

**Before the
Office of Management and Budget
Washington, DC**

In re

Public Information Collection Requirement Submitted)
To OMB for Review and Comment – FCC Form 323)

To: *Nicholas A. Fraser, Office of Management and Budget*

COMMENTS

These Comments are being submitted as requested (74 Fed Reg. 40188 (Aug. 11, 2009)) with regard to the proposed FCC Form 323, currently before the Office of Management and Budget for review.

The new FCC Form 323 will require individual attributable owners of broadcast stations (*e.g.*, investors such as stockholders, partners, limited partners, stockholders, as well as certain lenders and program suppliers subject to the “debt equity plus” rules) to supply an “FCC Registration Number” to the FCC *in addition* to the standard information supplied to the FCC concerning his or her identity (*i.e.*, name, address, gender, race, and ownership interest) typically requested in an Ownership Report.

This requirement is new, not previously proposed, burdensome, unnecessary, and otherwise objectionable for several reasons.

First, it goes beyond the authority of the scope of the rationale adopted originally by the FCC for the FCC Registration Number. The rules governing the requirements for obtaining an FCC Registration Number are contained in Part 1, Subpart W of the FCC’s Rules, 47 C.F.R. § 1.8001, et al. The rules were adopted in a “notice and comment” rulemaking. MD Docket No.

00-205. In the original proposal, the FCC stated the thrust of the new requirement for obtaining an FRN would be focused as follows:

By this Notice, the Commission proposes to amend its rules to require persons and entities doing business with the Commission to obtain a unique identifying number called the FCC Registration Number (FRN) to be obtained, or in some cases assigned, through the Commission Registration System (CORES). It will enable the Commission to better manage the financial systems of the agency and improve compliance with various statutes that govern the financial operations of the Federal government. The FRN requirement will also allow the Commission to improve the efficiency of its own processes to the benefit of the public.

Adoption of a Mandatory FCC Registration Number, 24 C.R. 2039, ¶ 1 (2000). In defining “who” would be required to obtain an FRN under the new rules, the Commission clearly stated:

Who Must Obtain an FRN? We propose that anyone doing business with the Commission, as that term is defined by the DCIA,¹⁰ must obtain an FRN. Thus, all businesses and individuals that file applications with the Commission – whether feeable or non-feeable – or make any payments of any type to the Commission will be required to obtain an FRN and provide it to the Commission in its filings.

¹⁰ The DCIA, 31 USC §7701(c)(2), states that “a person shall be considered to be doing business with a federal agency if the person is —

- (A) a lender or servicer in a Federal guaranteed or insured loan program administered by the agency;
- (B) an applicant for, or recipient of, a Federal license, permit, right-of-way, grant, or benefit payment administered by the agency or insurance administered by the agency;
- (C) a contractor of the agency;
- (D) assessed a fine, fee, royalty or penalty by the agency; and
- (E) in a relationship with the agency that may give rise to a receivable due to that agency, such as a partner of a borrower in or a guarantor of a Federal direct or insured loan administered by the agency.”

Adoption of a Mandatory FCC Registration Number, 24 C.R. 2039, ¶ 9 (2000). This limitation on the requirement and use of the “FRN” was adopted by the FCC in its *Report and Order* later issued in that proceeding:

When Must FRNs be Obtained? As we noted in the NPRM, FRNs must be obtained by anyone who is doing business with the Commission as that term is defined in the DCIA.⁴¹ This requirement is reflected in rule 1.8002(a) adopted in this Order.⁴² We stated, “all businesses and individuals that file applications with the Commission – whether feeable or non-feeable – or make any payments of any type to the Commission will be required to obtain an FRN and provide it to the Commission in its filings.”⁴³ We also noted that

anyone who does not pay a fee because of an exception in our rules or the statute had to acquire and provide an FRN to enable us to keep track of entities that claim an exemption from paying fees.

