> we believe that the potential chilling effect on participation in NCE station governance, and the potentially deleterious effect that loss of NCE leaders could have on the noncommercial broadcast service to the public, outweigh this benefit in the NCE context.<sup>35</sup> Therefore, we conclude that the better course is to make reporting of CORES FRNs and RUFNRs optional for individuals who hold an attributable interest in an NCE station. Accordingly, NCE filers may report an SUFRN on Form 323-E for an attributable individual who has not obtained a CORES FRN or RUFNR at the time the filer submits its ownership report, without the need to first use reasonable and good-faith efforts to obtain the information needed to report a CORES FRN or RUFNR, including informing individuals about the threat of enforcement action.

11. We conclude that taking this step will address the concerns raised by the Petitioners and NCE commenters in this proceeding. Unlike registering for a CORES FRN or RUFNR, obtaining an SUFRN does not require submission of any personal information, be it an SSN, date of birth, or residential address. Filers can generate an SUFRN simply by clicking a button within the electronic Form 323-E as the noncommercial ownership report is being prepared. Use of an SUFRN therefore does not involve any of the types of information that the Petitioners and other NCE commenters assert would discourage participation in NCE station governance.<sup>36</sup> By allowing NCE filers to report SUFRNs without first using reasonable and good-faith efforts to obtain the information needed to report a CORES FRN or RUFNR, we will avoid the potential chilling effect that the prospect of enforcement action could have on participation in NCE station governance for unpaid board members who choose not to provide their personal information to the Commission.

12. We find that our action today properly balances the need to improve the integrity and usability of the Commission's broadcast ownership data with the public interest in avoiding the potential chilling effect that a mandatory reporting requirement could have on participation in NCE station governance.<sup>37</sup> In particular, we expect that allowing NCE filers greater flexibility to report SUFRNs will not delay or significantly limit the value of our data collection. Because expanded use of SUFRNs on Form 323-E will not require significant changes to the revised form, we do not believe that our action today will delay implementation of revised Form 323-E. Moreover, we expect that, due to the nature of our ruling, the use of SUFRNs and the resulting collective impact on our broadcast ownership data will be limited. In this regard, we emphasize that our ruling today applies only to noncommercial broadcasters. Commercial broadcasters remain subject to the CORES FRN and RUFNR requirements set forth in the

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<sup>34</sup> *323 and 323-E Order*, 31 FCC Rcd at 412-17, 426-28, paras. 25-36, 52-55; *see supra* para. 4.

<sup>35</sup> Commenters claim that difficulties retaining or attracting qualified individuals to serve in leadership positions will adversely affect station operations. *See Public Broadcasting Parties Petition* at 9 (CORES FRN/RUFNR requirement would make it difficult for NCE licensees "to assemble effective and competent boards that are critical to successful operation in a challenging environment."); *id.* at 4 (many members of NCE community group boards "provide important financial support" to licensees); *NCE Licensees Petition* at 5 (disincentives created by the FRN requirement will "undermine the ability of NCE licensees to perform their missions"; losing qualified individuals "would exact a heavy toll public broadcasting").

<sup>36</sup> *See NCE Licensees Petition* at 4-6; *Public Broadcasting Parties Petition* at 4-5; *SUNY Petition* at 2; *APTS et al. Comments* at 2, 4-5.

<sup>37</sup> *See IPR Ex Parte Letter* at 1-2 (expressing concerns about the effect of our decision on data integrity). In the *323 and 323-E Order*, the Commission concluded that requiring unique identifiers for parties that hold attributable interests in broadcast stations helps ensure that the Commission's ownership data is reliable and usable for studies and analyses. *323 and 323-E Order*, 31 FCC Rcd at 412-17, 426-28, paras. 25-36, 52-55. We affirm these conclusions and deny the Petitions to the extent they suggest that we abandon entirely the use of CORES FRNs and RUFNRs in the NCE context. *See NCE Licensees Petition* at 8-10; *Alabama Trustees Comments* at 7. In light of the relief afforded by our action herein expanding the option to use SUFRNs on Form 323-E, there is no justification for removing the option for NCE filers to report a CORES FRN or RUFNR for attributable individuals on Form 323-E.

