

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

In the Matter of)	
)	
Promoting Diversification of Ownership In the Broadcasting Services)	MB Docket No. 07-294
)	
2006 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. 06-121
)	
2002 Biennial 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. 02-277
)	
Cross-Ownership of Broadcast Stations and Newspapers)	MM Docket No. 01-235
)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets)	MM Docket No. 01-317
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	
Ways to Further Section 257 Mandate and To Build on Earlier Studies)	MB Docket No. 04-228
)	
Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested)	OMB Control Number: 3060-0010
)	

REPLY TO OPPOSITION

Pursuant to Section 1.429 of the Federal Communications Commission’s rules, 47

C.F.R. § 1.429, the National Association of Broadcasters (“NAB”)¹ hereby replies to the

¹ The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

single opposition² to its Petition for Reconsideration of limited aspects of the *Report and Order*³ in the above-captioned proceeding. Because our Reply relates directly to the burdens imposed by certain new ownership reporting obligations, NAB also is filing this reply with the Office of Management and Budget (“OMB”) in response to the Federal Register Notice seeking comment on a revised ownership report form pursuant to the Paperwork Reduction Act of 1995 (“PRA”).⁴

As previously indicated, NAB strongly supports the FCC’s goals of improving the quality and reliability of its data on minority and female owners in the broadcast industry.⁵ We hope that this data will support the kinds of regulatory⁶ and private sector⁷ initiatives

² See *Opposition to Petition for Reconsideration of the Office of Communication of the United Church of Christ, Inc., Benton Foundation, Common Cause, Media Alliance, and the National Organization for Women Foundation*, MB Docket No. 07-294 (filed Aug. 11, 2009) (“UCC Opposition”).

³ See *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, FCC 09-33 (rel. May 5, 2009) (“*Report and Order*”).

⁴ *Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested*, 74 Fed. Reg. 40188 (Aug. 11, 2009) (“*OMB Notice*”).

⁵ See, e.g., *Petition for Reconsideration of the National Association of Broadcasters in MB Docket No. 07-294* (Jun. 26, 2009) at 2 (“*NAB Petition*”); NAB Comments in MB Docket No. 07-294 (filed Jul. 30, 2008) at 8 (“*NAB supports the Commission’s goal of ensuring that its ownership reports generate data allowing accurate measurement of minority and female ownership...*”).

⁶ See, e.g., NAB Comments in MB Docket No. 07-294 (filed Jul. 30, 2008) at 4-6 (encouraging the FCC to adopt incentive-based rule changes that will stimulate investment in new entrant broadcast properties, including incubator programs); NAB Comments in MB Docket No. 06-121 at 3-4 (filed Oct. 1, 2007) (urging FCC to seek Congressional reinstatement of the tax certificate program); *Id.* at 7-9 (supporting proposals of the Minority Media & Telecommunications Council and others to allow sales of grandfathered clusters to parties that agree to transfer them to qualified small businesses within one year, and provide economic incentives for licensees that establish an incubator program, among other proposals).

⁷ Through partnerships with the National Association of Broadcasters Education Foundation (“NABEF”) and the Broadcast Education Association (“BEA”), NAB has helped to develop a very successful educational system that not only provides professionals and students with access to employment in the broadcasting industry, but

to promote diversity and new entry that NAB has long supported. We requested reconsideration of two requirements adopted in the *Report and Order* on grounds that those new obligations will create burdens without furthering the goals of diversity and new entry and, indeed, may have the opposite effect. Specifically, NAB requested the Commission to eliminate or modify its expansion of the biennial ownership report filing obligation to include certain non-attributable interests and sole proprietors. In this Reply, we continue to urge the Commission to eliminate or modify the ownership reporting requirement for non-attributable investors. The UCC Opposition fails to allay concerns that this reporting obligation will unduly burden licensees and investors and could deter investment in broadcasting at a time when it is sorely needed. We also continue to urge the Commission to explore ways to use data previously filed by sole proprietor licensees so as to reduce burdens on these small businesses, while at the same time achieving the Commission's important goal of obtaining accurate and complete information about minority and female ownership of broadcast stations.

I. Contrary to UCC's Unsupported Assertions, the Public Interest is Not Served by New Reporting Requirements for Non-Attributable Investors

In our Petition, NAB urged the Commission to reconsider its new ownership reporting requirement for certain non-attributable interest holders.⁸ We stated that this

gives them the tools that they need to excel in broadcast management and ownership. NABEF sponsors Media Sales Institutes at three universities, including Howard University, Florida A&M, and at the Spanish Language Media Center of the University of North Texas. These intensive 10-day training programs prepare talented students with diverse backgrounds for sales careers in the broadcast industry. Up to 90 students are trained each year. NABEF's Broadcast Leadership Training program provides MBA-style executive training for station managers and others who aspire to own stations. To date, 24 graduates of the program own stations and many others have been promoted or are in various stages of station acquisition.

