

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

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

SECOND FURTHER NOTICE OF PROPOSED RULEMAKING
AND
SEVENTH FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. INTRODUCTION

1. The Commission has a long-standing goal of promoting ownership diversity in broadcast stations to ensure that diverse viewpoints and perspectives are available to the American people in the content they receive over the broadcast airwaves.¹ In pursuit of this goal, the Commission has a long

¹ See, e.g., 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, MB Docket No. 14-50 et al., Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4480, ¶ 246 (2014) (“2014 Quadrennial Review Notice”); Promoting Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294, Sixth Further Notice of Proposed Rulemaking, 28 FCC Rcd 461, 463, ¶ 4 (2013) (“Sixth Diversity Further Notice”); 2010 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, MB Docket No. 19-182 et al, Notice of Proposed Rulemaking, 26 FCC Rcd 17489, 17496, 17544-55, ¶ 148 (2011) (“2010 Quadrennial (continued....)”)
(continued....)

history of promulgating rules and regulations designed to foster diversity in terms of minority and female ownership.² A necessary foundation for the Commission's rulemaking efforts is the collection of comprehensive, reliable data reflecting the race, gender, and ethnicity of the owners and other interest holders in broadcast stations.³ Such data are essential to study and analyze ownership trends effectively, to assess the impact of Commission rules, and to determine whether rule changes would be in the public interest. To be useful for these purposes, to the greatest extent possible the data must be capable of being read, verified, searched, aggregated, and cross-referenced electronically.⁴

2. As a part of these efforts, the Commission herein proposes improvements to the collection of data reported on FCC Form 323, Ownership Report for Commercial Broadcast Stations, and also to FCC Form 323-E, Ownership Report for Noncommercial Broadcast Stations, through the development of a new functionality in the Commission's Registration System ("CORES") for issuing FCC Registration Numbers ("FRNs"). Specifically, we seek comment on a proposal to create a new mechanism for obtaining an FRN through CORES. Use of this FRN would be restricted to the reporting of individual attributable interest holders in commercial and noncommercial broadcast stations on ownership reports. This "Restricted Use" FRN ("RUFN") would be supported by identifying information for attributable individuals that does not include full Social Security Numbers ("SSNs") and that would be housed securely on the Commission's servers and not made available to the public. This proposal is intended to address some of the privacy and data security concerns that commenters raised with respect to prior proposals while still enabling the Commission to uniquely identify reported individuals, obtain data reflecting a more useful, accurate, and thorough assessment of minority and female broadcast station ownership in the United States and reduce certain filing burdens.⁵ Ultimately, such changes to the Commission's system could assist future initiatives promoting diverse ownership.⁶

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Review Notice"); *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, MB Docket No. 07-294 *et al.*, 24 FCC Rcd 5896, 5897, 5902 ¶¶ 1, 12 (2009) ("323 Order" and "Fourth Diversity Further Notice"); *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, MB Docket No. 07-294, *et al.*, 23 FCC Rcd 5922, 5924 ¶¶ 1-2 (2008) ("Diversity Order" and "Third Diversity Further Notice"); *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, MM Docket No. 98-43, Report and Order, 13 FCC Rcd 23056, 23095, 23097-98, ¶¶ 96, 102 (1998) ("1998 Biennial Review Order") (citing 47 U.S.C. § 257(b), *Policy Statement*, 62 Fed. Reg. 34648 (1997)); *Reexamination of the Policy Statement on Comparative Broadcast Hearings*, 12 FCC Rcd 22363, 22398, ¶ 86 (1997) ("Competitive Bidding Notice"); *See, e.g., Review of the Commission's Regulations Governing Television Broadcasting*, MM Docket No. 87-8, Further Notice of Proposed Rule Making, 10 FCC Rcd 3524, 3547, ¶ 60 (1995) ("Television Review Further Notice"); *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, 10 FCC Rcd 2788, 2788, ¶¶ 1-2 (1995) ("Minority/Female Ownership Notice"); *Statement of Policy on Minority Ownership of Broadcast Facilities*, Public Notice, 68 F.C.C.2d 979 (1978) ("1978 Minority Ownership Statement"); *See also* "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," Report to the Chairman of the Subcommittee on Telecommunications and the Internet, Energy and Commerce Committee, House of Representatives, GAO-08-383, at 21 (Mar. 2008) ("GAO Report").

² *See, e.g., 1978 Minority Ownership Statement*, 68 FCC 2d at 980-81.

³ *See 1998 Biennial Review Order*, 13 FCC Rcd at 23095-99, ¶¶ 96-105; *See also Prometheus Radio Project v. FCC*, 652 F.3d 431, 471 (3d Cir. 2011) (*Prometheus II*); *GAO Report* at 21-23.

⁴ *See, e.g., id.*; *323 Order*, 24 FCC Rcd at 5902-5903, 5907-5908, ¶¶ 12, 20.

⁵ *See 323 Order*, 24 FCC Rcd at 5898, ¶ 3.

⁶ *See Sixth Diversity Further Notice*, 28 FCC Rcd at 463, ¶ 4 (citing *323 Order*, 24 FCC Rcd at 5904, ¶ 13).

II. BACKGROUND

3. The Commission is engaged in ongoing efforts to improve the quality, utility, and reliability of its broadcast ownership data.⁷ As part of this endeavor, in 2009 the Commission substantially revised Form 323. The changes to the filing requirements and the modifications to the form were intended to facilitate long-term comparative studies of broadcast station ownership⁸ and to address flaws in the data collection process identified by the United States Government Accountability Office (“GAO”) and by researchers.⁹ “[T]o further improve the ability of researchers and other users of the data to cross-reference information and construct ownership structures,” filers were required to provide a CORES FRN for all reported interest holders.¹⁰ To obtain a CORES FRN, with some limited exceptions, a party must submit a Tax Identification Number (“TIN”) to the Commission via CORES.¹¹ In the case of an individual, a TIN is his or her SSN.¹² Because a CORES FRN is backed by a TIN/SSN, it can serve as a unique identifier in most instances,¹³ which is crucial to the quality and utility of the Commission’s broadcast ownership data and the ability of the Commission and outside parties to search, aggregate, and cross-reference that data electronically.¹⁴

⁷ See, e.g., *Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket No. 07-294, Memorandum Opinion & Order and Fifth Further Notice of Proposed Rulemaking, 24 FCC Rcd 13040, 13044, ¶ 8 (2009) (“*323 MO&O*” and “*Fifth Diversity Further Notice*”) (citing 24 FCC Rcd at 5904, ¶13); *323 Order*, 24 FCC Rcd at 5908 ¶ 21; *Diversity Order*, 23 FCC Rcd at 5955-56, ¶¶ 95-96.

⁸ *323 MO&O*, 24 FCC Rcd at 13044 ¶ 8; *323 Order*, 24 FCC Rcd at 5902 ¶ 11.

⁹ See generally *GAO Report*. The 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 data storage and retrieval. *Id.* at 4. See also *323 Order*, 24 FCC Rcd at 5901 ¶ 10.

¹⁰ See generally *323 Order*, 24 FCC Rcd at 5903 ¶ 12. See *Promoting Diversification of Ownership in the Broadcasting Services*, 74 Fed. Reg. 56,135 (Oct. 30, 2009); *Promoting Diversification of Ownership in the Broadcasting Services*, 74 Fed. Reg. 56,136 (Oct. 30, 2009) (Federal Register notices announcing OMB approval and effective date of revised Form 323). On October 16, 2009, the Commission sent a subsequent letter to OMB acknowledging the Commission’s action in the *323 Order* to eliminate the reporting of certain nonattributable interest holders. Letter from Walter Boswell, Acting Assoc. Managing Director, PERM, OMD, FCC, to Nicholas A. Fraser, OMB (Oct. 16, 2009).

¹¹ See 47 C.F.R. § 1.8002(b)(1). The ongoing Commission proceeding to update CORES proposes to eliminate several of the exceptions to the TIN requirement. See *Amendment of Part 1 of the Commission’s Rules, Concerning Practice and Procedure, Amendment of CORES Registration System*, MD Docket No. 10-234, Notice of Proposed Rulemaking, 25 FCC Rcd 17407, 17408, 17415-19, ¶¶ 4, 28-37; n. 100 (2010) (“*CORES Notice*”), *infra*.

¹² See *id.* at 17408 n. 7; 47 C.F.R. § 1.8002(b)(1). When an individual or entity submits a TIN to the Commission via CORES, that information is secured by the Commission and not used or disclosed publicly. See *Sixth Diversity Further Notice*, 28 FCC Rcd at 472, ¶ 18.

¹³ Currently, CORES allows multiple FRNs to be issued for the same TIN. See *id.* at 467, ¶ 9; *CORES Notice*, 25 FCC Rcd at 17411, ¶ 13. As described below, the CORES proceeding proposes to modify CORES to require each individual or entity to rely primarily on a single CORES FRN. See *CORES Notice*, 25 FCC Rcd. at 17409, 17411-14 ¶¶ 4, 12-24; ¶ 17, *infra*. Nonetheless, with respect to Form 323 filings, the Commission can in most cases use CORES FRNs for unique identification, because CORES allows the Commission to determine when multiple FRNs are registered to the same TIN and, therefore, identify the same party.

¹⁴ The *323 Order* also delegated to the Media Bureau authority to: (1) revise Form 323’s electronic interface so that the ownership data incorporated into the database are searchable, and can be aggregated and cross-referenced; (2) build additional checks into Form 323 to perform verification and review functions; and (3) conduct audits to ensure the accuracy of the Form 323 reports. *323 Order* 24 FCC Rcd at 5903, ¶ 12.

4. *OMB Review and Approval of 2009 Form 323.* On August 11, 2009, the Commission submitted the revised Form 323, which included the CORES FRN requirement,¹⁵ to the Office of Management and Budget (“OMB”) for approval pursuant to the Paperwork Reduction Act (“PRA”) requirements and published the Federal Register notice initiating a 60-day comment period.¹⁶ Many of the comments to OMB objected to having to report CORES FRNs for individuals holding attributable interests, arguing that in order to obtain a CORES FRN for these individuals, they would need to provide SSNs to the Commission, a requirement that they claimed triggers privacy, data security, and identity theft concerns.¹⁷ Commenters also suggested that obtaining and reporting CORES FRNs for these individuals would be onerous for filers, and that in some cases, filers might be unable to obtain a CORES FRN for all individual attributable interest holders because the individuals are unwilling either to obtain the FRN themselves or provide their SSN to the filer for the purpose of obtaining an FRN.¹⁸ Additionally, commenters criticized the Commission for failing to seek comment on requiring these individuals to obtain CORES FRNs prior to including this requirement on the revised form submitted for OMB approval.¹⁹

5. On October 6, 2009, the Office of the Managing Director (“OMD”) at the Commission submitted a letter to OMB addressing the comments filed in response to the revised Form 323.²⁰ OMD explained that requiring CORES FRNs on Form 323 is an integral part of the Commission’s effort to “improve the quality, reliability, and usability of the collected data by eliminating inconsistencies and inadequacies in the data submitted.”²¹ Noting that the CORES FRN is a key tool for ensuring that ownership data is matched to specific owners, OMD explained that, without the CORES FRNs, it would be unable to accurately determine an interest holder’s identity when variations of a single name or other spelling irregularities appear from form to form.²² The Reply Letter also responded to comments that the Commission erred in concluding that the revised Form 323 did not implicate the Privacy Act.²³ OMD stated that because sole proprietors, officers, and directors are acting in an entrepreneurial role with

¹⁵ FCC Form 323 Section II, Item 3(a) requires Respondents to list “each of the officers, directors, stockholders, non-insulated partners, members and other persons or entities with a direct attributable interest in the Respondent.” See also, 323 MO&O, 24 FCC Rcd at 13043 ¶ 8 (noting that the Media Bureau is requiring a licensee “to report the FRNs of entities one step above and one step below it in the ownership chain” and to “identify the FRNs of its attributable officers, directors, and shareholders”).

¹⁶ *Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested*, MB Doc. No. 07-294, 74 Fed. Reg. 40188 (Aug. 11, 2009).