⁴¹ NPRM, 15 FCC Rcd at 24373 and n.10, citing 31 U.S.C. § 7701(c)(2).

⁴² See App. adopting 47 CFR § 1.8002(a).

⁴³ NPRM, 15 FCC Rcd at 24373.

Amendment of Parts 1, 21 61, 73, and 74 of the Commission's Rules – Adoption of a Mandatory FCC Registration Number, 24 C.R. 628, ¶ 23 (2001).

Requiring individual investors in a broadcast entity each to obtain an FRN goes beyond the scope and purpose of the FCC's rules and self-imposed authority. As the FCC's own adopted rules state in relevant part:

(a) The FRN must be obtained by anyone doing business with the Commission, see 31 USC 7701(c)(2)....

47 C.F.R. § 1.8002(a). While a corporation, partnership, etc., filing an application for license for an FCC authorization clearly each is an “entity doing business with the FCC,” as described under the definition adopted by the FCC from the definition contained in 31 U.S.C. § 7701(c)(2)(B), under *no* reasonable interpretation of the statute is a mere “stockholder,” “partner,” “limited partner,” etc., of such an entity itself “doing business” with the FCC in *any* manner. Therefore, under the FCC's own rules and definitions, requiring the application for and acquisition of an FRN by such individuals goes beyond the scope of the FCC's rules. Before such a requirement could be adopted, a new “notice and comment” rulemaking would first have to be initiated in order for the FCC's rules and policies to be changed.

Moreover, the reasons stated by the FCC in its *Report and Order* for the adoption of the FRN were as follows:

The FRN will have multiple benefits to the Commission and the public. The FRN will enable us to ensure that fees are recorded and credited to the proper party. This will result in fewer letters requesting confirmation of payments and make it easier for us to respond to inquiries. The FRN will enable us to keep better records of entities that are exempt from paying fees. It will help us to maintain the integrity and efficiency of our collection systems and correct deficiencies identified in our accounting systems. The

FRN will eliminate repetitive collection of data while providing us with a database to provide electronic mailings, such as annual fee materials and other informational mailings, to the public doing business with the Commission.

One of the main reasons we are adopting the FRN requirement is to facilitate compliance with the Debt Collection Improvement Act of 1996 (DCIA), sections 8 and 9 of the Communications Act, and the regulations implementing these statutes. These statutes and regulations permit us to withhold the processing or ultimate grant of a license, application, or other authorization where the applicant has not paid the application fees or is delinquent in its debts to the Commission. The FRN, in conjunction with the Revenue Accounting and Management Information System (RAMIS), will enable us to perform fee and debt sufficiency checks to better manage our collection and revenue systems.

Amendment of Parts 1, 21 61, 73, and 74 of the Commission's Rules – Adoption of a Mandatory FCC Registration Number, 24 C.R. 628, ¶¶ 6-7 (2001) (footnotes omitted). The requirement for individual stockholders and other investors to obtain an FRN serves none of those functions. Either civilly or federally, individual investors generally have never been responsible to the FCC for the debts of the organization in which they have chosen to invest. In light of that fact, it is unknown what function such a new FRN requirement is intended to serve, at all.

Third, the requirement will be tremendously burdensome on existing license holders seeking to satisfy the FCC's universal November 1, 2009 deadline for utilization of the new FCC form. Under the FCC's current processes, CDBS allows for the pre-fill of information from the most recent Ownership Report. Since ownership of a licensee generally does not change appreciably (absent the filing of an application for assignment or transfer of control), this function predominantly allowed for the vast majority of information in most cases simply to be pre-filled into a new application, making the preparation of the updated FCC Form 323 a relatively speedy process.