⁸ NAB Petition at 4-10. Specifically, the Commission held that it would collect information from holders of equity interests in a licensee that would be attributable but for the single majority shareholder exemption and from holders of interests that would

requirement will not yield useful information about minorities or women with a meaningful role in broadcast station operations because, as the Commission has previously determined, only the holders of attributable interests have such influence.⁹ At the same time, the new reporting obligation will significantly burden licensees and their investors—many of whom may be deterred by the new requirements.¹⁰ Because these requirements will harm broadcasters' ability to attract investors and create filing burdens while providing no corresponding public interest benefit, they should be eliminated or at least modified. We stated that, for example, the Commission could minimize the burden by requiring *only* demographic data and not full reporting by non-attributable investors.¹¹ The UCC Opposition offers no rationale or facts to undercut NAB's arguments.

UCC states that information on non-attributable investors will “provide a more complete picture of minority and female *involvement* in the broadcast industry.”¹² While NAB agrees that such involvement is desirable, UCC does not explain how tallying non-attributable “involvement” can be used to establish new rules or policies in support of greater minority and female *ownership*. NAB can envision supporting such a data-gathering effort if it could be linked to a potential regulatory action that furthers the Commission's ownership diversity goals. However, the *Report and Order* does not identify any specific potential regulatory purpose for the information it seeks, nor does the UCC Opposition.

be attributable but for the higher Equity/Debt Plus (“EDP”) attribution thresholds applicable to investment in eligible entities. *Report and Order* at ¶ 17.

⁹ NAB Petition at 8-9.

¹⁰ *Id.* at 5-8.

¹¹ *Id.* at 9-10.

¹² UCC Opposition at 6 (emphasis added).

UCC does not address the burdensome nature of this new filing requirement, except to make the wholly unsupported claim that there is no significant burden because “[b]roadcasters’ attorneys and banks already keep data on all their investors, attributable and non-attributable alike.”¹³ This is simply not accurate. It would be highly unusual for attorneys or banks representing *any* type of company to request or maintain information on the race, ethnicity or gender of all of the individuals who are part of the chain of investment in that company. Based on the experience of our members, if an investor does not hold an attributable interest in the broadcaster, there would be no reason for a broadcast licensee (or its banks or attorneys) to inquire as to that investor’s other media holdings or maintain any lists of these holdings – certainly not a list detailing, for any and all outlets, the call sign, community of license, facility ID number, type and percentage of equity and/or voting interest, and familial relationships between holders of both non-attributable and attributable interests.¹⁴ The limited contact information that an attorney, bank, or licensee may have on file for a non-attributable broadcast investor is only an address that the licensee will have to verify is current and acceptable for public review and inspection. UCC’s assertion that “only entity investors will be responsible for filing the report”¹⁵ may be accurate, but this does not mean that significant information about individual investors does not need to be gathered, verified and disclosed in connection with the new requirements.

¹³ UCC Opposition at 6.

¹⁴ For example, if a broadcast license is held by Licensee Co., Inc., with a 94% ownership by Licensee Parent, Inc. and 6% ownership by Minority Investor, Inc., there is no reason for a bank or attorney to have on file a listing of the name, address, ethnicity, race, gender, positional interest, media holdings, and familial relationships of each officer, director, and 5% or greater shareholder in Minority Investor, Inc. But that is the information which must be gathered and disclosed under the new requirements, even for such small equity stakes.

¹⁵ UCC Opposition at 6.

UCC also contends that the FCC already has made the determination that the new reporting obligation would not deter investment,¹⁶ but as NAB pointed out in the Petition, the Commission made this determination without the benefit of public comment on this issue.¹⁷ Because the Commission did not solicit comment on the issue of expanding reporting obligations to non-attributable investors,¹⁸ the record upon which it based the determination that investment would not suffer is incomplete. The Commission should seek comment on and fully assess the potential harms or benefits of expanded disclosure requirements.