¹⁷ Saga Sept. 10, 2009 Comments at 4-5; State Associations Sept. 10, 2009 Comments at 7-10; Letter from Joseph DiScipio, Esq. *et al.* Counsel for Various Broadcaster Clients and Associations, to Marlene H. Dortch, Secretary, FCC (Nov. 6, 2009) (ex parte notification of meeting with FCC staff to discuss FRN requirement) (DiScipio, *et al.* Nov. 6 *Ex Parte* Letter); Fletcher Heald Petition at 17. Copies of comments filed with OMB are available on the OMB website at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=200908-3060-001.

¹⁸ State Associations Sept. 10, 2009 Comments at 10 (arguing, in part, that the FRN requirement will deter investment in broadcasting); NAB Sept. 10, 2009 Comments at 7-11; Joint Comments of ABC, *et al.* (Sept. 10, 2009) at 13 nn. 30-31, 21 (expressing concern that some individuals with reportable interests may be unwilling to obtain FRNs, or provide their SSN to Form 323 filers so that they can obtain an FRN for these individuals).

¹⁹ See NAB Sept. 10, 2009 Comments at 4; Wiley Rein Sept. 10, 2009 Comments at 2; Fletcher Heald Petition at 15.

²⁰ Letter from Walter Boswell, Acting Assoc. Managing Director, PERM, OMD, FCC, to Nicholas A. Fraser, OMB (Oct. 6, 2009) (“Reply Letter”).

²¹ *Id.* at 3-4.

²² *Id.* at 5.

²³ See Joint Commenters Sept. 10, 2009 OMB Comments at 12-13; NAB Sept. 10, 2009 OMB Comments at 9; Wiley Rein LLP Sept. 10, 2009 OMB Comments at 10; State Associations Sept. 10, 2009 OMB Comments at 8; Saga Sept. 10, 2009 OMB Comments at 5; see also 5 U.S.C. § 522a (codification of the Privacy Act, as amended).

respect to broadcast stations, these persons are not individuals for purposes of the Privacy Act.²⁴ OMD added that, to the extent that the revisions raise any privacy concerns, the Commission created a Privacy Act System of Records (“SORN”) for Form 323 that would address them.²⁵ The Reply Letter also rejected allegations that the Commission failed to comply with the notice requirements of the PRA.²⁶ OMD also disputed commenters’ objections that the CORES FRN requirement raised security and identity theft concerns.²⁷ OMD noted that “none of the commenters identify a single instance of a security breach” of the CORES system.²⁸ The Commission utilizes a “robust security architecture . . . for CORES that exceeds Federal guidelines and recommendations” and has deployed operational controls that comply with National Institute of Standards and Technology guidance.²⁹ OMD stated that its servers are securely located, that its databases are behind several firewalls, and that all servers and communications are monitored.³⁰ The Reply Letter also notes that administrative access to the CORES application is limited and that all transmission of non-public data is encrypted.³¹

6. On October 19, 2009, OMB approved the revised Form 323, including the requirement that filers provide a CORES FRN for all individuals and entities holding an attributable interest in the license.³² After several delayed filing deadlines,³³ the Commission set July 8, 2010 as the first biennial filing deadline using the revised Form 323.³⁴ In response to industry concerns about filers’ ability to obtain CORES FRNs for all individual interest holders due to individuals’ concerns about privacy,

²⁴ Reply Letter at 7.

²⁵ *Id.* at 7-8. The Commission issued a System of Records Notice to cover the data contained in responses to Form 323 that became effective on December 21, 2009. Privacy Act System of Records, 74 Fed. Reg. 59,978 (Nov. 19, 2009) (system of records FCC/MB-1).

²⁶ Reply Letter at 2-3.

²⁷ See Anthony T. Lepore, Esq., Aug. 21, 2009 OMB Comments at 1 (arguing that the new requirement will make the Commission’s databases “ripe for identity theft incursions”); The Law Office of Dan J. Alpert Sept. 10, 2009 OMB Comments at 5 (claiming that the CORES FRN registration process “will foster identity theft against unsuspecting users”); Saga Sept. 10, 2009 OMB Comments at 4-5 (noting regular security breaches of computer systems); State Associations Sept. 10, 2009 OMB Comments at 9 (citing to 2006 Congressional report about security breaches at other federal agencies where sensitive personal data was lost).

²⁸ Reply Letter at 9.

²⁹ *Id.*

³⁰ *Id.* Details concerning improvements made to the security of Commission systems since 2009 are provided at paragraph 30, *infra*.

³¹ Reply Letter at 9.

³² See Promoting Diversification of Ownership in the Broadcasting Services, 74 Fed. Reg. 56,135 (Oct. 30, 2009); Promoting Diversification of Ownership in the Broadcasting Services, 74 Fed. Reg. 56,136 (Oct. 30, 2009) (Federal Register notices announcing OMB approval and effective date of revised Form 323). On October 16, 2009, the Commission sent a subsequent letter to OMB acknowledging the Commission’s action in the 323 *MO&O* to eliminate the reporting of certain nonattributable interest holders. Letter from Walter Boswell, Acting Assoc. Managing Director, PERM, OMD, FCC, to Nicholas A. Fraser, OMB (Oct. 16, 2009).

³³ *Media Bureau Extends the Biennial Filing Deadline for the Commercial Broadcast Ownership Report (Form 323)*, MB Docket No. 07-294, Public Notice, 24 FCC Rcd 14055 (Med. Bur. 2009) (announcing the Media Bureau’s extension of the Form 323 filing deadline until January 11, 2010, in order to allow for additional testing of the electronic version of the form); *Promoting Diversification in the Broadcast Services*, MB Docket No. 07-294, Order, 24 FCC Rcd 14628, 14628-29 (Med. Bur. 2009) (suspending the January 11, 2010, filing deadline to permit staff to investigate technical problems and announcing the new filing date will be at least 90 days from the date that the form is made available for biennial filings).

³⁴ *Media Bureau Announces Revised Form 323 will be Available Online on April 9, 2010, and Sets New Filing Deadline of July 8, 2010*, MB Docket No. 07-294, Public Notice, 25 FCC Rcd 3595 (Med. Bur. 2010).

security, and identity theft, the Media Bureau allowed filers, as an interim measure, to obtain a “Special Use” FRN (“SUFRN”) for one or more reported individuals in lieu of obtaining a CORES FRN.³⁵ When clicking a button on the electronic version of Form 323 to generate a SUFRN, filers were advised via a pop-up box that “[i]f, after using diligent and good-faith efforts” a filer is unable to obtain a social security number from an individual that must be reported on Form 323 in order to generate a CORES FRN, the filer may elect to automatically generate in the electronic Form 323 a SUFRN for that individual.³⁶ The respondents were also informed that those who use a SUFRN on Form 323 would be deemed to be fully compliant with the filing obligations and the lack of a CORES FRN would not subject a filer to enforcement action.³⁷ An individual does not submit an SSN, or any other identifying information, to the Commission when he or she generates a SUFRN, and SUFRNs are not stored within CORES.³⁸ Each individual must obtain only one SUFRN and must use it consistently on all broadcast ownership reports.³⁹ Filers submitted reports on the revised version of Form 323 during the 2009, 2011, and 2013 biennial filing periods, and SUFRNs were available to filers during all three biennial filing rounds.

7. *Quality of Data in Form 323 Biennial Reports.* In July 2011, the U.S. Court of Appeals for the Third Circuit, as part of its review of the Commission’s media ownership rules, vacated and remanded certain aspects of the *Diversity Order*, an Order in which the Commission adopted measures intended to promote minority and female ownership of broadcast stations.⁴⁰ The Third Circuit concluded that the Commission’s decision to adopt a revenue-based eligible entity definition to facilitate ownership diversity was arbitrary and capricious because the Commission did not show how determining eligibility for particular programs and preferences based on such a definition specifically would assist minorities and

³⁵ *Media Bureau Announces Online Availability of Revised Biennial Form 323, an Instructional Workshop on the Revised Form, and the Possibility of Obtaining a Special Use FRN for the Form*, MB Docket No. 07-294, Public Notice, 24 FCC Rcd 14329 (Med. Bur. 2009) (“*Dec. 4, 2009 PN*”). The information provided in the public notice has since been superseded. For example, as explained in the Media Bureau’s Frequently Asked Questions page for Form 323, filers are permitted to report a SUFRN on a non-biennial report submitted on Form 323. Federal Communications Commission, *Form 323 Frequently Asked Questions*, <http://www.fcc.gov/guides/form-323-frequently-asked-questions> (visited Dec. 15, 2014) (“Form 323 FAQ”).

³⁶ See Office of Management and Budget, *FCC Form 323—OMB Control No. 3060-0010, Changes to Pop-up Box Text, Section II-A and Section II-B* (“2010 Pop-up Box Text”), http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201006-3060-006 (select the hyperlink under “Supplementary Documents”) (visited Dec. 15, 2014). On September 28, 2011, the Commission subsequently amended the pop-up box to inform filers that the guidance provided in the *Dec. 4, 2009 PN* has been superseded. Office of Management and Budget, *FCC Form 323 – OMB Control No. 3060-0010, Changes to Pop-up Box Text*, http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201109-3060-020 (select the bottom hyperlink under “Supplementary Documents”) (visited Dec. 15, 2014).

³⁷ See 2010 Pop-up Box Text at 1.

³⁸ See *CORES Notice*, 25 FCC Rcd at 17419, ¶ 38; *Sixth Diversity Further Notice*, 28 FCC Rcd at 467 ¶ 8. SUFRNs are generated during the filing of Form 323 in the Commission’s Consolidated Database System. See *id.* at 461-62, ¶ 2.

³⁹ See Form 323 FAQ. Two Petitions for Writs of Mandamus were filed with the Court of Appeals for the D.C. Circuit to stay the FCC from implementing revisions to the form based on the requirement that all reported individuals would be required to obtain and report a CORES FRN. The law firm of Fletcher, Heald & Hildreth, PLC, on behalf of itself and various state broadcaster association clients, filed the first Petition on December 23, 2009 (Doc. No. 09-1321) and the second Petition on May 28, 2010 (Doc. No. 10-1117). Both were denied. *Fletcher, Heald & Hildreth, P.L.C., et al.*, Doc. No. 09-1321 (D.C. Cir. 2010) (per curiam) (denied Mar. 4, 2010); *Fletcher, Heald & Hildreth, P.L.C., et al.*, Doc. No. 10-1117 (D.C. Cir. 2010) (per curiam) (denied July 7, 2010). In denying the latter petition, the court explicitly relied on the fact that, in light of the Commission’s implementation of the SUFRN, no reported individual would be required to obtain a CORES FRN.

⁴⁰ See generally *Diversity Order*, 23 FCC at 5924, ¶ 1; *Prometheus II*, 652 F.3d at 469-72.

women, who were among the intended beneficiaries of the action.⁴¹ The court also remanded each of the measures adopted in the *Diversity Order* that relied on the eligible entity definition.⁴² The court found that the eligible entity definition was not supported by “data attempting to show a connection between the definition chosen and the goal of the measures adopted – increasing ownership of minorities and women,”⁴³ stressing that regulations seeking to increase ownership by women and minorities must be based upon reliable data. The court stated that, “[a]t a minimum, in adopting or modifying its rules, the FCC must ‘examine the relevant data and articulate a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made.’”⁴⁴ The court also made plain that “[i]f the Commission requires more and better data . . . it must get the data.”⁴⁵ The court stated that the actions taken in the *323 Order* and *Fourth Diversity Further Notice* to reliably analyze minority and female ownership “will, however, lay necessary groundwork for the Commission’s actions on remand.”⁴⁶

8. On November 14, 2012, the Media Bureau released the first electronic analysis of commercial broadcast ownership data submitted pursuant to the revised biennial reporting requirements for 2009 and 2011 (“*2012 323 Report*”).⁴⁷ On June 27, 2014, the Bureau released a similar, second report for 2013 ownership data (“*2014 323 Report*”).⁴⁸ The data contained in these reports are “snapshots” of the status of minority and female ownership of commercial television, radio, Class A television, and LPTV stations and represent the first three of a planned series of biennial “snapshots” that can be used for trend analysis. Preparation of the reports revealed continued difficulties with, and errors within, the Commission’s broadcast ownership data. Many commercial broadcast stations submitted reports with apparently inaccurate or insufficient data to permit electronic calculation of voting interests.⁴⁹ Commission staff required numerous broadcasters to correct errors contained in their biennial Form 323 filings via amendments, which allowed stations covered by those reports to be properly categorized for the report. In addition, Commission staff manually analyzed a large number of ownership reports, together with other available information, in order to assign certain stations to the appropriate categories manually for purposes of the report.⁵⁰ As the *2012 323 Report* stated, many data problems stemmed, in part, from the “complexity of the information required to accurately file” Form 323.⁵¹

⁴¹ *See id.*

⁴² *Id.* at 471-73. The Commission subsequently suspended the application of the eligible entity definition pending further Commission action. *See Media Bureau Provides Notice of Suspension of Eligible Entity Rule Changes and Guidance on the Assignment of Broadcast Station Construction Permits to Eligible Entities*, Public Notice, 26 FCC Rcd 10370 (Med. Bur. 2011) (“*Eligible Entity Rule Suspension Notice*”).

