

**Before the
Office of Management and Budget
Washington, D.C. 20503**

In re)	
)	
Notice of Public Information Collection)	OMB Control Number: 3060–0010
Requirement Submitted to OMB for Review)	ICR Reference Number 201207-3060-005
and Approval, Comments Requested)	Ownership Report for Commercial
)	Broadcast Stations, FCC Form 323

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COMMENTS

The law firm of Fletcher, Heald & Hildreth, P.L.C. (“FHH”) hereby submits its comments in response to the Notice and Request for Comments with regard to the Federal Communications Commission (“FCC”) Ownership Report for commercial broadcast stations, FCC Form 323, published in 77 *Federal Register* 41785 (July 16, 2012). The FCC stated therein that, in accordance with the Paperwork Reduction Act, it is seeking renewed Office of Management and Budget (“OMB”) approval of its Form 323 ownership report form.

Form 323 was significantly revised in 2009. OMB initially approved the revised form on October 19, 2009 (ICR Reference Number 200908-3060-001).

Prior to that time, a number of problems had been raised relative to the revised form. Those included substantial privacy concerns due primarily to the FCC’s requirement that each person with an attributable interest in a commercial broadcast station provide an FCC Registration Number (“FRN”) based on that person’s social security number. FHH and a

number of state broadcast associations sought FCC reconsideration of this requirement and, after OMB's initial approval had been issued, also filed petitions for mandamus with the U.S. Court of Appeals with the D.C. Circuit in an effort to compel the FCC to address the privacy issues. As a result of the reconsideration and mandamus proceedings, which extended from 2009 into mid-2010, the FCC introduced additional changes to the form after OMB's October, 2009 approval.

In particular, the FCC developed a "Special Use" FRN which could be inserted in a biennial ownership report as an alternative to a social security number-based FRN. Special Use FRNs may be used in cases in which a social security number-based FRN is not available for any reason. The Special Use FRN is included as a feature in the electronic version of Form 323, together with a pop-up box explaining its use. (The FCC requires the use of the electronic version; "hard copy" paper versions of the form may not ordinarily be filed.) The Special Use FRN is generated and inserted into Form 323 by use of an electronic button and has been available for use during the last two biennial Form 323 filing windows. Many respondents have opted to use the Special Use FRN.

The Special Use FRN option was initially presented to, and approved by, OMB in March, 2010 in ICR Reference Number 201003-3060-025 (approved March 26, 2010). That revision, however, did not eliminate problems relative to the form, which led to the submission (by FHH and others) of a petition for mandamus in the U.S. Court of Appeals for the D.C. Circuit in June, 2010. As the Commission prepared to respond to that petition, it revised Form 323 yet again. That revision was submitted to, and approved by, OMB in ICR Reference Number 201006-3060-006 (approved June 21, 2010), immediately prior to the FCC's June 23, 2010 response to the court.

The practical effects of the various form revisions on entities required to submit the form were not fully spelled out by the Commission to the public. In September, 2011 – two months prior to the next deadline for filing biennial Form 323 – FHH petitioned the Commission to revise and correct the instructional and informational materials which the Commission routinely made available relative to Form 323 in order to assure that those materials fully and accurately reflected the obligations imposed on such entities. In apparent response to the FHH petition, the Commission submitted yet another revision of the form to OMB two weeks after the FHH petition. According to OMB records, that revision was approved by OMB on the day it was submitted. *See* ICR Reference Number 201109-3060-020 (request uploaded and approved on September 28, 2011).

The various changes effected in Form 323 since OMB’s December, 2009 approval of the initial version of the current form have significantly altered both the form and the obligations it imposes on those required to submit it.¹

Nearly three years have passed since OMB’s 2009 approval of the revised Form 323, and the form is now before OMB (in ICR Reference Number 201207-3060-005) for renewed approval. It appears that the copy of Form 323 submitted to OMB in the current review process does not include any express reference to Special Use FRN’s or the related changes to the form approved in 2010 and 2011. The supporting statement submitted by the FCC appears instead to track the supporting statement filed in October, 2009, in connection with ICR Reference Number 200908-3060-001. It makes no reference to any of the events that occurred after that submission

¹ In its March, 2010, June, 2010 and September, 2011 submissions to OMB, the FCC characterized the changes to the form described in each of those submissions as “non-substantive” and for purposes of “clarification”. While FHH questions the accuracy of those descriptions – since the revisions in question substantially altered the obligations imposed by Form 323 – we do not press that issue at this time.

or the changes that resulted from them. (As discussed above, those changes include the text of the pop-up explaining the Special Use FRN and a depiction of the electronic button by which a respondent may elect to use a Special Use FRN is included in the material provided to OMB.)

FHH understands that the omission of any reference to Special Use FRNs (or the proceedings and considerations from which they arose) is attributable to the fact that the FCC has submitted to OMB merely a Word version of Form 323, rather than the electronic version actually used by respondents. Since the Special Use FRN option appears in the electronic version only after clicking a special button, that option does not appear on the face of the plain Word version.

To clarify the Commission's intent, FHH informally contacted a member of the Commission's staff. In response, FHH has been advised by FCC staff that no changes whatsoever are contemplated for the electronic Form 323. That is, the changes implemented in 2010 and 2011 – and approved by OMB in March, 2010, June, 2010 and September, 2011 – will remain in place and the form will still include the Special Use FRN option and related instructional language as approved by OMB most recently in ICR Reference Number 201109-3060-020,

Based upon that assurance, FHH has no objection to renewed approval of the Form 323. FHH requests that OMB seek and obtain express written confirmation from the FCC that no changes from the most recently approved version of the form are contemplated by the currently pending request for approval. If FHH's understanding of the Commission's intent here is incorrect and the Commission is now seeking approval for some further changes to the form, FHH submits that OMB and the FCC should so indicate in a formal notice to be published in the Federal Register. That notice should identify whatever changes the Commission may be

proposing and invite interested parties to submit comments on the proposals. Again, FHH understands from FCC staff that no changes are contemplated by the Commission, and FHH has no reason to doubt that. Nevertheless, so that the public record on this matter is clear going forward, it would be appropriate for OMB to seek and obtain more formal confirmation of the FCC's intent here.²

WHEREFORE, the premises considered, approval of FCC Form 323 should be conditioned on maintaining the electronic version of that form as-is, with the ability to use Special Use FRN's as previously approved by OMB.

Respectfully submitted,

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August 15, 2012

² OMB may also wish to seek clarification with respect to the FCC's compliance with the Privacy Act. According to the Federal Register notice, the FCC "is in the process of publishing a system of records notice (SORN), FCC/MB-1, 'Ownership Report for Commercial Broadcast Stations,' to cover the collection, purposes(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323." 77 Fed. Reg. at 41786. But the FCC has already apparently established such a SORN. See 74 Fed. Reg. 59978 (November 19, 2009). If no change in Form 323 is currently contemplated, then it would appear that no new or revised SORN would be required.