*323 and 323-E Order*.<sup>38</sup> Further, because SUFRNs are available only for *individuals*, unique FRNs will be reported for *entities* on Forms 323 and 323-E.<sup>39</sup> Importantly, as we have previously emphasized, filers that report an SUFRN for an attributable individual must do so consistently.<sup>40</sup> If an SUFRN was reported previously for an individual and the individual does not have a CORES FRN or RUFNR, the filer must use the same SUFRN that was reported previously for that individual. Furthermore, if an individual is reported on multiple reports, the filer must ensure that the same SUFRN is reported consistently for that individual, assuming that the individual does not have a CORES FRN or RUFNR. Finally, the Commission's prior decision to collect data on the race, ethnicity, and gender of individuals holding attributable interests in NCE licensees remains undisturbed, and this data will be available to the Commission and researchers for purposes of evaluating ownership diversity issues.<sup>41</sup>

13. In addition, although we are expanding the option to use SUFRNs on Form 323-E, in many cases an NCE filer will continue to nonetheless report a CORES FRN or RUFNR for an attributable individual. For instance, some individuals with attributable interests in NCE stations may not object to obtaining a CORES FRN or RUFNR. Also, if an individual with an attributable interest in an NCE station has already obtained a CORES FRN or RUFNR for another reason (for example, because the individual also appears on one or more commercial Form 323 filings), filers must report that FRN for the individual on Forms 323 and 323-E. In such circumstances, use of the CORES FRN or RUFNR could not be expected to have a chilling effect on the individual's participation in NCE station governance.<sup>42</sup> This further supports our conclusion that expanded use of SUFRNs on Form 323-E will have a limited collective impact on our data collection.

14. In opposing the CORES FRN/RUFNR requirement, some commenters to this proceeding<sup>43</sup> suggest that certain individuals serving on NCE boards may be uninvolved with the

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<sup>38</sup> *323 and 323-E Order*, 31 FCC Rcd at 411-20, 428-29, paras. 25-42, 56-58. In the *323 and 323-E Order*, the Commission noted that, in the limited cases where a non-profit entity holds a commercial license, the Commission will deem the filing of Form 323-E, in accordance with the standards set forth in the *Order*, compliant with the Commission's biennial filing obligation in those circumstances and the non-profit entity would not be required to file Form 323. *Id.* at 424, n.175. Accordingly, we will deem the filing of Form 323-E, in accordance with the standards set forth herein and in the *323 and 323-E Order*, compliant with our biennial reporting requirement where a non-profit entity holds a commercial license. *See* Alabama Trustees Comments at 2 (asserting that the concerns raised by the Petitions may also apply to non-profit entities that operate commercial stations).

<sup>39</sup> *323 and 323-E Order*, 31 FCC Rcd at 403-404, 426, 428-29, paras. 10, 56-58 & n.191.

<sup>40</sup> *Id.* at 404, para. 10 & n.41.

<sup>41</sup> *See 323 and 323-E Order*, 31 FCC Rcd at 420-21, paras. 43-45; IPR *Ex Parte* Letter at 2-3 (noting that race, ethnicity, and gender information for NCEs is necessary to evaluate the effectiveness of Commission policies designed to promote broadcast ownership by women and minorities). To the extent IPR and UCC et al. state that the Commission will not collect race, gender, and ethnicity information from NCEs as a result of our action today, these belated pleadings are wrong. *See* UCC et al. *Ex Parte* Letter at 1; IPR *Ex Parte* Letter at 2-3. Although we will not require NCE licensees to report unique identifiers for all individuals holding attributable interests, the data on race, ethnicity, and gender will not be "useless," UCC et al. *Ex Parte* Letter at 5, as we will still be able to determine which licensees, stations, and markets have minorities and women in NCE leadership positions.

<sup>42</sup> Because we are relieving NCE licensees of the obligation to report a CORES FRN or RUFNR for individuals holding attributable interests, we need not address NCE Licensees' and Public Broadcasting Petitioners' claim that the statutory authority the Commission relied on in adopting the requirement does not apply to NCE stations. NCE Licensees Petition at 10-12; Public Broadcasting Parties' Petition at 7 n.6. These arguments are moot. Thus, we dismiss these portions of the NCE Licensees Petition and Public Broadcasting Parties Petition. SUNY's argument that the Privacy Act bars mandatory collection of SSNs from individuals holding attributable interests in NCE licensees is moot for the same reason, and we dismiss this aspect of the SUNY Petition. SUNY Petition at 7-8.