⁴³ *Prometheus II*, 652 F.3d at 471.

⁴⁴ *Id.* at 469 (internal quotation omitted).

⁴⁵ *Id.* at 471 n.42.

⁴⁶ *Id.* at 471.

⁴⁷ *See 2010 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*, MB Docket No. 09-182, Report on Ownership of Commercial Broadcast Stations, 27 FCC Rcd 13814, 13815 (Med. Bur. 2012) (“*2012 323 Report*”). The *2012 323 Report* is based on ownership information, as of November 1, 2009, and October 1, 2011, submitted by broadcasters in their biennial Form 323 filings. *See* 47 C.F.R. § 73.3615.

⁴⁸ *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*, MB Docket No. 14-50, Report on Ownership of Commercial Broadcast Stations (rel. June 27, 2014) (“*2014 323 Report*”).

⁴⁹ *See 2012 323 Report* at 13816, 13818, 13832-33, ¶ 5 n.8, ¶ 9 n.10, Appendix B. *See also* the definitions of “insufficient data to identify” and “not filed” in Appendix A and the tables contained in Appendix C of the report.

⁵⁰ *See id.* at 13832-33, Appendix B (explanatory note 2 for each broadcast service).

⁵¹ *Id.* at 13818, ¶ 9 n.10.

9. The Media Bureau's Consolidated Database System ("CDBS") reflects that for each filing round, more than one quarter of the unique FRNs provided for individuals were SUFRN. Further, a combined analysis of the 2009, 2011, and 2013 filing rounds shows that more than 30 percent of the total unique FRNs reported were SUFRNs and the rate at which filers obtained and reported new SUFRNs for individuals was higher than the rate at which they obtained and reported new CORES FRNs.⁵² In addition, it appears that single SUFRNs have been used for multiple individuals and that single individuals have used multiple SUFRNs despite Bureau guidance to the contrary.⁵³ Because it is possible for filers to improperly report SUFRNs for individuals – either by reporting multiple SUFRNs for a single individual on multiple reports or using the same SUFRN for multiple individuals on multiple reports – the number of unique SUFRNs reported during a given filing period cannot be relied on to determine accurately the number of individuals using a Special Use FRN.⁵⁴ The Media Bureau therefore cannot confidently determine the number of individuals reporting a SUFRN.

10. On December 3, 2012, the Commission issued a *Public Notice* in the 2010 Quadrennial Regulatory Review proceeding offering parties the opportunity to comment on the *2012 323 Report* ("2012 323 Report PN").⁵⁵ The notice broadly sought "additional comment on data contained in [the *2012 323 Report*],"⁵⁶ specifically referencing the Commission's efforts "to improve its collection and analysis of broadcast ownership information" and make "improvements to the reliability and utility of the data reported in FCC Form 323."⁵⁷ Some commenters expressed concern that the Commission's incomplete and inaccurate ownership data render it difficult to track broadcast ownership trends from 2009 and 2011 accurately.⁵⁸ One commenter suggested that the manner in which the Commission currently provides broadcast ownership data from Form 323 to the public does not meet the objective that such data be capable of being electronically searched, aggregated, or cross-referenced.⁵⁹

11. On June 27, 2014, the Commission solicited comment concerning the *2014 323 Report* as part of its 2014 Quadrennial Review Proceeding.⁶⁰ In response, commenters acknowledged that the

⁵² Based on a May 2014 staff analysis of CDBS data for biennial Form 323 filings for the 2009, 2011, and 2013 filing rounds, the percentages of unique FRNs provided for individuals that were SUFRNs were: 25.5% in 2009 (3,365 of 13,195 FRNs), 25.8% in 2011 (3,436 of 13,332 FRNs), and 26.9% in 2013 (3,440 of 12,781 FRNs). Further, 31.5% of the total unique FRNs provided for individuals during the three filing rounds were SUFRNs (5,988 of 19,201 FRNs), because filers obtain and report new SUFRNs for individuals at a significantly higher rate than CORES FRNs (that is, for each biennial filing round, the percentage of reported SUFRNs that were not contained in the filings from the previous round(s) was higher than the percentage of reported CORES FRNs that were not contained in the filings from the previous round(s)).

⁵³ See, e.g., Form 323 FAQ.

⁵⁴ See, e.g., *id.* For example, the May 2014 staff analysis indicates that in the 2011 biennial ownership reports, 3,436 unique SUFRNs were reported. SUFRNs were used in 9,325 instances, however, because many reported SUFRNs were used multiple times. Similar difficulties exist for all three filing rounds.

⁵⁵ See *Commission Seeks Comment on Broadcast Ownership Report*, MB Docket No. 09-182, Public Notice, 27 FCC Rcd 15036 (Med. Bur. 2012) ("2012 323 Report PN").

⁵⁶ *Id.*

⁵⁷ *Id.* at 15037.

⁵⁸ UCC *et al.* Dec. 26, 2012 Comments, MB Docket No. 09-182, at 11-12 ("UCC *et al.* 2012 323 Report Comments"); Free Press Jan. 4, 2013 Reply, MB Docket No. 09-182, at 9.

⁵⁹ UCC *et al.* 2012 323 Report Comments at 13-14.

⁶⁰ See *2014 Quadrennial Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 14-50, Order, 3, ¶ 6 (rel. June 27, 2014).

Commission has taken steps to improve the quality of its broadcast ownership data.⁶¹ Nonetheless, some parties suggested that the Commission should do more to make its broadcast ownership data easier to use, search, aggregate, and cross-reference electronically, for the benefit of studies and analysis.⁶² Some commenters supported elimination of the use of SUFRNs to ensure accuracy, reliability, and usefulness of the data.⁶³

12. *Proposals Related to Noncommercial Broadcast Stations.* The Commission has put forth several proposals that remain pending to improve the broadcast ownership reports focused on making the data more comprehensive, reliable, and less burdensome to collect. For instance, the *Fourth Diversity Further Notice*, which accompanied the *323 Order*, generally sought comment on whether to adopt the same or similar modifications for Form 323-E for noncommercial stations (“NCEs”) as the *323 Order* imposed for commercial stations.⁶⁴ The Notice specifically sought comment on the proper definition of “ownership” in the NCE context, asking whether looking at the composition of the board of directors or other governing body of an NCE station would be appropriate for determining “ownership” for Form 323-E purposes.⁶⁵ Several commenters support this approach, noting, for example, that board members have legally cognizable duties to the licensees they serve and often are involved in station operations and hiring decisions, have final authority over NCE licensees, and are responsible to the local communities they serve.⁶⁶ This approach is consistent with the Commission’s attribution standards, which attribute ownership interests to officers and directors of NCE stations.⁶⁷ Other commenters argue that dissimilarities between the governance of commercial and NCE stations preclude any definition of “ownership” in the NCE context. These parties 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.⁶⁸ The *Fourth*

⁶¹ National Hispanic Media Coalition Aug. 6, 2014 Comments, MB Docket No. 14-50, at 16 (“NHMC 2014 Quadrennial Comments”); Free Press Aug. 6, 2014 Comments, MB Docket No. 14-50, at 8.

⁶² *Id.* At 15; NHMC 2014 Quadrennial Comments at 16-17; UCC *et al.* Aug. 6, 2014 Comments, MB Docket No. 14-50, at 19 (“UCC 2014 Quadrennial Comments”); Howard Media Group/Carolyn Byerly Comments, MB Docket No. 14-50, at 4-5 (“Howard 2014 Quadrennial Comments”).

⁶³ UCC 2014 Quadrennial Comments at 19.

⁶⁴ *Fourth Diversity Further Notice*, 24 FCC Rcd at 5910-11, ¶¶ 27-30. The *Fourth Diversity Further Notice* was published in the *Federal Register* on May 27, 2009, with comments due on or before June 26, 2009, and reply comments due on or before July 13, 2009. See Promoting Diversification of Ownership in the Broadcasting Services, 74 Fed. Reg. 25,205 (May 27, 2009); see also *Media Bureau Announces Comment and Reply Comment for the Fourth Diversity Further Notice of Proposed Rulemaking in the Diversification of Ownership Proceeding*, MB Docket No. 07-294, Public Notice, 24 FCC Rcd 7295 (Med. Bur. 2009). The *Fourth Diversity Further Notice* also sought comment on whether to require low power FM (“LPFM”) stations to file a Form 323-E or to continue to exempt LPFM licensees from the filing requirements. *Fourth Diversity Further Notice*, 24 FCC Rcd at 5911, ¶ 30.

⁶⁵ *Id.* at 5910-11, ¶¶ 28-29.

⁶⁶ See, e.g., Byerly/Miles June 23, 2009 Comments at 2; Educational Media Foundation June 25, 2009 Comments at 2-3; Minnesota Public Radio June 29, 2009 Comments at 3; NFCB/Prometheus June 26, 2009 Comments at 3-4; Native Public Media June 26, 2009 Comments at 4-7; UCC *et al.* June 26, 2009 Comments at 3-4; Free Press July 13, 2009 Reply at 2-4; Native Public Media July 13, 2009 Reply at 2-5; UCC *et al.* July 13, 2009 Reply at 2-4; NFCB/Prometheus July 30, 2009 Reply at 2-3.

⁶⁷ See 47 CFR § 73.3555(f) (while NCE stations are not subject to the Commission’s ownership limits, those stations are subject to the same attribution standards applicable to their commercial counterparts); *id.* Note 2(g) (each officer or director of a broadcast station has an attributable interest in that station unless his or her duties are wholly unrelated to the broadcast station and the Commission grants an attribution waiver).

⁶⁸ See, e.g., Association for Public Television Stations (“APTS”) *et al.* June 26, 2009 Comments at 3, 7-12; Public Television and Radio Licensees June 26, 2009 Comments at 7-8; APTS *et al.* July 13, 2009 Reply at 2-5; Letter from Julie M. Kearney, Director of Public Policy and Legislation, National Public Radio (“NPR”), to Marlene H.

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Diversity Further Notice also asked for input concerning the burden of providing race and gender information on Form 323-E.⁶⁹ Several commenters argue that requiring the collection and reporting of such information would be unduly burdensome and might discourage board participation.⁷⁰ Other commenters argue that the collection of such information is minimally burdensome and agree that such information is necessary to construct a complete picture of minority and female participation in broadcasting.⁷¹

13. On January 3, 2013, the Commission released its *Sixth Diversity Further Notice*. It specifically proposed extending the CORES FRN requirement to all listed interest holders on Form 323-E if the filing modifications proposed in the *Fourth Diversity Further Notice* are implemented.⁷² The *Sixth Diversity Further Notice* tentatively concluded that obtaining and reporting a CORES FRN for individuals identified on Form 323-E is not burdensome and sought comment.⁷³ Some commenters believe that the public interest benefits associated with compiling comprehensive data on this segment of the broadcast industry outweigh any burdens associated with such a plan.⁷⁴ Several commenters argue that the requirement would be unduly burdensome for NCEs and that it would discourage people from serving on the boards of NCE stations.⁷⁵ Parties also state that licensees may have difficulty obtaining SSNs from board members, some of whom are appointed governmental officials.⁷⁶ In addition, certain

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Dortch, Secretary, FCC 1 (Nov. 19, 2009) (“NPR *et al.* Nov. 19, 2009 *Ex Parte* Letter”) (letter filed on behalf of NPR, APTS, Station Resource Group, and Pacifica Foundation); Letter from Rishi Hingoraney, Director of Public Policy and Legislation, NPR, to Marlene H. Dortch, Secretary, FCC 1 (Jan. 30, 2013) (“NPR Jan. 30, 2013 *Ex Parte* Letter”); Capital of Texas Public Telecommunications Council *et al.* Feb. 12, 2013 Comments at 2; Syracuse/Kansas Feb. 14, 2013 Comments at 1-2, 5-10; NPR *et al.* Feb. 14, 2013 Comments at 2-7, Appendix A; Public Broadcasting Licensees Feb. 14, 2013 Comments at 3-4; Educational Media Foundation Feb. 14, 2013 Comments at 2-3; University Station Alliance Feb. 14, 2013 Comments at 1-2; Regents of the University of California Feb. 14, 2013 Comments at 1-3; SUNY Feb. 14, 2013 Comments at 2-4; C-Span Radio Feb. 14, 2013 Comments at 2-5; Public Television and Radio Licensees Feb. 14, 2013 Comments at 2-4; Alabama Educational Television Commission *et al.* Feb. 14, 2013 Comments at 9-11; Alabama Educational Television Commission *et al.* Mar. 1, 2013 Reply at 2; Public Radio Regional Organizations Mar. 1, 2013 Reply at 1.

