Before the
United States of America

OFFICE OF MANAGEMENT AND BUDGET

Washington, DC

In the Matter of	)	
Public Information Collection	)	**OMB Control No. 3060-0010**
Requirement Submitted to OMB	)	
For Review and Approval	)	
Proposed Revised FCC Form 323	)	

To: Office of Management and Budget
Attention: Mr. Nicholas A. Fraser (via internet at Nicholas_A._Fraser@omb.eop.gov)
Ms. Cathy Williams, FCC (via internet at Cathy.Williams@fcc.gov)

COMMENTS ON REVISED FORM 323

These Comments are submitted on behalf of Saga Communications, Inc. ("Saga"), a publicly-held broadcasting company whose business is devoted to acquiring, developing and operating broadcast properties. Saga owns or operates broadcast properties in 26 markets, including 61 FM and 30 AM radio stations, state radio networks, farm radio networks, television stations and low-power television stations.

These Comments address the Paperwork Reduction Act ("PRA") Notice published in the Federal Register (74 Fed. Reg. 40188) on August 11, 2009, that established a deadline of September 10, 2009, for the filing of comments on OMB Control Number 3060-0010, which seeks OMB approval for a revised FCC Form 323 which is used to compile ownership information on commercial broadcast stations.

The PRA Notice estimates: that it will take 1.5 to 2.5 hours to complete FCC Form 323; that there is no need for confidentiality with the information requested and that there are no Privacy Act impacts. These estimates and projections are either grossly minimized or incorrect.

Proposed FCC Form 323 should not be approved in its current configuration. The FCC has failed accurately to gauge the annual burden that completing and filing this form would impose on the FCC's regulatees. It has grossly underestimated the cost of compliance and has failed to provide any basis for its estimates of burdens. Moreover, it has failed to appreciate the need for confidentiality of the data it intends to collect through this form. Each of these points is discussed herein.

Underestimating Annual Burden. The FCC's "Supporting Statement" for "OMB 3060-0010, August 2009, Ownership Report for Commercial Broadcast Station, FCC Form 323," which is a part of this record, underestimates the burden that will be imposed on FCC regulatees without providing any information for the basis of its estimates. The FCC (at Supporting Statement p. 9) states: "We assume the respondent would consult with its attorney to complete and file the FCC Form 323 or certification of no change. We estimate these respondents would have an average salary of $100,000 ($48.08) per hour." The FCC then states, "We assume that the respondent would use an attorney to complete and

file the FCC Form 323. We estimate that this attorney would have an average salary of $200/hour." The FCC says, "These estimates are based on the FCC staff's knowledge and familiarity with the availability of the data required."

Broadcast stations are typically represented by law firms that have expertise in representing clients before the FCC. These attorneys -- most based in Washington -- command a higher hourly rate than their general practitioner colleagues and a much higher rate than $200. The FCC should be required to provide the basis of its "knowledge and familiarity" with the data, both as to the average salary of respondents and also their counsel, before the OMB can accept the FCC's estimates.[1] By example, this small "communications boutique" law firm charges far in excess of that figure and even mid-size firms charge much higher rates.[2]

In addition, the data collection requirements will most likely require far in excess of 2.5 hours to complete. There is nothing in the Supporting Statement to explain how the FCC arrived at this low figure. Unless the FCC provides the basis for its estimates, it must greatly increase the annual cost burden it has estimated, or OMB must reject the proposed form.

---

[1] Under the General Schedule, GS-14, step 7, government workers earn in excess of $100,000 per year. Does the FCC really think that the owners of broadcast stations on average earn less than a mid-level government worker?

[2] On information and belief, hourly rates above $400 per hour are common in larger communications law firms.

Need for Confidentiality of Data/Burden of Collecting FRN Information. In its *Report and Order and Fourth Further Notice of Proposed Rule Making,* MB Docket No. 07-294, FCC 09-33, released May 5, 2009, the FCC stated (at ¶ 21):

> However, to further improve the ability of researchers and other users of the data to cross-reference information and construct complete ownership structures, we will require each attributable entity above the licensee in the ownership chain to list on Form 323, the FCC Registration Number (FRN) of the entity in which it holds an attributable interest. In other words, each filing entity must identify by FRN the entity below it in the chain. [fn 60 omitted] We direct staff to revise Form 323 accordingly. While we believe these measures will resolve concerns regarding the usefulness of the data, we delegate authority to the staff to revisit this issue if additional modifications of the form are determined to be necessary.

While the stated reason for requiring FRNs to be provided for all attributable entities above the licensee in the ownership chain may seem benign, the FCC's implicit confidence in the security of this personal information is belied by the regular reports of "hacker" attacks on computer systems, including the U. S. Government's, to steal confidential data and use it to the detriment of those whose data is compromised. The PRA Notice states, "There is no need for confidentiality with this information collection." This is demonstrably incorrect. In order to apply for an FRN, an individual must provide his or her name, address, and social security number. A business must provide its employer identification number. Hackers gaining access to this information would find much that could be exploited, yet the FCC does not provide for any security whatsoever with

respect to this data; in fact, the FCC says there is no need for confidentiality with the information collection.

Saga does not dispute the FCC's right to know who its regulatees are. Each licensee must have an FRN in order to do business with the FCC. Yet, proposed FCC Form 323 goes much farther. It would require licensees, like Saga, to identify both every stockholder with a 5% or greater interest and also those individuals and entities with interests that exceed the "equity debt plus" levels. Moreover, with broadcast properties in 26 markets, Saga has numerous employees who are officers of its local operating entities. Saga also has non-licensee directors on its board. The FCC's new form would require each of these persons to apply for an FRN. Some stockholders reasonably may be unwilling to provide sensitive personal information necessary to obtain an FRN. This is potentially an intrusion on privacy and a violation of the Privacy Act;[3] however, the FCC states the Privacy Act is not impacted by this form. Clearly, the unauthorized release of social security, employer identification and taxpayer identification numbers would impact the Privacy Act. Furthermore, the instructions to the new Form 323 require that FRN information be "consistent." The FCC's database often reflects multiple FRNs for the same entity. In order to be consistent, each licensee will have to spend additional time interviewing each potential FRN holder to verify that the FRN used in its filings is the same FRN

[3] 5 U. S. C. § 552a, which prohibits the disclosure of records maintained in an agency's system of records without the prior written consent of the individual to whom the record pertains. The Privacy Act also requires agencies to have in place an administrative and physical security system to prevent unauthorized release of personal records.

used in all other FCC filings. This will, in turn, drive up the number of hours necessary to complete the form.

Conclusion/Recommendations. At minimum, the FCC must (1) provide for a way to secure the data collected consistent with the Privacy Act, (2) revise its FRN software to generate only one FRN per social security, employer identification or taxpayer identification number entered in the system, or (3) abandon its plan to collect FRNs on non-licensees.

Respectfully submitted,

SAGA COMMUNICATIONS, INC.

By_____
Gary S. Smithwick
Its Counsel

SMITHWICK & BELENDIUK, P.C
5028 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016

202-363-4560