<sup>43</sup> *See* Alabama Trustees Comments at 5 ("Often, university and other non-profit board members are focused on the primary mission of the institution rather than on the broadcast stations licensed to the institution.").



licensing, operation, or ultimate disposition of the noncommercial broadcast license and that it is not necessary to include information about these individuals on broadcast ownership reports. We take this opportunity to reiterate that, as discussed in the *323 and 323-E Order*, our rules already contemplate that circumstance and afford appropriate relief.<sup>44</sup> Specifically, an officer or director can be exempted from attribution in the licensee if his or her duties are wholly unrelated to the operation of the broadcast station(s) at issue.<sup>45</sup> Exempted officers and directors would not be reported as attributable interest holders on the Form 323-E and thus would not need to obtain a CORES FRN or RUFNR for Form 323 or Form 323-E reporting purposes. Appropriate use of this existing exemption would further reduce the burden on NCE licensees and potentially avoid the concern of a chilling effect raised by the Petitioners.<sup>46</sup> We therefore encourage NCE filers to avail themselves of this exemption in order to avoid reporting potential interest holders who are uninvolved with the operation of the station(s) and whose interests therefore need not be reported.<sup>47</sup>

#### IV. PROCEDURAL MATTERS

##### A. Supplemental Final Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>48</sup> the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The Supplemental FRFA is set forth in the Appendix.

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<sup>44</sup> *323 and 323-E Order*, 31 FCC Rcd at 424, para. 50. Our attribution standards, including the standards applicable to attribution exemptions for officers and directors, apply to both commercial and NCE stations. See 47 CFR § 73.3555(f), Note 2(g); see also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 16 FCC Rcd 5074, 5102, ¶¶ 82-83 (2001) (noting, in the context of the NCE point system, that attribution exemptions are available to NCE stations pursuant to the same standards and rationale that apply to their commercial counterparts).

<sup>45</sup> 47 CFR § 73.3555, Note 2(g).

<sup>46</sup> See *323 and 323-E Order*, 31 FCC Rcd at 424, para. 50.

<sup>47</sup> Although some petitioners argue that differences between NCEs and commercial licensees make the collection of NCE data unnecessary, the Commission previously rejected this argument, and, as we have granted reconsideration regarding the specific aspect of our data collection that petitioners challenge, we need not revisit the Commission's response to this argument. Compare Public Broadcasting Parties Petition at 8-9 ("The relationship of such individuals to NCE station operations is important and is attributable, but is substantially different from the business relationship of a commercial broadcast company owner to a station. Such board composition certainly has little bearing on the Commission's laudable goal of promoting television and radio station ownership by small businesses, women and minorities."), with *323 and 323-E Order*, 31 FCC Rcd at 422-24, paras. 46-49 (dismissing arguments that dissimilarities between the governance of commercial and NCE stations precludes any definition of "ownership" in the NCE context). We note that even though the Commission's multiple ownership rules do not apply to NCE stations, collecting race, gender, and ethnicity information from NCEs will enable the Commission, as well as GAO and other outside researchers, to more fully understand and analyze the broadcasting industry, and thereby support the Commission's efforts to promote diversity of ownership in broadcasting. In an *ex parte* filed well after the close of the pleading cycle, public broadcasting representatives filing as "Public Broadcasters" ask the Commission "to consider simply returning to the status quo ante by reversing its prior decision to adopt new rules for noncommercial stations in this proceeding." Letter from Lonna Thompson, Executive Vice President, Chief Operating Officer and General Counsel, APTS, et al., to Marlene H. Dortch, Secretary, FCC, at 2 (filed Apr. 13, 2017) (asserting that the concept of ownership is inapposite to NCE licensees). To the extent this request applies to other improvements adopted in the *323 and 323-E Order*, including the collection of race, gender, and ethnicity information from NCE Licensees, Public Broadcasters' request is untimely and is procedurally barred. 47 CFR § 1.429(d) (a petition for reconsideration and any supplement thereto must be filed no later than 30 days after public notice of the challenged action).