⁶⁹ *Fourth Diversity Further Notice*, 24 FCC Rcd at 5911, ¶ 29.

⁷⁰ *See, e.g.*, APTS *et al.* June 26, 2009 Comments at 14; Public Television and Radio Licensees June 26, 2009 Comments at 8-11.

⁷¹ *See, e.g.*, NFCB/Prometheus June 26, 2009 Comments at i, 2-6, 10; Native Public Media June 26, 2009 Comments at 3, 7; Byerly/Miles June 23, 2009 Comments at 2; UCC *et al.* June 26, 2009 Comments at 2-4; Native Public Media July 13, 2009 Reply at 2-3; Free Press July 13, 2009 Reply at 2-5.

⁷² *Sixth Diversity Further Notice*, 28 FCC Rcd at 473-74, ¶ 21.

⁷³ *Id.*

⁷⁴ *See, e.g.*, UCC *et al.* Feb. 14, 2013 Comments at 8-9.

⁷⁵ *See, e.g.*, NPR *et al.* Nov. 19, 2009 *Ex Parte* Letter at 1; NPR Jan. 30, 2013 *Ex Parte* Letter at 1; Capital of Texas Public Telecommunications Council *et al.* Feb. 14, 2013 Comments at 3-4; Syracuse/Kansas Feb. 14, 2013 Comments at 4; NPR *et al.* Feb. 14, 2013 Comments at 8; Public Broadcasting Licensees Feb. 14, 2013 Comments at 4-5; Educational Media Foundation Feb. 12, 2013 Comments at 3; University Station Alliance Feb. 14, 2013 Comments at 1-2; SUNY Feb. 14, 2013 Comments at 6; Alabama Educational Television Commission *et al.* Feb. 14, 2013 Comments at 10; Alabama Educational Television Commission *et al.* Mar. 1, 2013 Reply at 2; Public Radio Regional Organizations Mar. 1, 2013 Reply at 1-2.

⁷⁶ *See, e.g.*, NPR Jan. 30, 2013 *Ex Parte* Letter at 1; Capital of Texas Public Telecommunications Council *et al.* Feb. 12, 2013 Comments at 2; Syracuse/Kansas Feb. 14, 2013 Comments at 12-13; NPR *et al.* Feb. 14, 2013 Comments at 8; Public Broadcasting Licensees Feb. 14, 2013 Comments at 7-8; University Station Alliance Feb. 14, 2013 Comments at 2; Regents of the University of California Feb. 14, 2013 Comments at 3-4; Public Television and Radio Licensees June 26, 2009 Comments at 7-8. Certain commenters also argued that the Commission should not

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commenters suggest that a CORES FRN is insufficient as a unique identifier because, for example, (1) multiple FRNs can be obtained for a single TIN/SSN, (2) an individual can in certain circumstances obtain a CORES FRN without providing an SSN, (3) an individual may provide an incorrect SSN, either intentionally or inadvertently, and (4) researchers outside the Commission do not have access to the TIN information in CORES to permit them to use it as an underlying unique identifier.⁷⁷ Citing the Privacy Act, multiple commenters object to a requirement that noncommercial attributable interest holders obtain a CORES FRN for Form 323-E filings because it requires submission of an SSN.⁷⁸

14. *Use of CORES FRNs Versus Use of SUFRNs.* The *Sixth Diversity Further Notice* also sought comment on the Commission's requirement that commercial entities filing Form 323 provide a CORES FRN for attributable interest holders.⁷⁹ The Commission tentatively affirmed its prior determination that the use of CORES FRNs was crucial to unique identification on Form 323 and that such unique identification is essential to providing the kind of searchable and manipulable database needed to support accurate and reliable studies of ownership trends.⁸⁰ It tentatively concluded that the reporting of CORES FRNs on Form 323 was superior to the reporting of SUFRNs and proposed eliminating the availability of SUFRNs.⁸¹ The Commission reasoned that SUFRNs do not provide a reliable means of linking a reported interest holder to a unique individual and the continued use of the SUFRN undermines the Commission's efforts to "accurately ascertain the nature and extent of minority and female ownership of broadcast properties."⁸² Acknowledging that the Third Circuit in *Prometheus II* highlighted the importance of reliable data to support rulemaking initiatives, the *Sixth Diversity Further Notice* asked for comments on the importance of the CORES FRN as a unique identifier for quality, cross-referencing, and searchability purposes.⁸³ The Commission also asked whether it should continue to permit filers to use the SUFRN in the event that reportable individuals are unwilling to provide their SSN to a third party or unwilling to obtain and provide a CORES FRN.⁸⁴ The Commission encouraged commenters to offer alternative proposals to the SUFRN. The Commission also invited comment on its

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require individuals to provide CORES FRNs on Form 323-E because of differences between the ownership/governance of commercial stations and their noncommercial counterparts. See NPR *et al.* Nov. 19, 2009 *Ex Parte* Letter at 1; NPR Jan. 30, 2013 *Ex Parte* Letter at 1; Capital of Texas Public Telecommunications Council *et al.* Feb. 12, 2013 Comments at 2; Syracuse/Kansas Feb. 14, 2013 Comments at 5-7; NPR *et al.* Feb. 14, 2013 Comments at 2-7, Appendix A; Public Broadcasting Licensees Feb. 14, 2013 Comments at 3-4; Educational Media Foundation Feb. 14, 2013 Comments at 2; University Station Alliance Feb. 14, 2013 Comments at 1; Regents of the University of California Feb. 14, 2013 Comments at 2-3; Public Television and Radio Licensees June 26, 2009 Comments at 3-6; SUNY Feb. 14, 2013 Comments at 3; C-Span Radio Feb. 14, 2013 Comments at 2-5; Alabama Educational Television Commission *et al.* Feb. 14, 2013 Comments at 9-11; Alabama Educational Television Commission *et al.* Mar. 1, 2013 Reply at 2; Public Radio Regional Organizations Mar. 1, 2013 Reply at 1.

⁷⁷ See Alabama Educational Television Commission *et al.* Feb. 14, 2013 Comments at 6; Fletcher Heald Petition for Reconsideration at 22-23; Alabama Educational Television Commission *et al.* Mar. 1, 2013 Reply at 5.

⁷⁸ See, e.g., *id.* at 6-7; NPR *et al.* Feb. 14, 2013 Comments at 8, n.25; SUNY Feb. 14, 2013 Comments at 7-8.

⁷⁹ *Sixth Diversity Further Notice*, 28 FCC Rcd at 461, ¶ 1. Comments to the *Sixth Diversity Further Notice* were due on or before February 14, 2013, with Reply Comments due on or before March 1, 2013. The Commission noted that the ongoing *CORES* proceeding also addressed SUFRNs, but that it tentatively concluded that it could take action to improve Form 323 without awaiting the outcome of that proceeding. *Id.* at 470, ¶ 15.

⁸⁰ *Id.* at 468-69, ¶ 13.

⁸¹ *Id.* at 461-62, ¶ 2.

⁸² *Id.* at 468, ¶ 12.

⁸³ *Id.*

⁸⁴ *Id.* at 471-72, ¶ 17. The Commission added that in such instances where an individual with reportable interests fails to obtain and provide a CORES FRN, the Commission can use its enforcement authority against the recalcitrant individual. *Id.*

tentative conclusion that the Privacy Act does not prohibit adoption of the CORES FRN proposal and asked commenters to discuss the degree of the risk to privacy the proposal poses.⁸⁵

15. In response to the *Sixth Diversity Further Notice*, some commenters support the Commission's proposal to eliminate the SUFRN, arguing that requiring CORES FRNs "is a necessary step" to compiling complete and searchable data.⁸⁶ These commenters also suggest that the availability of the SUFRN contributed to the instances of incomplete data that prevented the Media Bureau from identifying ownership interests in some stations that submitted biennial ownership reports during the 2009 and 2011 reporting periods.⁸⁷ No commenters offered any alternative to the CORES FRN other than the SUFRN, and no commenters seriously contend that the SUFRN provides similar data quality as CORES FRNs. Instead, some commenters argue that even a CORES FRN cannot serve as a unique identifier because, for instance, the CORES system allows filers to obtain multiple FRNs and because outside researchers do not have access to the underlying TIN as a unique identifier.⁸⁸ Also, while some commenters support the Commission's conclusion that a unique identifier is essential to allow analysis of the data,⁸⁹ other commenters dispute that position.⁹⁰

16. The *Sixth Diversity Further Notice* also sought input concerning proposed modifications to Form 323 designed to reduce filing burdens in the Commission's *Review of Media Bureau Data Practices* proceeding.⁹¹ For instance, the Commission sought comment on an NAB suggestion to eliminate a requirement that a filer disclose the other attributable newspaper and broadcast interests of attributable parties listed in the filing, arguing that portion of the submission is particularly burdensome.⁹² In comments, NAB reiterates its support and no commenters oppose it.⁹³

17. In December 2010, the Commission initiated a rulemaking proceeding in which it proposed to update CORES in an effort to enhance the Commission's data collection efforts and to improve customer interface with CORES.⁹⁴ The Commission noted that, "[s]ince the creation of CORES,

⁸⁵ *Sixth Diversity Further Notice*, 28 FCC Rcd at 472, ¶ 18. The Commission also noted that it has already adopted a Privacy Act System of Records for CORES and with respect to the Form 323 requirement, which applies to any personally identifiable information required by Form 323 and CORES in connection with the CORES FRN registration process. *Id.*; see also Reply Letter at 7-8; Privacy Act System of Records, 74 Fed. Reg. 59,978 (Nov. 19, 2009) (system of records FCC/MB-1 for Form 323); Privacy Act System of Records, 71 Fed. Reg. 17,234 (Apr. 5, 2006) (system of records FCC/OMD-9 for CORES). These System of Records Notices ("SORNS") can be viewed at <http://www.fcc.gov/encyclopedia/privacy-act-information#systems> (visited Dec. 15, 2014).

⁸⁶ UCC *et al.* Feb. 14, 2013 Comments at 6-7.

⁸⁷ *Id.* at 7-8 (citing *2012 323 Report*, 27 FCC Rcd at 13816, ¶ 5 n.8).

⁸⁸ See Alabama Educational Television Commission *et al.* Feb. 14, 2013 Comments at 6; Fletcher Heald Petition for Reconsideration at 22-23; Alabama Educational Television Commission *et al.* Mar. 1, 2013 Reply at 5.

⁸⁹ UCC *et al.* Feb. 14, 2013 Comments at 7.

⁹⁰ For instance, Alabama Educational Television Commission *et al.* argue that requiring CORES FRNs for interest holders is not necessary to study broadcast ownership trends over time. Alabama Educational Television Commission *et al.* Mar. 1, 2013 Reply at 3-5; see also Koerner & Olender Petition for Reconsideration at 4 (asserting that "requiring FRNs of only reporting entities (or 'filing entities') is sufficient").

⁹¹ *Sixth Diversity Further Notice* 28 FCC Rcd at 474-5, ¶ 23; MMTCC Data Practices Comments at 8-11; NAB Data Practices Reply at 6-8.

