

(b) The amount of a civil money penalty that may be imposed is subject to the following limitations:

(1) For violations occurring prior to February 18, 2009, the Secretary may not impose a civil money penalty—

(i) In the amount of more than \$100 for each violation; or

(ii) In excess of \$25,000 for identical violations during a calendar year (January 1 through the following December 31);

(2) For violations occurring on or after February 18, 2009, the Secretary may not impose a civil money penalty—

(i) For a violation in which it is established that the covered entity did not know and, by exercising reasonable diligence, would not have known that the covered entity violated such provision,

(A) In the amount of less than \$100 or more than \$50,000 for each violation; or

(B) In excess of \$1,500,000 for identical violations during a calendar year (January 1 through the following December 31);

(ii) For a violation in which it is established that the violation was due to reasonable cause and not to willful neglect,

(A) In the amount of less than \$1,000 or more than \$50,000 for each violation; or

(B) In excess of \$1,500,000 for identical violations during a calendar year (January 1 through the following December 31);

(iii) For a violation in which it is established that the violation was due to willful neglect and was corrected during the 30-day period beginning on the first date the covered entity liable for the penalty knew, or, by exercising reasonable diligence, would have known that the violation occurred,

(A) In the amount of less than \$10,000 or more than \$50,000 for each violation; or

(B) In excess of \$1,500,000 for identical violations during a calendar year (January 1 through the following December 31);

(iv) For a violation in which it is established that the violation was due to willful neglect and was not corrected during the 30-day period beginning on the first date the covered entity liable for the penalty knew, or, by exercising reasonable diligence, would have known that the violation occurred,

(A) In the amount of less than \$50,000 for each violation; or

(B) In excess of \$1,500,000 for identical violations during a calendar year (January 1 through the following December 31).

(3) If a requirement or prohibition in one administrative simplification

provision is repeated in a more general form in another administrative simplification provision in the same subpart, a civil money penalty may be imposed for a violation of only one of these administrative simplification provisions.

■ 5. Revise § 160.410 to read as follows:

**§ 160.410 Affirmative defenses.**

(a) For violations occurring prior to February 18, 2009, the Secretary may not impose a civil money penalty on a covered entity for a violation if the covered entity establishes that an affirmative defense exists with respect to the violations, including the following:

(1) The violation is an act punishable under 42 U.S.C. 1320d-6;

(2) The covered entity establishes, to the satisfaction of the Secretary, that it did not have knowledge of the violation, determined in accordance with the federal common law of agency, and, by exercising reasonable diligence, would not have known that the violation occurred; or

(3) The violation is—

(i) Due to reasonable cause and not willful neglect; and

(ii) Corrected during either:

(A) The 30-day period beginning on the first date the covered entity liable for the penalty knew, or by exercising reasonable diligence would have known, that the violation occurred; or

(B) Such additional period as the Secretary determines to be appropriate based on the nature and extent of the failure to comply.

(b) For violations occurring on or after February 18, 2009, the Secretary may not impose a civil money penalty on a covered entity for a violation if the covered entity establishes that an affirmative defense exists with respect to the violations, including the following:

(1) The violation is an act punishable under 42 U.S.C. 1320d-6; or

(2) The covered entity establishes to the satisfaction of the Secretary that the violation is—

(i) Not due to willful neglect; and

(ii) Corrected during either:  
(A) The 30-day period beginning on the first date the covered entity liable for the penalty knew, or, by exercising reasonable diligence, would have known that the violation occurred; or

(B) Such additional period as the Secretary determines to be appropriate based on the nature and extent of the failure to comply.

■ 6. Revise § 160.412 to read as follows:

**§ 160.412 Waiver.**

For violations due to reasonable cause and not willful neglect that are not

corrected within the period described in § 160.410(a)(3)(ii) or (b)(2)(ii), as applicable, the Secretary may waive the civil money penalty, in whole or in part, to the extent that the payment of the penalty would be excessive relative to the violation.