<sup>48</sup> See 5 U.S.C. § 604. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847, 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

## B. Paperwork Reduction Analysis

16. This document contains a non-substantive and non-material modification of information collection requirements that were previously reviewed and approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.<sup>49</sup> In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

17. In this present document, we have assessed the effects of requiring NCE filers to report a CORES FRN or RUFNR for each attributable interest holder on ownership reports filed with the Commission, and we have expanded the option for such filers to report SUFRNs for attributable individuals by eliminating the requirement that NCE filers first use reasonable and good-faith efforts to obtain the personal information needed to report a CORES FRN or RUFNR before using an SUFRN. We find that this action properly balances the need to improve the integrity and usability of the Commission's broadcast ownership data with the potential chilling effects that a mandatory reporting requirement could have on participation in NCE station governance, and that our action will have the effect of reducing the burden on NCE filers, including those with fewer than 25 employees.

## V. ORDERING CLAUSES

18. **ACCORDINGLY, IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 2(a), 4(i), 257, 303(r), 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 257, 303(r), 307, 309, and 310, this Order on Reconsideration **IS ADOPTED**.

19. **IT IS FURTHER ORDERED THAT**, pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.429 of the Commission's rules, 47 CFR § 1.429, 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 GRANTED IN PART, DISMISSED** to the extent discussed in footnote 42, **AND OTHERWISE ARE DENIED**, to the extent stated herein.

20. **IT IS FURTHER ORDERED** that the applications for review filed by the NCE Licensees and the University of Michigan **ARE DISMISSED** as moot.

21. **IT IS FURTHER ORDERED** that, pursuant to section 553(d) of the Administrative Procedure Act, 5 U.S.C. § 553(d), and Section 1.427(b) of the Commission's rules, 47 CFR § 1.427(b), this Order on Reconsideration **SHALL BE EFFECTIVE** immediately upon publication in the Federal Register,<sup>50</sup> except those provisions that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act will become effective after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective date.

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<sup>49</sup> See OMB, Notice of Office of Management and Budget Action, ICR Reference No. 201609-3060-006, OMB Control No. 3060-0084 (Nov. 25, 2016), [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201609-3060-006#](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201609-3060-006#) (select the "Retrieve Notice of Action (NOA)" hyperlink); 5 CFR § 1320.5(g) (only substantive or material modification requires supplemental OMB approval).

<sup>50</sup> See 5 U.S.C. § 553(d); 47 CFR § 1.427(b) (action removing a restriction may be made effective immediately upon publication in the Federal Register).

22. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX

## Supplemental Final Regulatory Flexibility Analysis

1. In compliance with the Regulatory Flexibility Act (RFA),<sup>1</sup> this Supplemental Final Regulatory Flexibility Analysis (SFRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *323 and 323-E Order*,<sup>2</sup> to the extent that changes adopted on reconsideration require changes in the conclusions reached in the FRFA. As required by the RFA,<sup>3</sup> the FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the *Fourth Diversity Further Notice*,<sup>4</sup> *Sixth Diversity Further Notice*,<sup>5</sup> and *Seventh Diversity Further Notice*,<sup>6</sup> which sought public comment on the policies and rules proposed in those further notices of proposed rulemaking.

**A. Need for, and Objectives of, the Order**

2. This Order on Reconsideration grants in part, dismisses in part, and denies in part, several petitions for reconsideration of the *323 and 323-E Order*<sup>7</sup> and provides noncommercial broadcasters with relief from the requirement that they report a unique FCC Registration Number (FRN) generated by the Commission Registration System (CORES) for each attributable interest holder on ownership reports filed with the Commission.<sup>8</sup> Currently, this requirement compels those with an attributable interest in the licensee of a noncommercial educational (NCE) broadcast station—typically the officers and governing board members—to provide the Commission with identifying information, such as a social security number (SSN) or date of birth, or risk being subject to a Commission enforcement action.<sup>9</sup> Because this requirement, and the prospect of enforcement action for individuals who choose not to provide their personal information to the Commission, may raise unique concerns for some noncommercial entities, this Order on Reconsideration expands the option for NCE filers to report Special Use FRNs (SUFRNs), which do not require personal information, for attributable individuals.<sup>10</sup>

3. Currently, NCE filers are permitted to report an SUFRN for an attributable individual only if the filer has used reasonable and good-faith efforts to obtain the information needed to report a CORES FRN or Restricted Use FRN (RUFRN), including informing the individual about the risk of enforcement action for choosing not to provide his or her personal information to the Commission.<sup>11</sup> This

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<sup>1</sup> See 5 U.S.C. § 604.