⁹² See NAB Feb. 14, 2013 Comments at 9-10; NAB Mar. 1, 2013 Reply Comments at 1-2.

⁹³ *Id.* at 7. FCC Form 323 Section II-B, Question 3(c) asks whether the "[r]espondent or any other person/entity with an attributable interest in the Respondent also hold an attributable interest in any other broadcast station, or in any newspaper entities in the same market, as defined in 47 C.F.R. § 73.3555."

⁹⁴ See generally *CORES Notice*, 25 FCC Rcd at 17401, ¶ 1. The *CORES Notice* was published in the Federal Register on February 11, 2011. See *Amendment of Part 1 of the Commission's Rules, Concerning Practice and*

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entities have been able to obtain multiple FRNs in order to permit different members of their corporate family to obtain their own individual FRNs, regardless of whether those entities have different taxpayer identification numbers”⁹⁵ The *CORES Notice* also stated that the Commission has had difficulty using CORES to identify all FRNs held by the same entity when entities have provided inconsistent TINs.⁹⁶ To address these issues, the *CORES Notice* sought comment on two proposals for requiring entities and individuals to rely primarily upon a single CORES FRN.⁹⁷ Under Option 1, an entity would be required to use a single ten-digit FRN for all of its dealings with the FCC, but would have the ability to create an unlimited number of sub-accounts that could be assigned to organizational units, such as a geographic district served by the entity or a distinct line of business conducted by the entity, or even to particular employees.⁹⁸ Option 2 would enable entities that currently hold multiple FRNs to retain all of their various FRNs, which would be electronically linked to each other within the Commission’s database through the assignment of an identical prefix that would precede each of the entity’s ten-digit FRNs.⁹⁹ Commenters generally support Option 2 as a mechanism for limiting parties’ use of multiple CORES FRNs.¹⁰⁰

III. DISCUSSION

18. We propose implementing an RUFNR for use on Form 323 filings. We tentatively conclude that this proposal will provide reasonable assurance of unique identification of individuals within our broadcast ownership report database, which is critical to the improvement of the Commission’s data gathering practices. We also tentatively conclude that RUFNRs provide superior data quality to SUFRNs and could enable the Commission to implement a burden-reducing form modification. We next consider ways in which the RUFNR proposal is consistent with other Commission data gathering and policy initiatives. Thereafter we propose to apply RUFNRs to NCE filings if additional Commission action is undertaken with respect to broadcast ownership reporting in the NCE industry segment. We believe that the quality of the Commission’s security systems and the Privacy Act are not a barrier to the system proposed. In addition, we tentatively conclude that the RUFNR proposal is not burdensome. We

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Procedure, Amendment of CORES Registration System; Notice of Proposed Rulemaking, MD Docket No. 10-234, FCC 10-192, 76 Fed. Reg. 5652 (February 1, 2011). Comments and Reply Comments were due on March 3, 2011 and March 18, 2011, respectively. *See id.*

⁹⁵ *See CORES Notice*, 25 FCC Rcd at 17411, ¶ 13.

⁹⁶ *See id.*

⁹⁷ *Id.* at 17408, 17411-14 ¶¶ 4, 12-24.

⁹⁸ *Id.* at 17413, ¶ 18.

⁹⁹ *Id.* at 17413, ¶ 19.

¹⁰⁰ *See, e.g.*, Frontier March 3, 2011 Comments, MD Docket No. 10-234, at 1-3; Sprint March 3, 2011 Comments, MD Docket No. 10-234, at 4; AT&T March 18, 2011 Reply, MD Docket No. 10-234, at 1-2; Blooston Law March 18, 2011 Reply, MD Docket No. 10-234, at 2-3. There are several limited exceptions to the requirement that a party requesting a CORES FRN provide a TIN, including (1) foreign entities and non-United States citizens; (2) petitioners and non-feeable complainants; (3) parties that have applied for, but have not received an EIN from the Internal Revenue Service; (4) entities and individuals claiming an “exempted activities” exception when, under IRS rules, the party is not required to obtain an EIN; (5) amateur radio clubs; and (6) tribal government or entity. *See id.* at 17411, 17415-19, n. 24, ¶¶ 28-37. The *CORES Notice* indicated that these exceptions, which are sometimes invoked in error, limit the ability of the Commission to track parties through CORES. *See id.* at 17411, ¶ 13. To address these issues, the *CORES Notice* proposed limiting or eliminating some of the limited exceptions to the TIN requirement. *Id.* at 17409, 17411, 17415-19 ¶¶ 4, 13, 28-37. Commenters oppose changing the TIN exception applicable to foreign individuals and entities. Inmarsat March 3, 2011 Comments, MD Docket No. 10-234, at 2-5; Blooston Law March 18, 2011 Reply, MD Docket No. 10-234, at 4-5. One commenter supports eliminating the TIN exception for amateur radio clubs. ARRL March 3, 2011 Comments, MD Docket No. 10-234, at 9-10. No commenters address the other TIN exceptions.

ask for comment on whether SUFRNs should remain available in the case of recalcitrant individuals. We seek comment on the costs and benefits of all the proposals contained herein and any alternatives commenters propose.

19. *RUFRNs Support the Commission's Data Gathering and Policy Making Initiatives.* We continue to believe, as described below, that the Commission must be able to identify parties reported on broadcast ownership reports uniquely for purposes of creating reliable and usable data in support of policy initiatives promoting diverse ownership.¹⁰¹ Our RUFRN proposal is important to the Commission's ongoing mission to improve, streamline, and modernize the way it collects and uses data.¹⁰² We wish, however, to balance these Commission objectives against the privacy, data security, and identity theft concerns of individuals with attributable interests in broadcast stations.¹⁰³ The Commission is particularly sensitive to concerns that have been expressed in the existing record in the *Diversity* proceeding concerning the proposal that individual attributable interest holders of broadcast stations provide an SSN to the Commission for purposes of broadcast ownership reporting.¹⁰⁴

20. Accordingly, we propose to establish an alternative mechanism within CORES to identify individuals uniquely that does not require submission of a full SSN to the Commission. This method would allow an individual to obtain an RUFRN from CORES by submitting an alternate set of identifying information – including full name, residential address, date of birth, and last four digits of the individual's SSN. The CORES system will be programmed to verify that the submitted information is complete and does not duplicate any information that is already associated with an RUFRN in CORES.¹⁰⁵ We also propose that when an applicant obtains an RUFRN the individual will be asked to list all CORES FRNs registered to the individual and all SUFRNs that individual previously used in any broadcast ownership report filings since the 2009 biennial reporting cycle. We tentatively conclude that such disclosures will allow the Commission to identify CORES FRNs, RUFRNs, and SUFRNs that identify the same individual, promoting the usefulness of the broadcast ownership data for purposes of electronic searching, aggregating, and cross-referencing and for trend analysis.¹⁰⁶ Once an RUFRN is issued, we propose that any ownership report filing that lists that specific individual would be required to include that RUFRN.¹⁰⁷ We propose that attributable interest holders would not be required to obtain or use an RUFRN for Form 323 (or Form 323-E if the filing obligations proposed in the *Fourth Diversity Further Notice* are extended to NCEs) and could instead opt to use a CORES FRN. Like SUFRNs, we propose that RUFRNs would be usable only on broadcast ownership reporting forms and only for individuals (not entities) reported as

¹⁰¹ See also ¶ 14, *supra*.

¹⁰² See ¶ 1, *supra*.

¹⁰³ See ¶ 2, *supra*.

¹⁰⁴ See ¶¶ 2, 4, 12-13, *supra*.

¹⁰⁵ Specifically, we propose that, when a new RUFRN is generated, the identifying information provided by the individual will be stored confidentially in CORES, as other sensitive information is stored in CORES currently to support CORES FRNs issued pursuant to existing functionalities. In the current system, only the individual's name and the CORES FRN number are publicly available and the SSN is held securely and confidentially in CORES. Similarly, for the RUFRN, the individual's name and RUFRN could be available publicly but the remaining identifying information would be held securely and confidentially within CORES. CORES will determine if the same underlying identifying information already exists in the database and if so, the system will not issue the request for a new RUFRN based on the same information.

¹⁰⁶ Cf. n. 126, *infra*.

¹⁰⁷ The Commission's electronic systems will be capable of distinguishing between traditional CORES FRNs and RUFRNs. To help individuals reviewing ownership reports distinguish between the two types of FRNs, we propose that RUFRNs will use a specific number series (e.g., all and only RUFRNs will begin with "88").

attributable interest holders.¹⁰⁸ We seek comment on these proposals and tentative conclusions and on the costs and benefits of using an RUFNR as described herein for broadcast ownership reporting purposes.

21. The Commission has previously recognized that Sections 257 of the 1996 Act and 309(j) of the Act support its efforts to gather the ownership data contained in Form 323.¹⁰⁹ In the *1998 Biennial Review Order*, the Commission concluded that, in order to fulfill its statutory mandates, it must collect race, gender, and ethnicity information from all interest holders reported on Form 323.¹¹⁰ Collecting these 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 facilitate opportunities for women- and minority-owned businesses and to promote a diversity of media voices.¹¹¹ Just as it is essential for the Commission to collect these ownership data to fulfill its mandates, it is important that these data be reliable, aggregable, and useful for studies and trend analysis. The Commission has recognized that CORES FRNs offer a unique identifier and therefore play an important role in promoting the integrity of the data collected.¹¹²

22. We tentatively find that flaws in the current practices related to the reporting of SUFRNs for individuals listed on Form 323 compromise the integrity of the data and thereby frustrate the Commission's attempts to fulfill its statutory mandates under Section 257 and Section 309(j). Because our policy initiatives are dependent on the quality of the data collected, we tentatively conclude that requiring an FRN generated by CORES, either through existing mechanisms or via the proposed method to obtain an RUFNR, for all reportable interest holders on Forms 323 (and 323-E if proposals in the *Fourth Diversity Further Notice* are adopted) is essential to improve the quality and usability of the data collected. We seek comment on these tentative conclusions.

23. We tentatively conclude that having reasonable assurance that attributable interest holders are uniquely identified on ownership reports in a manner that ensures the data can be meaningfully searched, aggregated, and cross-referenced electronically is crucial to data quality and usability. In the *Sixth Diversity Further Notice* we tentatively concluded that TINs/SSNs within CORES were necessary as underlying unique identifiers of individuals. Would the RUFNR system described provide sufficient assurances that individuals are uniquely identified? For instance, are the specific pieces of identifying information described in our proposal (full name, residential address, date of birth, and last four digits of the individual's SSN) sufficient to provide a reasonable basis for determining that an individual identified is unique within the CORES system? Are there a sufficient number of criteria included in the proposal or are there additional pieces of information that would improve the reliability of the data? Are there additional or different pieces of information that better enable the Commission to ensure that individuals are uniquely identified? If so, what additional or different pieces of information should the Commission require? What risk would remain that the system could not uniquely identify individuals using these pieces of information?

24. A commenter to the *Sixth Diversity Further Notice* asserts that unique identification of individuals in ownership data is not necessary to study broadcast ownership trends over time.¹¹³ This argument is not convincing because it presumes incorrectly that the only utility of the data is to track how

¹⁰⁸ In a future item, we may consider expanding the use of RUFNRs to other purposes. Cf. *CORES Notice*, 25 FCC Rcd at 17420, ¶ 39 (discussing possible expansion of SUFRN usage beyond broadcast ownership reports).

¹⁰⁹ *323 Order*, 24 FCC Rcd at 5897, ¶ 2.

¹¹⁰ *1998 Biennial Review Order*, 13 FCC Rcd at 23095, ¶ 96.

¹¹¹ *1998 Biennial Review Order*, 13 FCC Rcd at 23097-98, ¶¶ 101-02.

¹¹² See, e.g., *Sixth Diversity Further Notice*, 28 FCC Rcd at 465-66, ¶ 7; *323 MO&O*, 24 FCC Rcd at 13043 ¶ 8 n.20; Reply Letter at 3-7.

