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September 10, 2009

Ms. Cathy Williams
Federal Communications Commission
Room 1-C823
445 12th Street, SW
Washington, DC 20554

Mr. Nicholas A. Fraser
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: OMB Control No. 3060-0010: *Ownership Report for Commercial Broadcast Stations*; FCC MB Dkt. No. 07-294 *et al.*: *Promoting Diversification of Ownership in the Broadcast Services*

Dear Ms. Williams and Mr. Fraser:

Pursuant to the Paperwork Reduction Act of 1996,¹ and a Federal Register Notice concerning revisions to FCC Form 323,² the Office of Communication of the United Church of Christ, Inc., Benton Foundation, Common Cause, Media Alliance and National Organization for Women Foundation (collectively, “UCC *et al.*”) respectfully submit these comments. UCC *et al.*

¹ 44 U.S.C. §3507 (2002).

² Notice of Agency Information Collection Activities, *Ownership Report for Commercial Broadcast Stations*, 74 Fed. Reg. 40,188-01 (Aug. 11, 2009) (“Notice”).

comprises nonprofit organizations dedicated to ensuring that broadcasters serve the public interest. UCC *et al.* have participated extensively in the Federal Communications Commission (“Commission” or “FCC”) broadcast ownership diversity proceeding.³

In the Notice and accompanying Information Collection Request,⁴ the government invites comment on “[w]hether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility” and whether or not the data collection poses unnecessary burdens on the regulated entities.⁵ Specifically, the government seeks input on the following changes to Form 323: biennial, uniform filing dates; the expansion of reporting requirements to sole proprietors, partnerships of natural persons, certain non-attributable interests, and low power TV stations; and the addition of electronic searchability and built-in edit checks.⁶

UCC *et al.* support the Commission’s decisions to require uniform biennial filing dates, to expand the range of individuals, entities and licensees responsible for biennial ownership report filings, and the changes made to enhanced online searchability and data accuracy. These measures will enable the Commission to better monitor trends in minority and female ownership, evaluate the impact of existing rules and implement policies pursuant to sections 257 and 309(j) of the Communications Act, which direct the FCC to identify and eliminate “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services” and to do so in a manner “favoring

³ *Promoting Diversification of Ownership in the Broadcasting Services*, FCC 09-33 (rel. May 5, 2009) (“*Diversity Order*”).

⁴ Information Collection Request at 1, OMB Control No. 3060-0010, ICR Reference No. 200908-3060-001, certified on Aug. 11, 2009.

⁵ Notice of Agency Information Collection Activities, *Ownership Report for Commercial Broadcast Stations*, 74 Fed. Reg. 40,188-01 (Aug. 11, 2009).

⁶ Information Collection Request at 1, OMB Control No. 3060-0010, ICR Reference No. 200908-3060-001, certified on Aug. 11, 2009.

diversity of media voices”⁷ and to “disseminate[] licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”⁸ The FCC’s revisions to Form 323 are necessary steps in this process, and they will not unduly burden licensees.

Uniform Biennial Filing Dates. The *Diversity Order* established a uniform filing date for all respondents⁹ to help provide a “comprehensive picture of broadcast ownership.”¹⁰ Previously, “filing and reporting requirements [were] tied to stations’ renewal cycles, and new data [were] continually incorporated into the database as it [was] filed, mixing new data and old data.”¹¹ That system was flawed because the Commission was unable to use the database to make time-related comparisons,¹² and because it was difficult to track whether stations had submitted ownership reports at all. Thus, the uniform biennial filing date is necessary “to obtain a snapshot of broadcast ownership at any one particular moment in time to use as a benchmark or for analytical purposes.”¹³ Without such uniformity the data will suffer from incompleteness, inaccuracy and duplicate filings.¹⁴

Expanding Reporting Requirements to Sole Proprietors and Partnerships of Natural Persons. The *Diversity Order* also enlarged the class of licensees required to file ownership reports biennially to include sole proprietors and partnerships of natural persons.¹⁵ This decision

⁷ 47 U.S.C. §257 (2007).

⁸ 47 U.S.C. §309(j)(3)(B) (2007).

⁹ *Diversity Order* at ¶22.

¹⁰ *Diversity Order* at ¶27.

¹¹ *Diversity Order* at ¶22.

¹² *Diversity Order* at ¶22.

¹³ *Diversity Order* at ¶7.

¹⁴ See *Diversity Order* at ¶7; see also Comments of Professors Carolyn M. Byerly and Reginald Miles at 1, MB Dkt. No. 07-294 *et al.*, filed Jun. 23, 2009.

¹⁵ *Diversity Order* at ¶12.

was based on information provided by commenters, study authors, and the GAO that the FCC’s past Form 323 data collections were “not sufficiently reliable and comprehensive to form the basis for effectively assessing ownership diversity and whether additional measures to promote it are necessary.”¹⁶

The Commission found “that the most effective way to obtain comprehensive, up-to-date ownership data is to require all commercial broadcast licensees to file the revised 323 Form biennially.”¹⁷ The Commission noted that exempting sole proprietors and partnerships of natural persons from filing prevents the FCC from “obtaining information resulting from ownership changes that do not require FCC approval,”¹⁸ and that “relying on transfer or assignment applications to collect minority and female ownership data as to these entities will not suffice.”¹⁹ The Commission provided that “collecting minority and female ownership data for these stations is essential if we are not to overlook a substantial reservoir of minority and female owners of broadcast facilities, and we believe the benefits of collecting this information outweigh any additional filing burdens imposed on these stations.”²⁰

UCC *et al.* support the Commission’s decision to collect ownership data from sole proprietors. Such information is necessary to ensure that the Commission has a complete picture of minority and female broadcast ownership, and does not present any substantial time or record-keeping burdens for sole proprietors. Sole proprietors must file this exact ownership report when they obtain their licenses,²¹ and (because their demographic data does not change) they can

¹⁶ *Diversity Order* at ¶12.