<sup>2</sup> *Promoting Diversification of Ownership in the Broadcasting Services et al.*, Report and Order, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 398, Appx. C (2016).

<sup>3</sup> 5 U.S.C. § 603.

<sup>4</sup> *Promoting Diversification of Ownership in the Broadcasting Services et al.*, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896 (2009).

<sup>5</sup> *Promoting Diversification of Ownership in the Broadcasting Services*, Sixth Further Notice of Proposed Rulemaking, 28 FCC Rcd 461 (2013).

<sup>6</sup> *Promoting Diversification of Ownership in the Broadcasting Services et al.*, Second Further Notice of Proposed Rulemaking and Seventh Further Notice of Proposed Rulemaking, 30 FCC Rcd 1725 (2015).

<sup>7</sup> See *supra* note 2.

<sup>8</sup> *Report and Order* at 1, para. 1. Although our action today grants certain flexibility to NCEs, we retain the use of unique FRNs in the NCE context, to the extent attributable interest holders may already have, or will not object to obtaining, unique FRNs. To the extent the petitioners request that we completely eliminate unique FRNs in the NCE context, we deny the petitions for reconsideration. See *id.* at 7, note 37.

<sup>9</sup> *Id.* at 1, para. 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 4, para. 7.



Order on Reconsideration eliminates that requirement for NCE filers.<sup>12</sup> The Commission finds that NCEs participating in this proceeding have raised legitimate concerns that the CORES FRN/RUFRN requirement, and the prospect of enforcement action for failing to comply with this requirement, may hinder their efforts to recruit volunteers to serve on their licensee boards and pose other unique challenges.<sup>13</sup> The Commission finds that the *323 and 323-E Order* erred in rejecting those valid concerns.<sup>14</sup> While use of unique identifiers improves the integrity and usability of the Commission's broadcast ownership data, the Commission believes that the potential chilling effect on participation in NCE station governance, and the potentially deleterious effect that loss of NCE leaders could have on the noncommercial broadcast service to the public, outweigh this benefit in the NCE context.<sup>15</sup> Therefore, the Commission concludes that the better course is to make reporting of CORES FRNs and RUFRNs optional for individuals who hold an attributable interest in an NCE station. Accordingly, NCE filers may report an SUFRN on Form 323-E for an attributable individual who has not obtained a CORES FRN or RUFRN at the time the filer submits its ownership report, without the need to first use reasonable and good-faith efforts to obtain information needed to report a CORES FRN or RUFRN.<sup>16</sup>

4. The Commission concludes that allowing NCEs to report an SUFRN for an attributable individual who has not obtained a CORES FRN or RUFRN, without first using reasonable and good-faith efforts to obtain the information necessary to report the latter identifiers, will address the concerns raised by the petitioners and NCE commenters in this proceeding.<sup>17</sup> The Commission also finds that its action today properly balances the need to improve the integrity and usability of the Commission's broadcast ownership data with the public interest in avoiding the potential chilling effect that a mandatory reporting requirement could have on participation in NCE station governance.<sup>18</sup>

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and FRFA**

5. The Commission received no comments in direct response to the IRFAs contained in the *Fourth Diversity Further Notice*, *Sixth Diversity Further Notice*, and *Seventh Diversity Further Notice*, or the FRFA.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

7. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted in this Order on Reconsideration.<sup>19</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 4-5, para. 8.

<sup>14</sup> *Id.* at 6, para. 9.

<sup>15</sup> *Id.* at 6-7, para. 10.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 7, para. 11.

<sup>18</sup> *Id.* at 7-8, para. 12.