¹¹³ *Alabama Educational Television Commission et al.* Mar. 1, 2013 Reply at 3-6.

many stations have minority and/or female owners.¹¹⁴ Other questions relevant to evaluating trends in minority and female ownership include how many individual minority and/or female owners exist at a given point and how those numbers change over time.¹¹⁵ The Commission cannot count unique individual owners without a mechanism to identify individuals uniquely. The same commenter also states that the fact that ownership reports are submitted under penalty of perjury is sufficient to ensure that parties report race or gender information on ownership report filings accurately.¹¹⁶ But, as noted above, examination of ownership reports from 2009, 2011, and 2013 revealed numerous data reporting errors due in part to the complexity of the information required to accurately file the form.¹¹⁷ We have no reason to believe that these errors were the result of filers attempting to deliberately mislead the Commission. We tentatively conclude that the presence of a unique identifier will improve the quality of our ownership data by permitting errors to be identified and remedied. For example, since an individual's race cannot change over time,¹¹⁸ the presence of the same individual's FRN on multiple reports, along with inconsistent race information could indicate one or more reporting errors that can then be cured. We seek comment on these positions.

25. *RUFNRs Provide Superior Data Quality to SUFRNs.* We tentatively conclude that the RUFNR would provide superior data quality to the SUFRN and we seek comment on that tentative conclusion. The SUFRN was devised as merely a computer generated number created by clicking a button within Form 323 itself and not backed by any identifying information.¹¹⁹ The Commission collects no information when the system generates a new SUFRN, and there is no database analogous to CORES that contains uniquely identifying information associated with SUFRNs. The SUFRN therefore offers the Commission no way to cross reference or trace back reported information to a single individual.¹²⁰ Because the Commission cannot determine whether particular individuals hold one or more SUFRNs or whether a particular SUFRN is being used to identify one or more individuals, it cannot reliably examine the complete attributable holdings of an individual reported with a SUFRN (either at a specific time or over time), or search, aggregate, and cross-reference our ownership data using Commission systems.¹²¹ Any attempt at such analysis would require manual consideration of every single entry where a SUFRN appears together with a subjective analysis of other textual information contained on the form or available from other public sources. Manual, subjective analysis of thousands of Form 323 entries using various sources of information compromises data integrity and data utility. On the other hand, we tentatively conclude that since RUFNRs will be backed by identifying information, and since CORES will not issue multiple RUFNRs for the same identifying information, RUFNRs can be relied upon to identify individuals uniquely. We seek comment on our view that the qualities of the proposed RUFNR provide superior data quality to the SUFRN.

26. As noted above, some commenters in the *Diversity* proceeding argued that CORES FRNs cannot serve as unique identifiers because, for example, multiple FRNs can be obtained for a single

¹¹⁴ *See id.*

¹¹⁵ *See id.* For example, the biennial ownership filings submitted in one year might indicate that ten owners of a particular race own 100 FM broadcast stations. Two years later, the biennial ownership filings may reveal that 120 FM stations have owners of that race. In addition to counting the number of stations owned, it is notable to know whether the number of individual owners increased or whether existing owners acquired additional stations.

¹¹⁶ *Id.* at 3-4.

¹¹⁷ *See* ¶ 8, *supra*.

¹¹⁸ *See Alabama Educational Television Commission et al.* Feb. 14, 2013 Comments at 6-7; *Alabama Educational Television Commission et al.* Mar. 1, 2013 Reply at 3.

¹¹⁹ *Sixth Diversity Further Notice*, 28 FCC Rcd at 466-67, 470-71, ¶¶ 8, 15.

¹²⁰ *Id.* at 468-71, ¶¶ 12-13, 15.

¹²¹ *Id.* at 464, 468-71, ¶¶ 5, 13, 15

TIN/SSN, an FRN might be associated with no TIN or an incorrect TIN, and outside researchers do not have access to underlying TIN information within CORES.¹²² We observe that the CORES proceeding has proposed several options to resolve some of these issues.¹²³ Even as the Commission continues to examine those issues through its CORES reform process, we tentatively conclude, for several reasons, that, notwithstanding these possibilities, CORES FRNs and RUFNRs are still superior to SUFRNs for the purpose of broadcast ownership reports. To begin with, exceptions permitting an individual or entity to obtain a CORES FRN without a TIN are legitimately available in a limited number of cases¹²⁴ that would not be expected to compromise the overall ownership data submitted. And even though CORES currently permits an individual or entity to obtain multiple FRNs with a single TIN, the Commission can identify all FRNs that relate to a single TIN.¹²⁵ Also, we expect that individuals and entities will comply with our rules and provide accurate information during the CORES registration process to the greatest extent possible. While the Commission's obligation to hold the TIN confidential does limit the direct utility of the TIN to outside researchers as a unique identifier, that limitation does not decrease the benefits for data integrity and utility to the Commission.¹²⁶ With respect to the RUFNR proposal, we anticipate that the specificity of the identifying information required and the fact that a number of pieces of information are required will be sufficient to provide the Commission with reasonable certainty that the information identifies a unique filer within the CORES system. Based on our experience in the 2009, 2011, and 2013 reporting cycles, we tentatively conclude that the RUFNR proposal will improve the reliability and usability of the broadcast ownership report database, in furtherance of our statutory mandates. We seek comment on these conclusions.

27. *RUFNRs May Enable Burden-Reducing Form Modification.* As noted above, the Commission and commenters have identified errors in filings submitted to the Commission over the last three filing periods.¹²⁷ We tentatively conclude that some such errors could be reduced by simplifying the form and making it less burdensome to complete and submit. Specifically, the record reflects proposals that would eliminate a filer's obligation to disclose other attributable broadcast interests of attributable parties listed in the filing.¹²⁸ We tentatively conclude that in order to implement this burden-reducing form modification without compromising the scope and content of the information collected, the Commission requires a unique identifier to allow the filings to be electronically searched and cross-referenced within a single filing period and over time. We tentatively conclude that the existence of unique identifiers will permit the Commission to make this modification while maintaining the integrity of its ownership data, thereby reducing burdens on filing parties and improving the quality of the information submitted to the Commission. We seek comment on these conclusions.

¹²² See ¶ 13, *supra*.

¹²³ See ¶ 17 and n. 100, *supra*.

¹²⁴ See *id*.

¹²⁵ See n. 13, *supra*.

¹²⁶ The Commission's raw broadcast ownership data is available to the public in a form that can be electronically analyzed, searched, aggregated, and cross-referenced. See Federal Communications Commission, *Index of Media Bureau CDBS Public Database Files*, <http://www.fcc.gov/mb/databases/cdbs> (visited Dec. 15, 2014). Moreover, the Commission has released two reports reflecting its analysis of biennial ownership data from the first three biennial filing periods, 2009, 2011, and 2013, and intends to continue releasing such reports going forward. See ¶ 8, *supra*. The Media Bureau will consider in preparing future reports whether and how to provide information regarding CORES FRN groupings that are tied to the same TIN. The pending proposal to limit or eliminate the availability of multiple FRNs, See ¶ 17, *supra*, could resolve this issue as well.

¹²⁷ See ¶¶ 8, 10, *supra*. (discussing extensive efforts by FCC staff to improve filing compliance and the accuracy of reported ownership data)

¹²⁸ *Sixth Diversity Further Notice*, 28 FCC Rcd at 474-75, ¶ 23.

28. *RUFNR Application in NCE Context.* We specifically seek additional comment concerning the proposal to use RUFNRs for Form 323-E if the pending proposal in the *Fourth Diversity Further Notice* to modify NCE ownership reporting practices to correspond to commercial requirements and the proposal in the *Sixth Diversity Further Notice* to extend FRN requirements to noncommercial stations are adopted. We tentatively conclude that if the Commission does modify the Form 323-E requirements as described in the *Fourth Diversity Further Notice* then a CORES-generated FRN, either a traditional SSN-based CORES FRN or the RUFNR proposed herein, is a sufficient and appropriate tool for the unique identification of individuals with attributable interests in NCEs for the same reasons and in the same manner as commercial stations. Accordingly, we propose to permit an individual listed on Form 323-E to obtain and provide an RUFNR, in lieu of a CORES FRN, for use on broadcast ownership filings. We invite comment on these tentative conclusions and on the foregoing proposal. As described above, we note that several commenters to the *Sixth Diversity Further Notice* argue that the CORES FRN requirement would be unduly burdensome for NCEs because an SSN disclosure requirement would discourage people from serving on the boards of NCE stations and licensees would have difficulty obtaining SSNs from board members who may be government officials.¹²⁹ We seek comment on how and whether these concerns would arise if RUFNRs were made available for use in broadcast ownership reports. We note that officers and directors of NCE stations already are reported on Form 323-E¹³⁰ and questions related to the propriety of requiring disclosure of race, gender, and ethnicity information on Form 323-E are pending pursuant to the *Fourth Diversity Further Notice*. Here we seek comment on specifically whether there are unique considerations with respect to NCE stations that would lead to a different conclusion for NCEs than for commercial stations with regard to the information proposed to be included to obtain an RUFNR. If so what are those unique considerations? Are there other alternatives for unique identification of individuals in the NCE context that would improve the quality, usability, and reliability of our broadcast ownership data and/or help ensure that our broadcast ownership data can be searched, aggregated, and cross-referenced electronically? We invite comment on the application of RUFNRs to NCEs in the event that the pending proposals in the *Fourth Diversity Further Notice* are adopted.

29. *Security of Commission Systems.* In the *Sixth Diversity Further Notice*, the Commission sought comment on any security concerns related to the requirement that interest holders submit an SSN,¹³¹ noting that only the FRN is made public and the SSN is not disclosed on any Commission application or form, including Forms 323 and 323-E.¹³² Commenters raised concerns that a CORES FRN requirement for individuals will open individuals to threats of identity theft.¹³³ Some commenters pointed

¹²⁹ See ¶ 13, *supra*.

¹³⁰ See FCC Form 323-E, Ownership Report for Noncommercial Broadcast Stations (June 2002), available at <http://transition.fcc.gov/Forms/Form323-E/323e.pdf>; see also UCC *et al.* June 26, 2009 Comments at 3-4.

¹³¹ *Sixth Diversity Further Notice*, 28 FCC Rcd at 472, ¶ 18.

¹³² *Id.* at 472, ¶ 18 n.75 (explaining that Form 323 does not collect TINs, and the use of CORES FRNs on Commission forms “comport with a government-wide effort to safeguard personally identifiable information by reducing the unnecessary use of SSNs and exploring alternatives to serve as personal identifiers for Federal programs”); see also *CORES NPRM*, 25 FCC Rcd at 17410, ¶ 9 (citing, *e.g.*, OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB MEMORANDUM M-07-16, SAFEGUARDING AGAINST AND RESPONDING TO THE BREACH OF PERSONALLY IDENTIFIABLE INFORMATION (2007), available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>).

¹³³ Joint Public Broadcast Licensees Feb. 14, 2013 Comments at 4-6; State University of New York (“SUNY”) Feb. 14, 2013 Comments at 4-5; Alabama Educational Television Commission *et al.* Feb. 14, 2013 Comments at 7-9.

to a system breach described in a GAO report on information security¹³⁴ and suggested that the Commission's systems are vulnerable to a security breach.¹³⁵

30. We agree with commenters that privacy and security with respect to personally identifiable information are paramount, and we believe that the steps taken and the procedures in place assure the security of the Commission's systems. The Commission is not aware of any breaches to CORES. In addressing similar security concerns from commenters, the Commission wrote in 2009 that the CORES architecture exceeds Federal guidelines and that its databases are behind several firewalls.¹³⁶ The Commission also explained that administrative access to the CORES application is limited and that all transmission of non-public data is encrypted.¹³⁷ Furthermore, the safeguards in place in 2009 have been improved. Certain improvements were underway prior to completion of the Information Security GAO Report, and that report also provided the Commission with additional, valuable recommendations for continuing to strengthen our security environment.¹³⁸ We have implemented enhanced perimeter controls, malware protection, and monitoring devices, and upgraded workstations to operating systems with improved security. The Commission's security architecture has strict operational controls in place that comply with National Institute of Standards and Technology guidance. As the Commission explained to OMB in 2009, system servers are located behind several firewalls and other security controls to protect CORES data from intrusion by outsiders as well as the general Commission population. Administrative access to CORES remains limited to only certain known internal workstations and all servers are monitored by automated tools and operational procedures. Moreover, the Commission made several upgrades to all of its systems, including CORES, to ensure that its systems remain secure. Security will continue to be one of our highest priorities. In light of the foregoing, we seek comment on whether the elimination of the need for individual attributable interest holders to submit an SSN eliminates the privacy and identity theft concerns existing in the current record. If not, what privacy or identity theft concerns remain and how can they be addressed? Are such concerns outweighed by the importance of the data collection?