■ 7. Revise § 160.420(a)(4) to read as follows:

**§ 160.420 Notice of Proposed Determination.**

(a) \* \* \*

(4) The amount of the proposed penalty and a reference to the subparagraph of § 160.404 upon which it is based.

\* \* \* \* \*

Dated: August 11, 2009.

**Kathleen Sebelius,**  
*Secretary.*

[FR Doc. E9-26203 Filed 10-29-09; 8:45 am]

BILLING CODE 4150-03-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[MB Docket Nos. 07-294; 06-121; 02-277; 04-228; MM Docket Nos. 01-235; 01-317; 00-244; FCC 09-92]

**Promoting Diversification of Ownership in the Broadcasting Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document reconsiders the requirement that licensees report certain nonattributable interests on FCC Form 323, Ownership Report for Commercial Broadcast Stations. Therefore, entities will not have to report these interests biennially on Form 323. The Commission reaffirms all other changes it made to the FCC Form 323 in the 323 Order.

**DATES:** The rule in this document contains information collection requirements that have been approved by the Office of Management and Budget (OMB). The rule will become effective upon publication of a document in the **Federal Register** announcing the OMB approval.

**FOR FURTHER INFORMATION CONTACT:** Mania Baghdadi, (202) 418-2330, Amy Brett, (202) 418-2300.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order in MB Docket Nos. 07-294; 06-121; 02-277; 04-228; MM Docket Nos. 01-235; 01-317; 00-244, FCC 09-92, adopted

October 15, 2009 and released October 16, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs>). The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

### Summary of the Memorandum Opinion and Order

1. In the MO&O, the Commission grants the National Association of Broadcaster's (NAB) Petition for Reconsideration to the extent that it requests reconsideration of the requirement that licensees report certain nonattributable interests. Otherwise, the Commission denies NAB's Petition, specifically its request to reconsider the requirement that sole proprietors file Form 323 ownership reports biennially. The Commission dismisses David Wilson's Petition for Reconsideration of the same requirement as repetitious.

2. The MO&O is an order on reconsideration of the 323 Order, in which the Commission adopted changes to the commercial broadcast ownership reporting requirements and delegated authority to the Media Bureau to revise FCC Form 323 accordingly. The Commission adopted these changes to increase the accuracy and comprehensiveness of the minority and female ownership data collected and to address other flaws in the data collection process as identified by the United States Government Accountability Office and by study authors who have attempted to use the current data to analyze broadcast ownership issues. Among other things, the Commission required sole proprietors and partnerships composed of natural persons to file Form 323 biennially, and it expanded the reporting requirement to include interests that are not attributable because of: (a) The single majority shareholder exemption; and (b) the exemption for interests held in eligible entities that would be attributable but for the higher Equity/Debt Plus ("EDP") thresholds adopted in the Diversity Order for certain investments in eligible entities.

3. The Commission ratifies the Media Bureau's extension of the date for commercial licensees to file their initial biennial ownership reports on the new Form 323 to a date that is no earlier than 30 days after public notice of approval by OMB of the revised Form, with data

current as of November 1, 2009. In the 323 Order, the Commission adopted a November 1, 2009 initial biennial filing date, requiring data to be current as of October 1, 2009. The deferral gives licensees and other entities sufficient time to review the new form and gather the necessary information. The extension of these deadlines will apply only to the initial filing. Beginning with the 2011 filing, the form must be filed no later than November 1 with data current as of October 1 of the filing year.