<sup>19</sup> 5 U.S.C. § 603(b)(3).

business,” “small organization,” and “small governmental jurisdiction.”<sup>20</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>21</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>22</sup> The FRFA accompanying the *323 and 323-E Order* described and estimated the number of small entities that would be affected by the revisions to FCC Forms 323 and 323-E. The actions taken in this Order on Reconsideration apply to the same entities affected by the revisions to Form 323-E that the Commission adopted in the *323 and 323-E Order*.

8. **Television Broadcasting.** This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”<sup>23</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>24</sup> These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.<sup>25</sup> The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of less than \$25,000,000, 25 had annual receipts ranging from \$25,000,000 to \$49,999,999, and 70 had annual receipts of \$50,000,000 or more.<sup>26</sup> Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

9. The Commission has estimated the number of licensed commercial television stations to be 1,383.<sup>27</sup> Of this total, 1,275 stations (or about 92 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on March 9, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed NCE television stations to be 394.<sup>28</sup> The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

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<sup>20</sup> *Id.* § 601(6).

<sup>21</sup> *Id.* § 601(3) incorporates by reference the definition of “small business concern” in 15 U.S.C. § 632. Pursuant to the RFA, the statutory definition of small business applies, “unless an agency, after consultation with the Office of Advocacy of the [SBA] and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>22</sup> 15 U.S.C. § 632.

<sup>23</sup> U.S. Census Bureau, 2017 NAICS Definitions, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Feb. 28, 2017) (515120 Television Broadcasting).

<sup>24</sup> *Id.*

<sup>25</sup> 13 CFR § 121.201; 2017 NAICS code 515120.

<sup>26</sup> U.S. Census Bureau, Table No. EC1251SSSZ4, Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table) (515120 Television Broadcasting).

<sup>27</sup> Press Release, FCC, Broadcast Station Totals as of Mar. 31, 2017 (Apr. 11, 2017) (*Broadcast Station Totals*), <https://www.fcc.gov/document/broadcast-station-totals-march-31-2017>.

<sup>28</sup> *Id.*

10. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>29</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

11. **Radio Stations.** This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”<sup>30</sup> The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts.<sup>31</sup> The 2012 Economic Census reports that 2,849 firms in this category operated in that year. Of that number, 2,806 had annual receipts of less than \$25,000,000, 17 had annual receipts ranging from \$25,000,000 to \$49,999,999, and 26 had annual receipts of \$50,000,000 or more.<sup>32</sup> Based on this data we therefore estimate that the majority of commercial radio stations are small entities under the applicable SBA size standard.

12. The Commission has estimated the number of licensed commercial radio stations to be 11,420.<sup>33</sup> Of this total, 11,506 stations (or about 99.9 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on March 9, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed NCE radio stations to be 4,112.<sup>34</sup> The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

13. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>35</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation.<sup>36</sup> We further note that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which rules may apply does not exclude any radio station

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<sup>29</sup> “[Business concerns] are affiliates of each other when one [concern] controls or has the power to control the other, or a third party or parties controls or has to power to control both.” 13 CFR § 121.103(a)(1).

<sup>30</sup> U.S. Census Bureau, 2017 NAICS Definitions, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Mar. 7, 2017) (515112 Radio Stations).

<sup>31</sup> 13 CFR. § 121.201; 2017 NAICS code 515112.

<sup>32</sup> U.S. Census Bureau, Table No. EC1251SSSZ4, Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 (Jan. 8, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table) (51511 Radio Broadcasting).

<sup>33</sup> *Broadcast Station Totals supra* note 28.

<sup>34</sup> *Id.*

<sup>35</sup> “[Business concerns] are affiliates of each other when one [concern] controls or has the power to control the other, or a third party or parties controls or has to power to control both.” 13 CFR § 121.103(a)(1).

<sup>36</sup> *Id.* § 121.102(b).

from the definition of a small business on this basis; thus, our estimate of small businesses may therefore be over-inclusive.

14. **Class A TV and LPTV Stations.** The same SBA definition that applies to television broadcast licensees would apply to Class A TV stations and other low power television (LPTV) stations. The SBA defines a television broadcast station as a small business if such station has no more than \$38.5 million in annual receipts.<sup>37</sup> As of March 31, 2017, there are approximately 417 licensed Class A stations and 1,965 licensed LPTV stations.<sup>38</sup> Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

**E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities**

15. The Order on Reconsideration provides NCE filers with greater flexibility to report SUFRNs than previously allowed by the *323 and 323-E Order*. It does not adopt additional reporting, recordkeeping, other compliance requirements.