31. *Privacy Act.* We tentatively conclude that the Privacy Act does not bar the adoption of the RUFNR requirements described herein. The *Sixth Diversity Further Notice* sought comments on whether the Privacy Act was a barrier to adoption of the CORES FRN requirement.¹³⁹ No commenters asserted that the Privacy Act was a barrier to the requirement for individuals with attributable interests in commercial entities. With respect to application of the CORES FRN requirement to Form 323-E if the proposals in the *Fourth Diversity Further Notice* are adopted, several commenters to the *Sixth Diversity Further Notice* argue that the Privacy Act bars application of the SSN requirement in the NCE context.¹⁴⁰ We find that elimination of the SSN requirement from the list of identifying information that is required in conjunction with broadcast ownership reporting would further ensure that the Privacy Act is not an impediment to the proposed RUFNR requirement. Also as described above, we tentatively conclude that

¹³⁴ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-155, FEDERAL COMMUNICATIONS COMMISSION NEEDS TO STRENGTHEN CONTROLS OVER ENHANCED SECURED NETWORK PROJECT (2013) ("INFORMATION SECURITY GAO REPORT").

¹³⁵ Alabama Educational Television Commission *et al.* Feb. 14, 2013 Comments at 8; Joint Public Broadcast Licensees Feb. 14, 2013 Comments at 5-6.

¹³⁶ Reply Letter at 9.

¹³⁷ *Id.*

¹³⁸ The Information Security GAO Report did not identify any security deficiencies in CORES. For the Commission's statement regarding its response to the security breach and the deployment of the Enhanced Secured Network Project, see the Information Security GAO Report at 26-29.

¹³⁹ See *Sixth Diversity Further Notice*, 28 FCC Rcd at 472, ¶ 18; Reply Letter at 7.

¹⁴⁰ SUNY Feb. 14, 2013 Comments at 7-8; NPR *et al.* Feb. 14, 2013 Comments at 8 n.25.

unique identification of individuals is essential for ownership data quality, utility, and reliability, which are critical components of any future policy initiatives to promote ownership diversity consistent with our statutory mandate under the Communications Act.¹⁴¹ Further, the Commission has already adopted a Privacy Act SORN for CORES and with respect to the Form 323 requirement, which applies to any personally identifiable information required by Form 323 and CORES in connection with the CORES FRN registration process,¹⁴² and to the extent necessary any modifications required by the implementation of the RUFN system for Form 323 or Form 323-E can be addressed with modifications to the SORN. We request comment on these tentative conclusions.

32. *RUFNs Are Not Burdensome, and the Benefits Outweigh the Costs.* We continue to believe that obtaining a CORES FRN imposes minimal costs and burdens, if any, on individuals or filers. As noted in the *Sixth Diversity Further Notice*, registering for a CORES FRN is a one-time process that takes a few moments to complete.¹⁴³ An individual that already has obtained a CORES FRN may continue to use his or her CORES FRN for Form 323 filings,¹⁴⁴ and need not obtain a RUFN. Moreover, an individual that wishes to obtain a RUFN can easily locate previously-registered CORES FRNs through CORES. We tentatively conclude that permitting individuals holding attributable interests in one or more broadcast licensees to obtain a RUFN in lieu of obtaining a CORES FRN would impose minimal costs or other burdens. We seek comment on these tentative conclusions and on any potential burdens inherent in the RUFN proposal. We seek input on alternatives that might reduce or eliminate such burdens as well as the costs and benefits of such alternatives. To the extent possible, commenters should quantify any identified costs and benefits. We note that the vast majority of individuals reported on Form 323 have obtained and reported CORES FRNs, and we believe it is likely that will continue to be the case for future broadcast ownership filing obligations. Individuals who already have a CORES FRN need not obtain an RUFN and may continue to use the existing number. Moreover, any individual that wishes to obtain a CORES FRN instead of an RUFN will be able to do so. Additionally, as explained above,¹⁴⁵ the existence of a unique identifier that can be cross-referenced may make modifications of the reports possible that could reduce the burdens on all filers and, thereby, further improve the quality of the ownership data submitted to the Commission. As such, we tentatively find that the benefits of improved data collection outweigh any *de minimis* costs or burdens associated with obtaining an FRN described herein and we seek comment on that conclusion. To the extent possible, commenters should quantify relative costs and benefits.

33. *Limited Availability of SUFRNs.* We seek further comment concerning the elimination of the availability of SUFRNs for broadcast ownership reports. The *Sixth Diversity Further Notice* solicited input on whether to retain the SUFRN in the event that reportable individuals are unwilling to provide

¹⁴¹ See ¶¶ 22-23, *supra* (discussing our statutory mandates under Section 257 of the 1996 Act and Section 309(j) of the Act).

¹⁴² See ¶ 5, *supra*; *Sixth Diversity Further Notice*, 28 FCC Rcd at 472, ¶ 18; Reply Letter at 7-8; Privacy Act System of Records, 74 Fed. Reg. 59,978 (Nov. 19, 2009) (system of records FCC/MB-1 for Form 323); Privacy Act System of Records, 71 Fed. Reg. 17,234 (Apr. 5, 2006) (system of records FCC/OMD-9 for CORES). These System of Records Notices (“SORNS”) can be viewed at <http://www.fcc.gov/encyclopedia/privacy-act-information#systems> (visited Dec. 15, 2014).

¹⁴³ To obtain a CORES FRN, an individual need only fill out a short online form requiring name, address, and SSN. The applicant also provides a password and a personal security question (to help in case the applicant later misplaces or forgets his or her password). See Federal Communications Commission, *FRN Registration*, <https://apps.fcc.gov/coresWeb/regEntityType.do?btnContinue=true> (visited December 1, 2014). The information we propose to require as part of the RUFN registration process -- full name, residential address, date of birth, and last four digits of the individual's -- is minimal as well. See ¶ 20, *supra*.

¹⁴⁴ Reply Letter at 10-11; see also *Sixth Diversity Further Notice*, 28 FCC Rcd at 471, ¶ 16;

¹⁴⁵ See ¶ 27, *supra*.

their SSNs to third parties or unwilling to obtain and provide CORES FRNs.¹⁴⁶ In the event that a SUFRN is reported for an individual, the *Sixth Diversity Further Notice* explained that the Commission could use its enforcement authority against individuals who failed to obtain a CORES FRN.¹⁴⁷ Commenters generally support the proposal to retain the SUFRN for this limited purpose and oppose the Commission's use of its enforcement authority.¹⁴⁸ We seek comment on whether the SUFRN should continue to be available to Form 323 filers (and Form 323-E filers if the proposals in the *Fourth Diversity Further Notice* are adopted), in the event that after a filer has used reasonable and good faith efforts, reportable individuals are unwilling to provide their identifying information or unwilling to obtain and provide a CORES FRN or RUFNR themselves. Would this limited availability of SUFRNs appropriately protect the position of filers in the case of recalcitrant interest holders? Should the Commission require filers to take specific steps to substantiate that they have made a reasonable good faith efforts? If so, what steps should be required? For instance, should the Commission expect that a filer will instruct an individual about the obligation to supply a filer with a CORES FRN or RUFNR or to provide the filer with the identifying information sufficient to obtain one of these numbers on the individual's behalf? Should the filer be expected to instruct such an individual about potential enforcement action? Should the filer itself be exempt from enforcement action only if such steps are substantiated? Should an instruction be included on Form 323 (and Form 323-E if the proposals in the *Fourth Diversity Further Notice* are adopted) informing reportable interest holders of their obligations and alerting them to the risk of enforcement action for the failure to provide a CORES FRN or RUFNR or to permit a CORES FRN or RUFNR to be obtained? We seek comment on these issues.

IV. PROCEDURAL MATTERS

A. Filing Requirements

34. *Ex Parte Rules.* The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁴⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments,

¹⁴⁶ *Sixth Diversity Further Notice*, 28 FCC Rcd at 471-72, ¶ 17. The Commission added that in such instances where an individual with reportable interests fails to obtain and provide a CORES FRN, the Commission can use its enforcement authority against the recalcitrant individual. *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ NAB Feb. 14, 2013 Comments at 8-9 (supporting the proposal to maintain the Special Use FRNs and arguing that the availability of the Special Use FRN will minimize the burden of obtaining and reporting CORES FRNs for "recalcitrant" interest holders); NPR *et al.* Feb. 14, 2013 Comments at 8 (arguing that imposing forfeitures on individuals reported on Form 323-E who refuse to obtain a CORES FRN would discourage their participating in public broadcasting); Joint Public Broadcast Licensees Feb. 14, 2013 Comments at 7-8 (urging the Commission to permit the use of Special Use FRNs on Form 323-E without penalty, if the Commission proceeds to adopt the CORES FRN requirement for Form 323-E); Regents of the University of California Feb. 14, 2013 Comments at 1, 4 (requesting that the Commission retain the Special Use FRN); SUNY Feb. 14, 2013 Comments at 7 (urging the Commission to permit the reporting of Special Use FRNs on Form 323-E without penalty); Alabama Educational Television Commission *et al.* Feb. 14, 2013 Comments at 8-9 (requesting that the Commission retain the Special Use FRN). *Contra* UCC *et al.* Feb. 14, 2013 Comments at 8-9 (supporting the elimination of the Special Use FRN).

¹⁴⁹ 47 C.F.R. §§ 1.1200 *et seq.*

memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

35. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

36. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to <mailto:fcc504@fcc.gov> or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

37. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC, 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-0432 (TTY), or bill.cline@fcc.gov. These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554; they can also be reached by telephone, at (202) 488-5300 or (800) 378-3160; by e-mail at fcc@bcpiweb.com; or via their website at <http://www.bcpiweb.com>. To request materials in accessible formats for people with

disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-1400 (voice), (202) 418-0432 (TTY).

38. *Information.* For additional information on this proceeding, contact Jake Riehm at (202) 418-2166 or Warren Firschein at (202) 418-0844. Press inquiries should be directed to Janice Wise at (202) 418-8165.

B. Initial Regulatory Flexibility Analysis

39. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹⁵⁰ the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in the *Second Further Notice of Proposed Rulemaking and Seventh Further Notice of Proposed Rulemaking*. The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the filing deadlines on the first page of this document.

C. Paperwork Reduction Act Analysis

40. Initial Paperwork Reduction Act Analysis. This Second Further Notice of Proposed Rulemaking and Seventh Further Notice of Proposed Rulemaking seeks comment on potential new or revised information collection requirements with regard to CORES, FCC Form 323, and FCC Form 323-E. The Commission invites the general public, the Office of Management and Budget (“OMB”) and other Federal agencies to comment on the information collection requirements. This Notice may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the Federal Register inviting additional public comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” On October 19, 2009, OMB approved the FCC’s proposal to implement a CORES FRN requirement for all individuals holding attributable interests in the licensee reported on Form 323.¹⁵¹ That requirement went into effect as of October 30, 2009.

41. In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via email to PRA@fcc.gov and to Nicholas A. Fraser, Office of Management and Budget, via email to nfraser@omb.eop.gov or via fax at 202-395-5167.

IV. ORDERING CLAUSES

42. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 2(a), 4(i,j), 257, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i)-(j), 257, and 303(r), this *Second Further Notice of Proposed Rulemaking and Seventh Further Notice of Proposed Rulemaking* **IS ADOPTED**.

43. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in sections 1, 2(a), 4(i, j), 257, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i, j), 257, 303(r), **NOTICE IS HEREBY GIVEN** of the proposals described in this *Second Further Notice of Proposed Rulemaking and Seventh Further Notice of Proposed Rulemaking*.

¹⁵⁰ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹⁵¹ See *Notice of Office of Management and Budget Action*, Oct. 19, 2009, http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200908-3060-001#; see also Federal Register notices announcing OMB approval and effective date of revised Form 323, 74 Fed. Reg. 56,135 (Oct. 30, 2009); 74 Fed. Reg. 56,136 (Oct. 30, 2009).