4. In the 323 Order, the Commission decided to require broadcasters to report every two years, on Form 323, information on entities with financial interests that would be attributable (1) but for the single majority shareholder attribution exemption or (2) the higher Equity/Debt Plus threshold adopted in the Diversity Order for purposes of attributing certain interests in eligible entities. NAB states that the Commission did not provide notice on this issue and that the record therefore lacks information as to potential harms or benefits of this new filing requirement. NAB expresses doubt that information from nonattributable entities will provide the Commission with any useful information on the current status of minority and female ownership of broadcast stations. NAB states that, by excluding these interests from its attribution rules, the Commission has already determined that such interests fail to confer sufficient influence over a licensee's operations. Therefore, NAB questions how the ownership information will further the Commission's stated goals. NAB is concerned that the reporting requirement will deter investment in the broadcast industry. If the Commission affirms its decision, NAB asks that reporting be limited to race, gender, and ownership percentage of the nonattributable investors, rather than full reporting of their names, addresses, familial relationships, and other media holdings.

5. Upon reconsideration, the Commission will delete the requirement that these two types of nonattributable interests be reported and modifies 73.3615 of the Commission's rules, accordingly. In the 323 Order, the Commission sought to revise Form 323 to "obtain an accurate, reliable, and comprehensive assessment of minority and female broadcast ownership in the United States." The Commission concluded that gathering race, ethnicity, and gender data on the holders of these two types of interests would be useful in achieving this goal. While the Commission believes that this reporting requirement is a logical outgrowth of the

Third Further Notice, it acknowledges that its intention to impose the requirement was not explicitly stated and notes that no comments specifically addressed the reporting of nonattributable interests. Therefore, the Commission separately issues a Further Notice to invite additional comment on this issue in order to obtain a complete record.

6. NAB also asks the Commission to reconsider the requirement that sole proprietors file ownership reports biennially. NAB also objects to sole proprietors having to update or refile after the initial filing on the new form. NAB is concerned that the biennial filing requirement will place a significant financial burden on sole proprietors, who may lack legal counsel or the personnel to track filing deadlines and other compliance matters. Instead, NAB proposes that the Commission incorporate in the database the most recently filed Form 323 for each licensee sole proprietor. NAB contends that the ownership report on file will provide current information on race, ethnicity, and gender, as these characteristics would not change over time. UCC disagrees with NAB that requiring sole proprietors to file Form 323 biennially creates significant burdens. UCC does not oppose NAB's suggestion that sole proprietors be allowed to link back to previously filed ownership reports, so long as the data "quality, accuracy, accessibility and ease of use" is not compromised.

7. The Commission reaffirms its decision to require sole proprietors to file Form 323 biennially. The revised Form 323 is intended to improve the quality, accuracy, and reliability of the information gathered over that collected in the old form, and it addresses the GAO Report and researcher's criticism that the existing data is difficult to aggregate and summarize. Pursuant to delegated authority, the Media Bureau revised and improved the instructions and questions in all sections of the form in order to: (1) Clarify the information sought in the form; (2) ensure that the data are collected in formats that can be easily incorporated in database programs used to prepare economic and policy studies and are not provided in unusable narrative exhibits; and (3) simplify completion of the form by giving respondents menu-style or checkbox-style options to enter data.

To further improve the ability of researchers and other users of the data to cross-reference information and construct complete ownership structures, the Media Bureau also is requiring each filing entity, including sole proprietors, to obtain a unique FCC

Registration Number (FRN) and to report the FRNs of entities one step above and one step below it in the ownership chain and to identify the FRNs of its attributable officers, directors, and shareholders. The uniform filing date and a uniform date "as of" which the data being reported must be accurate will allow comparisons of snapshots of all firms at uniform points in time and will facilitate long-term comparative studies of ownership.

8. Under NAB's approach, none of the ownership data on sole proprietors that would be included in the database immediately following the initial filing date would be submitted in the research-friendly format of the revised form, nor would it pass through the built-in quality control mechanisms in the revised form, and its submission would not be informed by the significantly improved instructions that are incorporated in the revised form. Absent the biennial filing requirement, it could be literally years before some sole proprietors would submit an ownership report using the non-biennial form, and even then race, ethnicity, and gender data would not be reported because, as a result of revisions made to the form pursuant to the 323 Order, non-biennial filers will not be required to provide this information. The Commission rejects NAB's approach that sole proprietors not update or refile after the initial filing on the new form. The biennial filing requirement will ensure that sole proprietors, like other filers, review and verify that the data on file are current. The verification process will greatly benefit efforts to improve the accuracy and reliability of the data collection. Without a periodical certification that the information is accurate, the Commission must assume that a lack of a filing constitutes a licensee's assurance that its information is current. However, the absence of a filing also could mean that the licensee failed to file a report, even though its ownership information had changed. The information could be out of date, and the Commission and public would have no assurance to the contrary.