However, in contrast, by requiring the acquisition of an FRN on-line for each attributable stockholder, investor, or lender prior to filing the proposed new FCC Form 323, will require each such person to share their personal Tax ID Number (*e.g.*, their Social Security Number) with the

FCC so that an FRN may be issued. Then, for example, when there are twenty attributable investors in a licensee, that information not only will have to be gathered from each and every one of them before the Report can be filed, but also it can be anticipated that the FCC's systems will be forced to issue twenty new FRNs to accommodate this new requirement – for that one FCC Form 323 alone! When multiplied by the number of licensees, this will require the FCC's data systems to issue tens or hundreds of thousands of FRNs in a short period of time! There is no evidence that the FCC's computer systems can handle such a load. Indeed, the FCC's computer systems have routinely become unusable in the past during time periods when large numbers of FCC applications were filed.

Additionally, the FCC's FRN system only accommodates the submission of an individual's Social Security Number to the FCC via a computer and the Internet. A number of recent news stories have detailed how virus and spyware programs log keystrokes of unsuspecting computer users.¹ Any governmental program that will require thousands or perhaps tens of thousands of individuals to use computers connected to the internet to type in their Social Security Number along with identifying information will foster identity theft against unsuspecting users. The OMB should not allow for a substantial expansion of an FCC mandated requirement to type Social Security Numbers along with identifying information without balancing the risks of exposing possibly thousands of people to identity theft, particularly in conjunction with this Form 323 where the FCC has not even determined (or at least announced) the *reason* why individual FRN's suddenly are now necessary.

¹ See e.g. *Password Hackers Are Slippery To Collar* by Tom Jackman, Washington Post, September 7, 2009 edition on page A1, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/06/AR2009090602238.html> and "Cyber Thieves Steal \$447,000 From Wrecking Firm, The Washington Post, available at, http://voices.washingtonpost.com/securityfix/2009/09/cyber_theives_steal_447000_fro.html

Finally, the addition of this mandatory FRN requirement makes erroneous the “Estimated Time for Response” to the FCC Form 323 contained in the OMB Notice. To estimate 1.5 to 2.5 hours per response, as the OMB Notice currently provides, is ludicrous. This requirement will be far in excess of that estimated at the present time by the FCC, and will increase significantly the burden placed upon licensees. Moreover, the expense (such as legal fees) they will generally incur will be substantial, and in today’s recessionary environment, will be extremely detrimental to the broadcasting industry.

Parenthetically it is noted that while the current FCC Form 175 (for auction participation) requests FRN from attributable owners, providing that information is discretionary, not mandatory. At worst, if the FCC desires to retain the data field in the Form, the provision of an FRN from individual attributable owners should be only discretionary in this Form 323 as well.

One additional aspect of the FCC Form 323 should be slightly altered to make more efficient the FCC’s information gathering processes. Under Section 73.3613 of the Commission’s Rules, certain documents need to be filed with the FCC. Under Section II-A, Question 1 of the proposed FCC Form 323, those documents that have been filed with the FCC need to be listed. Under the Commission’s current processes, there is no mechanism at the present time to file those documents other than manually (*i.e.*, by paper) with the FCC’s Office of the Secretary. Moreover, there is no mechanism at the present time other than manually (through a visit to the FCC’s Public Reference Room) that those documents may be accessed by the Commission Staff or members of the public.

That information gathering deficiency can be rectified by adding the ability for the documents not only to be listed under Section II-A, Question 1 of the proposed FCC Form 323, but making it so they can be also *uploaded* into the Form itself (as is already available for other

required exhibits or attachments). Adding this function will reduce the burdens imposed on the Public Reference Room; improve the accessibility of the documents; and eliminate the need for a paper filing of those documents in a day when the FCC more and more is transitioning to a complete electronic filing system. Also, if made mandatory only for documents that first come into existence after the adoption date of the new FCC Form 323 (and discretionary for all earlier documents), it will reduce the future regulatory burden for *all* licensees, while at the same time gradually increasing the amount of information more freely and easily available to the public as time goes on.

WHEREFORE, it is respectfully requested that the comments contained herein be considered prior to final approval of the FCC Form 323, and that the Form be modified as requested herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of these Comments are being served upon:

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