44. **IT IS FURTHER ORDERED** that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of the *Second Further Notice of Proposed Rulemaking and Seventh Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible economic impact on small entities by the policies and rules proposed in this *Second Further Notice of Proposed Rulemaking and Seventh Further Notice of Proposed Rulemaking* (“Notice”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. Currently, filers of Form 323 (Ownership Report for Commercial Broadcasters) must provide an FCC Registration Number (FRN) generated via the Commission’s Registration System (CORES) for each reported attributable party.⁴ To obtain a CORES FRN, an individual must submit his or her social security number (SSN) to the Commission through CORES.⁵ CORES FRNs therefore can be used to uniquely identify individuals reported on Form 323, which is crucial to the quality and utility of the Commission’s broadcast ownership data.⁶ However, if a filer uses diligent and good-faith efforts to obtain an SSN from an individual that must be reported on Form 323 in order to generate a CORES FRN, but is unable to do so, the filer may provide a Special Use FRN (SUFRN) for that individual.⁷ Because the SUFRN generation process does not require submission of an SSN, or any other identifying information, SUFRNs do not provide a reliable means of linking a reported interest holder to a unique individual.⁸ The existence of SUFRNs therefore undermines the usefulness and integrity of the Commission’s broadcast ownership data.⁹

3. To address this issue, the *Notice* invites comment on a proposal to create a new type of FRN within CORES – a Restricted Use FRN (“RUFNR”) – for use on Form 323.¹⁰ Under the proposal set forth in the *Notice*, an individual requesting an RUFNR would be required to submit his or her name, date of birth, and residential address, along with the last four digits of his or her SSN, to CORES.¹¹ Once obtained, an individual would be required to use the RUFNR on all current and future Form 323 filings.¹²

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See ¶ 3, *supra*.

⁵ See *id.*

⁶ See *id.*

⁷ See ¶ 6, *supra*.

⁸ See ¶¶ 6, 14, *supra*.

⁹ See *id.*

¹⁰ See ¶ 20, *supra*.

¹¹ See *id.*

¹² See ¶ 20, *supra*.

The *Notice* seeks comment on this RUFNR proposal, including input concerning the costs, benefits, and possible alternative approaches.¹³

4. The *Notice* explains that the Commission's *Fourth Diversity Further Notice* requested input on adopting modifications to Form 323-E (Ownership Report for Noncommercial Broadcast Stations) similar to those previously adopted for Form 323.¹⁴ The *Sixth Diversity Further Notice* specifically proposed requiring Form 323-E filers to provide a CORES FRN for all attributable parties.¹⁵ In light of the foregoing, the *Notice* seeks comment concerning the future application of the RUFNR proposal to Form 323-E (if Form 323-E is modified along the lines proposed in the *Fourth Diversity Public Notice*).¹⁶

5. Finally, the *Notice* indicates that the *Sixth Diversity Further Notice* solicited input on whether to retain the availability of SUFRNs for ownership report filings in the event that reportable individuals are unwilling to provide their SSN to a third party or unwilling to obtain and provide a CORES FRN.¹⁷ Similarly, the *Notice* asks whether, if the RUFNR proposal is adopted, SUFRNs should continue to be available to Form 323 filers (and Form 323-E filers if the proposals in the *Fourth Diversity Further Notice* are adopted), in the event that after a filer has used reasonable and good faith efforts, reportable individuals are unwilling to provide their identifying information or unwilling to obtain and provide a CORES FRN or RUFNR themselves.¹⁸

B. Legal Basis

6. This *Notice* is adopted pursuant to sections 1, 2(a), 4(i)-(j), 257, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i, j), 257, 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed 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 proposed rules, if adopted.¹⁹ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under Section 3 of the Small Business Act.²⁰ In addition, the term

¹³ See ¶¶ 18-27, 29-33, *supra*.

¹⁴ See ¶ 12, *supra*. In particular, the *Fourth Diversity Further Notice* proposed requiring each Form 323-E filer to list, and provide gender, race, and ethnicity information for, the station's owners. *See id.*; *Fourth Diversity Further Notice*, 24 FCC Rcd at 5910-11, ¶¶ 27-30. The item proposed to consider the members of the entity's board of directors or other governing body to be owners for purposes of Form 323-E and sought additional input concerning the proper definition of ownership in the NCE context. *See* ¶ 12, *supra*; *Fourth Diversity Further Notice*, 24 FCC Rcd at 5911, ¶ 29. The Commission proposed subjecting biennial Form 323-E filings to various requirements applicable to biennial Form 323 submissions (requiring all ownership filings to be submitted on a uniform date, requiring all ownership data to be accurate as of a uniform date, improving the computer interface process, building in additional checks to perform verification and review functions, and ensuring that all data filed is in a format that can be electronically searched, aggregated, and cross-referenced). *See id.* The item also proposed requiring LPM stations to submit Form 323-E. *See id.* at 5911, ¶ 30.

¹⁵ *See* ¶ 13, *supra*.

¹⁶ *See* ¶ 28, *supra*.

¹⁷ *See* ¶ 14, *supra*.

¹⁸ *See* ¶ 33, *supra*.

¹⁹ 5 U.S.C. § 603(b)(3).

²⁰ 5 U.S.C. § 601(6).

“small business” has the same meaning as the term “small business concern” under the Small Business Act.²¹ 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 SBA.²²

8. **Television Broadcasting.** The SBA defines a television broadcasting station that has no more than \$38.5 million in annual receipts as a small business. The definition of business concerns included in this industry states that establishments are primarily engaged in broadcasting images together with sound. These firms operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These firms 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.²³ Census data for 2007 indicate that 808 such firms were in operation for the duration of that entire year. Of these, 709 had annual receipts of less than \$25.0 million per year and 99 had annual receipts of \$25.0 million or more per year.²⁴ Based on this data and the associated size standard, the Commission concludes that the majority of such firms are small.

9. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,387.²⁵ According to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Television Database on November 25, 2014, about 1,276 of an estimated 1,387 commercial television stations (or approximately 92 percent) had revenues of \$38.5 million or less. The Commission has estimated the number of licensed noncommercial educational television stations to be 395.²⁶ We do not have revenue data or revenue estimates for noncommercial stations. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations²⁷ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the filing requirements for FCC Form 323 or Form 323-E, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

²¹ 5 U.S.C. § 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 a 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.” 5 U.S.C. § 601(3).

²² 15 U.S.C. § 632.

²³ U.S. Census Bureau, *2012 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> (NAICS Search) (visited Dec. 29, 2014). Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

²⁴ U.S. Census Bureau, *American Fact Finder*, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table (visited Dec. 29, 2014).

²⁵ *See* FCC News Release, *Broadcast Station Totals as of September 30, 2014*, October 16, 2014, https://apps.fcc.gov/edocs_public/attachmatch/DOC-329966A1.pdf (*Broadcast Station Totals*).

²⁶ *See id.*

²⁷ “[Businesses] are affiliates of each other when one [business] controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).

10. An element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

11. **Radio Broadcasting.** The SBA defines a radio broadcasting entity that has \$38.5 million or less in annual receipts as a small business.²⁸ Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.”²⁹ Census data for 2007 indicate that 2,926 such firms were in operation for the duration of that entire year. Of these, 2,877 had annual receipts of less than \$25.0 million per year and 49 had annual receipts of \$25.0 million or more per year.³⁰ Based on this data and the associated size standard, the Commission concludes that the majority of such firms are small.

12. Further, according to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Television Database on November 25, 2014, about 11,337 (or about 99.9 percent) of 11,348 commercial radio stations in the United States have revenues of \$38.5 million or less. The Commission has estimated the number of licensed noncommercial radio stations to be 4,085.³¹ We do not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations³² must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to filing requirements for FCC Form 323 or Form 323-E, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

13. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

²⁸ See 13 C.F.R. § 121.201, 2012 NAICS code 515112.

²⁹ U.S. Census Bureau 2002 NAICS Codes, Titles, and Definitions, Television Broadcasting, *available at* <http://www.census.gov/prod/ec02/parts/ec0251i09ab.pdf> (visited Aug 22, 2014).

³⁰ U.S. Census Bureau, *American Fact Finder*, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodTtype=table (visited Dec. 29, 2014).

³¹ *Broadcast Station Totals*, *supra*, n. 25.

³² “[Businesses] are affiliates of each other when one [business] controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).

14. **Class A TV and LPTV Stations.** The rules and policies adopted herein apply to licensees of low power television (“LPTV”) stations, including Class A TV stations and, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these 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.³³ As of September 30, 2014, there are approximately 430 licensed Class A stations and 2,115 licensed LPTV stations.³⁴ 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.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. There may be changes to reporting or recordkeeping requirements if the Commission adopts the RUFNR proposal for Form 323 and/or Form 323-E. In the event that the RUFNR proposal is adopted for the Form 323 and/or Form 323-E, filers will have the option to obtain and report a unique identifier for individual attributable interest holders that does not require submission of a full SSN to the Commission. Adoption of this proposal will allow an individual to obtain an RUFNR from CORES by submitting an alternate set of identifying information.³⁵ Individuals would not be required to obtain or report an RUFNR on the Form 323 and/or Form 323-E – instead, individuals could obtain and report a CORES FRN. An individual who has provided a CORES FRN on one or more previous ownership filings may continue to use that CORES FRN going forward. There also may be changes to reporting or recordkeeping requirements if the Commission limits or eliminates that availability of SUFRNs for broadcast ownership reports. Filers may be obligated to instruct individuals about their obligation to supply the filer with a CORES FRN or RUFNR or to provide the filer with the information sufficient to obtain one of these identifiers on the individual’s behalf. A filer may also be required to inform individuals about potential enforcement action for failure to obtain or report a CORES FRN or RUFNR. Moreover, if a filer reports an SUFRN for an individual interest holder, the filer may be required to show that the filer made reasonable good faith efforts to obtain a CORES FRN or RUFNR, or the information necessary to obtain a CORES FRN or RUFNR, on the individual’s behalf.³⁶

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

16. The RFA requires an agency to describe any significant alternatives that might minimize any significant economic impact on small entities. Such alternatives may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³⁷

³³ See 13 C.F.R. § 121.201, 2012 NAICS Code 515120.

³⁴ *Broadcast Station Totals*, *supra*, n. 25.

³⁵ See ¶ 20, *supra*.

³⁶ See ¶ 33, *supra*.

³⁷ 5 U.S.C. § 603(c).

17. As noted, we are directed under law to describe any such alternatives we consider, including alternatives not explicitly listed above.³⁸ The *Notice* proposes to allow individuals reported on Form 323 to obtain and provide an RUFNR in lieu of a traditional CORES FRN. Similarly, the *Notice* proposes making RUFNRs available to Form 323-E filers in the event that Form 323-E is modified as proposed in the *Fourth Diversity Further Notice*. The *Notice* also proposes eliminating the availability of SUFRNs for Form 323 and Form 323-E filings. In the alternative, the Commission could decide not to enact the RUFNR proposal contained in the *Notice* and not to modify the availability of SUFRNs. The Commission also could defer these actions until a later time. Additionally, the Commission could decide to treat noncommercial broadcasters differently from commercial broadcast stations for purposes of uniquely identifying and tracking individual attributable interest holders reported on the 323-E. While decisions to adopt the RUFNR proposal and eliminate the Special Use FRN might result in increased burdens on reporting parties, the *Notice* tentatively concludes that any such burdens would be minimal and that the benefits of having a unique identifier for data quality, searchability, cross-referencing and aggregation purposes in order to further the Commission's goal of advancing diversity of ownership in the broadcast industry would outweigh those burdens. A unique identifier is necessary to improve the quality of the data collected on the Form 323. The Commission also seeks comment on whether the Special Use FRN should be available solely in instances where, after reasonable and good faith efforts, filers are unable to obtain a CORES FRN or RUFNR from an individual with reportable interests. This alternative could reduce the burden for those filers who are unable to, after reasonable and good faith efforts, to obtain a CORES FRN or RUFNR from an individual attributable interest holder, while ensuring that the filer will be able to timely submit the Form 323. This will allow the Commission to identify the individual with a reportable interest that has failed to provide a CORES FRN or RUFNR.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

18. None.

³⁸ 5 U.S.C. § 603(b).