¹⁷ *Diversity Order* at ¶15.

¹⁸ *Diversity Order* at ¶16.

¹⁹ *Diversity Order* at n.45.

²⁰ *Diversity Order* at ¶15.

²¹ Petition for Reconsideration of the National Association of Broadcasters at 2-3, MB Dkt. No. 07-294 *et al.*, filed Jun. 26, 2009

simply resubmit their initial Form 323 report. As it stands, Form 323 is only four pages and contains step-by-step instructions, which Commission staff recently revised to make even clearer and simpler.²² Non-commercial broadcasters and tiny low power FM stations – which often have fewer resources than commercial sole proprietors and partnerships of natural persons – have voluntarily agreed to submit the same biennial reports, suggesting that such filings are not burdensome.²³

Expanding Reporting Requirements to Certain Non-Attributable Investors. For purposes of defining which ownership interests must be reported, the Commission decided to use the current attribution rules with two exceptions. The Commission explained that

to measure the extent of minority and female ownership of broadcast outlets and assess the need for and effectiveness of any policies designed to promote minority and female ownership, it is important to obtain information on holders of certain nonattributable interests as well as on holders of attributable interests.²⁴

Thus, the Commission now requires reporting by owners that would otherwise be exempt under the single majority shareholder exemption or the “Equity/Debt Plus (“EDP”) thresholds. Not only is such information necessary to obtain a comprehensive assessment of minority and female ownership, but its collection would not cause “an adverse effect on capital investment,” and would not be unreasonably burdensome because broadcasters are already “accustomed to keeping records in accordance with the Commission’s existing attribution rules.”²⁵

²² See FCC Form 323, *Ownership Report for Commercial Broadcast Stations*.

²³ See Comments of National Federation for Community Broadcasters & Prometheus Radio Project at 5-6, MB Dkt. No. 07-294 *et al.*, filed Jun. 25, 2009; Comments of Native Public Media at 3, 7, MB Dkt. No. 07-294 *et al.*, filed Jun. 26, 2009; Comments of Educational Media Foundation at 1-2, MB Dkt. No. 07-294 *et al.*, filed Jun. 25, 2009

²⁴ *Diversity Order* at ¶17.

²⁵ *Diversity Order* at ¶17.

UCC *et al.* endorse the Commission's decision to require that licensees include these non-attributable investors in their ownership reports. This information will help provide a more complete picture of minority and female involvement in the broadcast industry. It will also enable the Commission to determine whether certain patterns of non-attributable ownership raise policy questions, and to analyze investment in the broadcast industry and the barriers thereto.

Collecting this data will not impose any significant burden on licensees. Broadcasters' attorneys and banks already know the identity of their investors, attributable and non-attributable alike. Nor will this data collection deter legitimate investment; the Commission determined as much in the *Diversity Order*.²⁶ Form 323 is hardly extensive: it is only four pages, contains step-by-step instructions, is largely self-explanatory and only has to be filed once every two years.

Expanding Reporting Requirements to Low Power Television Stations. Upon recommendation from the Government Accountability Office, the Commission ordered that low power television stations be required to file biennial ownership reports so that the Commission can capture the full universe of broadcast stations owned by women and people of color.²⁷

UCC *et al.* agree with the Commission that low power television stations should biennially file Form 323. In the absence of such a requirement, the Commission may overlook a substantial number of female and minority owners.²⁸ Because of their lower cost, low power stations can provide a means for minorities and women to enter the television business.²⁹ As such, they could provide insight into how women and people of color can enter and compete in other types of television ownership and control. Moreover, because of the ease of use of the new Form 323, it is not unduly burdensome for low power television licensees to file biennially.

²⁶ *Diversity Order* at ¶17.

²⁷ *Diversity Order* at ¶¶3, 10.

²⁸ *Diversity Order* at ¶15.

²⁹ *Diversity Order* at n.44.

Enhancing Electronic Searchability and Accuracy. The *Diversity Order* mandated that Form 323 be electronically searchable and easily sorted, cross-referenced and aggregated.³⁰ It also required that additional verification checks be implemented to ensure the accuracy of the information collected.³¹ It delegated authority to Commission staff to enact these measures.³²

UCC *et al.* applaud the Commission and its staff in this effort. Form 323 is now much more user-friendly, and capable of yielding more accurate data than ever before. Not only did the staff implement the Commission's specific provisions, but they also enhanced Form 323's General Instructions to further explain and facilitate the Commission's new data collection procedures. These changes create a more meaningful data collection process by enhancing ease of use and precision, and if anything, they ameliorate – not augment – any burdens associated with filing Form 323.

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Respectfully Submitted,

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³⁰ *Diversity Order* at ¶20.

³¹ *Diversity Order* at ¶23.

³² *Diversity Order* at ¶20.

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