Finally, NAB renews its argument in the Petition – which is not refuted nor even acknowledged by UCC – that even if the Commission determines information on minority and female investment short of attribution thresholds is important, it should adopt a less burdensome and less intrusive rule.¹⁹ Under NAB’s proposal, the Commission could allow licensees to disclose only general demographic data, such as a series of pull down menus or checkboxes that would allow the licensee to identify the number and type of non-attributable investors that are minorities or women, together with their ownership share, without the granular information on their names, addresses,

¹⁶ UCC Opposition at 6.

¹⁷ UCC states in a footnote that this new requirement was a “logical outgrowth” of the Commission’s request for comment on expanding the reporting obligation to sole proprietors and partnerships. UCC Opposition at 5, Note 21. UCC’s newly announced support of this reporting requirement, however, calls into question the contention that this issue was the subject of clear notice. As a proponent of the reporting obligation, one would anticipate that UCC would have commented on it at an earlier stage of this proceeding. But UCC does not identify any previous filing – by itself or any other party – concerning biennial ownership reporting by non-attributable investors, further illustrating that there was no clear notice that the Commission was considering such reporting.

¹⁸ NAB Petition at 6.

¹⁹ NAB Petition at 9-10.

familial relationships, and other media interests.²⁰ Such a disclosure would make clear that, for example, a licensee with a single majority shareholder also has an Asian female investor holding seven percent of the company's shares. While this approach would still require some additional data-gathering and disclosure, it would be less burdensome and less likely to deter investment, and will still provide the Commission and the public with the information specifically related to the central issue in this proceeding.

NAB's proposal can be addressed through revisions to the draft FCC Form 323 attached to the *OMB Notice*. The *OMB Notice* seeks comment, pursuant to the PRA, on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.²¹ The *Report and Order* directed the staff to revise the form to obtain data on minority and female owners with non-attributable interests, but the current draft Form 323 gathers more data than is necessary to meet this goal. The draft Form 323 therefore requests information that is not "necessary for the proper performance of the functions of the Commission." NAB's proposal would minimize the "burden of the collection of information on the respondents" while still eliciting the desired information, and should accordingly be reflected in the final FCC Form 323 approved by OMB.

²⁰ *OMB Notice*.

²¹ *Notice*, 74 Fed. Reg. 27,549 (2009).

II. The Commission Should Use Data Previously Filed by Sole Proprietors to Obtain the Desired Information on Minority and Female Ownership

As NAB explained in its Petition as well as its comments in this proceeding, ownership reports, including information on minority and female ownership, must be filed at the time a licensee obtains a license, whether it is through an assignment/transfer (*i.e.*, on the post-consummation ownership report)²² or through an auction (*i.e.*, on the “short form” application; after a long form application for a construction permit is granted; and in connection with the license application once the station is constructed).²³ Unlike the demographic data for entities with multiple investors, officers, and directors, a sole proprietor’s race and gender does not change.²⁴

We continue to urge the Commission to explore ways to make available the data previously filed by sole proprietor licensees so as to keep new administrative and regulatory burdens on these small entities as minimal as possible.²⁵ Such an approach will “minimize the burden of the collection of information” by using “information technology,” consistent with the PRA.²⁶ It is also an important goal generally in today’s economic environment, which is particularly challenging for small broadcast businesses. UCC in fact indicates that a system that involves use of previously filed data could serve the Commission’s goals.²⁷ To the extent that the Commission can use previously

²² NAB Petition at 2-3 (citing 47 C.F.R. 73.3615(c)).

²³ *Id.* (citing FCC Form 175, Question 9; 47 C.F.R. 73.3615(a)).

²⁴ *Id.*

²⁵ For example, in our Petition, NAB urged the Commission to consider whether its updated ownership database could “link back to the most recent report filed by each sole proprietor who is a current licensee.” NAB Petition at 3-4.

²⁶ *OMB Notice.*

²⁷ UCC Opposition at 4.

submitted data to obtain the relevant information on minority and female ownership, it should do so.

III. Conclusion

For the reasons explained in the NAB Petition, which remain unrefuted, the Commission should reconsider its expansion of ownership reporting requirements to certain non-attributable investors. Data gathering regarding non-attributable investors should be eliminated because it will burden licensees and deter investment, without advancing FCC goals. At a minimum, this requirement should be implemented in a way that minimizes burdens and reduces the risk of deterring investors. Revisions can be made to the draft FCC Form 323 that reflect this proposal and make the form less burdensome, consistent with the PRA. Utilizing information about minority and female ownership previously submitted by sole proprietors also is consistent with the PRA and the public interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Erin L. Dozier, hereby certify that on this 21st day of August, 2009, the foregoing Reply to Opposition was served by first-class mail, postage paid, on the following:

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