9. The Commission also disagrees that the biennial filing requirement places an undue burden on sole proprietors. These licensees each have only one principal, therefore, determination of the relevant information should be a simple process. After the initial filing, these licensees, with current reports on file, simply must recertify, once every two years that they have reviewed their current reports and that they are accurate. Using the Commission's electronic filing system, a filer will

launch a pre-filled form that already contains the information from its previously submitted Form 323. If all of the information is up to date, sole proprietors would then simply sign and electronically submit the pre-filled form. No additional data must be entered.

#### **Final Paperwork Reduction Analysis**

10. The MO&O contains revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. The revised information collection requirements will have the effect of reducing the paperwork burden. On August 11, 2009, the Commission submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA, the modified information collections pursuant to the 323 Order and published a notice in the **Federal Register** seeking comments on the August 11 submission. Due to public comments that were received with respect to FCC Form 323, the Commission further revised the information collection requirements that were contained in the 323 Order and amended the supporting statement and adjusted the burden hours and costs based on the revised information collection requirements contained in the MO&O.

#### **Final Regulatory Flexibility Analysis**

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA). The Supplemental FRFA addresses only the matters considered on reconsideration in this MO&O.

##### *A. Need for, and Objectives of, the MO&O*

12. The MO&O reaffirms its earlier conclusions in the 323 Order, except for one decision. In the 323 Order, the Commission decided to require broadcasters to report on Form 323 certain nonattributable interests and to require entities holding nonattributable interests to file Form 323. Specifically, the Commission required broadcasters to report every two years on Form 323 information on entities with financial interests that would be attributable (1) but for the single majority shareholder attribution exemption or (2) the higher Equity/Debt Plus threshold adopted in the Diversity Order for purposes of attributing certain interests in eligible entities. In addition, every two years, entities holding these interests would have to file Form 323. The 323 Order revised 47 CFR 73.3615 to implement

this change. On reconsideration, the Commission determined that because no comments were filed on this issue, the record may not be complete. Therefore, the Commission will not require broadcasters to report these interests and will not require entities holding these interests to file Form 323. Instead, the Commission is issuing a further notice of proposed rulemaking to seek comment on this issue.

##### *B. Legal Basis*

13. This MO&O is adopted pursuant to 47 U.S.C. 151, 152(a), 154(i)-(j), 257, and 303(r).

##### *C. Summary of Significant Issues Raised by Public Comments in Response to the FRFA*

14. The Commission received no comments in direct response to the FRFA. No commenters addressed the impact of this reporting requirement on small entities in their comments generally.

##### *D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

15. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity" under Section 3 of the Small Business Act. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

16. Television Broadcasting. In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than \$14 million in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of August 14, 2009, about 923 (72 percent) of the 1,289 commercial television stations in the United States have revenues of \$14 million or less. The FCC notes that in assessing whether a business entity qualifies as small under the above

definition, business control affiliations must be included. The estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the filing requirements for FCC Form 323, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

17. An element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

18. Radio Broadcasting. The Small Business Administration defines a radio broadcasting entity that has \$7 million or less in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public." According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of August 14, 2009, about 10,660 (96 percent) of 11,100 commercial radio stations in the United States have revenues of \$7 million or less. The FCC notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

19. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. The FCC is unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing

estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

20. *Class A TV and LPTV stations.* The rules and policies adopted herein apply to licensees of Class A TV stations and low power television ("LPTV") stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$14.0 million in annual receipts. As of June 30, 2009, there are approximately 553 licensed Class A stations and 2,386 licensed LPTV stations. Given the nature of these services, the FCC presumes that all of these licensees qualify as small entities under the SBA definition. However, under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. The estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