**F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

16. The Order on Reconsideration provides relief to NCE filers by allowing them wider latitude to report SUFRNs—which do not require disclosure of an SSN, date of birth, or other personal information—for individual attributable interest holders reported on Form 323-E.<sup>39</sup> Accordingly, NCE filers may report an SUFRN on Form 323-E for an attributable individual who has not obtained a CORES FRN or RUFRN at the time the filer submits its ownership report, without the need to first use reasonable and good-faith efforts to obtain the information needed to report a CORES FRN or RUFRN.<sup>40</sup> The Commission concludes that allowing NCEs greater flexibility to report an SUFRN for an attributable individual, in lieu of a CORES FRN or RUFRN, will address the concerns that have been raised regarding the potential impact of the CORES FRN/RUFRN requirement on NCE stations, including small entities.<sup>41</sup>

**Report to Congress:**

The Commission will send a copy of this Order on Reconsideration, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act<sup>42</sup> and to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.<sup>43</sup>

<sup>37</sup> See *id.* § 121.201, 2012 NAICS Code 515120.

<sup>38</sup> *Broadcast Station Totals supra* note 28.

<sup>39</sup> *Report and Order* at 4, para. 7.

<sup>40</sup> *Id.* at 6-7, para. 10.

<sup>41</sup> *Id.* at 7, para. 11.

<sup>42</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>43</sup> *Id.* § 604(b).



**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *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.

Americans who serve as officers or board members of public radio and television stations generally don't do it for money or personal glory. Quite the opposite: they're volunteers who want to serve their communities. The last thing we should do is penalize them with unnecessary regulatory burdens, particularly when these requirements will deter them from volunteering in the first place.

Unfortunately, the FCC previously did just that. It decided to force these individuals to give the Commission sensitive personal information like Social Security numbers. Today, we correct that mistake before it takes effect. Noncommercial educational broadcasters (NCEs) have raised legitimate concerns that the FCC's current rule will make it harder to recruit qualified and committed volunteers to serve on their boards. For example, many have said that the current reporting requirement will "undermine the ability of NCE licensees to perform their missions" and that losing qualified individuals "would exact a heavy toll on public broadcasting."<sup>1</sup> The evidence in the record on this point has gone un rebutted.

I should note that this decision is important, but also modest. For example, we will still require NCE broadcasters to provide the FCC with information about the gender, race, and ethnicity of officers and board members. As a result, our approach properly balances the need to improve the FCC's broadcast ownership data with the potential chilling effects that a mandatory reporting requirement of this kind could have on participation in NCE station governance.

I'd like to thank Michelle Carey, Chris Clark, Brendan Holland, Mary Beth Murphy, and Jake Riehm from the Media Bureau for their hard work on this *Order* and their continued dedication to the public interest. And I would like to thank Americans all across our country who volunteer for their local public broadcaster. My message to you today is simple: I want the Commission to be your ally, not your adversary.

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<sup>1</sup> Petition for Reconsideration of the NCE Licensees (filed May 3, 2016), MB Docket No. 10-234.

**DISSENTING STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *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.

This Administration has prided itself on improving transparency and ensuring that the actions taken by the Commission are data driven. I support these goals. But by eliminating a noncommercial educational (NCE) broadcasters obligation to provide the Commission with adequate information about its officers or governing board members, today's *Order on Reconsideration* achieves neither. What it will do, is make it harder for us to gather the necessary data on the broadcast media landscape that the Third Circuit and the Government Accountability Office (GAO) have said are so important.

Let me explain. In 2008, the GAO noted that "more accurate, complete, and reliable [broadcast ownership] data would allow FCC to better assess the impact of its rules and regulations and allow the Congress to make more informed legislative decisions." The report went on to recommend that the "FCC take steps to improve the reliability and accessibility of its data on the gender, race, and ethnicity of broadcast outlet owners."

This *Order on Reconsideration* sends us in the opposite direction, at a time in which the Third Circuit has repeatedly faulted the FCC for not obtaining the data it needs to improve the state of minority and female broadcast ownership. So why is this data so important? Take for example a fictitious "Pastor John Smith." A Google search of Pastor John Smith produces 18,600 results. Without a requirement to submit a unique identifier, how does the Commission determine whether the Pastor John Smith who is on the board of a noncommercial station in Charleston, South Carolina, is the same as the one in Fargo, North Dakota? Knowing this information informs the Commission and the public whether we are talking about an individual with involvement in a single station or one that is making programming decisions across a dozen or more stations.

But noncommercial stations are fundamentally different than commercial stations, some might say, because board members have no equity stake and are not actual owners. Yet the GAO's report specifically affirmed that data from NCE stations is needed to have a comprehensive picture of ownership diversity, including representation from women and minorities. This view was reaffirmed in the Commission's 2016 *323 and 323-E Order*, which concluded "that the Commission's analysis with regard to the collection of data from commercial stations is equally applicable in the NCE context. NCE stations hold Commission licenses, as do commercial licensees. Their programming impacts local communities." Furthermore, despite suggestions to the contrary, many board members of NCE stations are in fact involved in either day-to-day operation of the station and/or programming decisions. To ensure accountability on the public airwaves, the American people have a right to know who these board members are.

The Commission's 2016 Order stated that "Nothing in the statute distinguishes the noncommercial nature of any segment of a service as exempting it from the overall statutory mandates" which leads me to my final concern. If the statute does not distinguish between the two types of stations, will this not lead to commercial stations asking for the same relief? Once again, the Commission and the American people deserve access to this information, whether it involves a commercial or a noncommercial station using the public airwaves.

For all of the reasons I have stated, I respectfully dissent. Despite my disagreement, I thank the Media Bureau staff for their work on this item.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *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.

In its simplest form, this item appropriately corrects an unnecessary and damaging information collection effort imposed by the previous Commission to supposedly facilitate the identification of attributable interests in non-commercial education (NCE) stations. This mandate was never justified and deserves to be repealed. I must add, however, that the more I look into the issue, my general concern extends to the entire "ownership" data collection from public broadcasters, not just the unique registration number issue.

The underlying justification for the mandate that we effectively undo today has been quite perplexing to me. Based on the facts and logic, it is clear that public broadcast stations' "ownership" is not the same as that for commercial entities. Even if the new registration process perfected the data collected, trying to compare public broadcasters' ownership data to that of commercial broadcasters would be worse than trying to compare apples to oranges; it's more like comparing apples to zebras or oranges to a '57 Chevy. If it is not comparable for analysis purposes, what exact value would come from allegedly more accurate data about attributable interests? No one has been able to provide a sufficient and defensible answer to this question.

One excuse bandied about has been that this more granular data is needed to comply with the Third Circuit Court of Appeals' media ownership decisions. While I have strenuously disagreed with that court's illogical statutory interpretation and irrational media ownership rulings, even it hasn't gone so far as to advocate for the Commission's collection of NCE ownership data. In fact, I can find no portion of those decisions to suggest that its media ownership demands pertain to NCEs. And there would be no reason to do so as the media ownership limitations caught in a perpetual black hole of review by that court do not govern (have no relevance to) public broadcasters. Additionally, given the vastly different organizational and governing structures, there would be no benefit to having such information for purposes of making decisions on rules that affect commercial stations.

At the same time, the record also highlights that real and substantial harm would come to the public broadcasting community from imposing this particular requirement. Specifically, public broadcasters have stated that the differing state governing structures often consist of individuals who would likely rather resign than share such information with the Commission due to privacy and other concerns. Moreover, it is highly likely, according to public broadcasters, that others would refuse to accept positions in the future for similar reasons. Together, the public broadcasting community could lose valuable and diverse viewpoints in its overall decision making. This could also have an influence on the ability of stations to raise private funds, thereby threatening the overall quality of programming and station viability.

Absent any practical reason to impose the collection burden coupled with the overall harm to public broadcasting, I am pleased to support its rejection and appreciate the Chairman bringing this item to the full Commission so quickly. Our action today is also consistent with legislation introduced by Energy and Commerce Committee's Subcommittee on Communications and Technology Chairman Blackburn, and I thank her for her leadership on the matter.