#### *E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

21. The MO&O eliminates one of the reporting, recordkeeping and compliance requirements adopted in the 323 Order. Licensees will not be required to report holders of two classes of nonattributable ownership interests: (1) Equity interests in a licensee that would be attributable but for the single majority shareholder exemption and (2) interests that would be attributable but for the higher Equity/Debt Plus thresholds adopted in the Diversity Order for purposes of determining attribution of certain interests in eligible entities. Thus, the FCC has reduced the reporting and recordkeeping requirements associated with this form.

#### *F. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered*

22. The RFA requires an agency to describe any significant alternatives that

it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

23. On reconsideration, the Commission reversed its decision in the 323 Order to require reporting of certain nonattributable interests. The FCC believes that it is preferable to seek additional comment on this issue in a further notice of proposed rulemaking to develop a full record on this issue, and not require broadcasters to file this information based on the current record in this proceeding. The MO&O reduces the burdens on small entities because these entities will not have to report on certain nonattributable interests and holders of those interests will not have to file Form 323 every two years.

#### *G. Report to Congress*

24. The Commission will send a copy of the MO&O, including the Supplemental FRFA, in a report to Congress and the Government Accountability Office, pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the MO&O, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### **List of Subjects in 47 CFR Part 73**

Radio, Television.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

#### **Final Rule**

■ For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

#### **PART 73—RADIO BROADCAST SERVICES**

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336 and 339.

■ 2. Section 73.3615 is amended by revising paragraph (a) introductory text to read as follows:

**§ 73.3615 Ownership reports.**

(a) The Ownership Report for Commercial Broadcast Stations (FCC Form 323) must be electronically filed every two years by each licensee of a commercial AM, FM, or TV broadcast station (a "Licensee"); and each entity that holds an interest in the licensee that is attributable for purposes of determining compliance with the Commission's multiple ownership rules (see Notes 1–3 to 47 CFR 73.3555) (a "Respondent"). The initial filing deadline shall be set by Public Notice issued by the Media Bureau. Thereafter, the Form shall be filed biennially by November 1, 2011, and every two years thereafter. A Licensee or Respondent with a current and unamended Report on file at the Commission, which was filed on or by the initial filing date or thereafter, using the Form revised pursuant to the Commission's Orders in MB Docket Nos. 07–294, *et al.*, 24 FCC Rcd 5896 (2009) (FCC 09–92, rel. Oct. 16, 2009), and which is still accurate, may electronically validate and resubmit its previously filed Form 323. Ownership Reports shall provide the following information as of October 1 of the year in which the Report is filed, except that the Form filed by the initial filing date shall provide the following information as of November 1, 2009:

\* \* \* \* \*

[FR Doc. E9–26071 Filed 10–29–09; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket Nos. 07–294, 06–121, 02–277, 04–228; MM Docket Nos. 01–235, 01–317, 00–244; FCC 09–92]

### Promoting Diversification of Ownership in Broadcast Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection, FCC Form 323, associated with 47 CFR 73.3615. Therefore, this rule and FCC Form 323 will take effect on October 30, 2009. A summary document of the Memorandum Opinion and Order, *In the Matter of Promoting Diversification of Ownership in the Broadcasting Services* in MB Docket Nos. 07–294, 06–

121, 02–277, 04–228; MM Docket Nos. 01–235, 01–317, 00–244; FCC 09–92 is published elsewhere in this issue of the **Federal Register**. The summary document of the *Memorandum Opinion and Order* states that the information collection requirements have been approved by OMB and that the Commission will publish a notice in the **Federal Register** announcing the effective date. This notification is consistent with the statement in that document, published elsewhere in this issue of the **Federal Register**.

**DATES:** The amendments to 47 CFR 73.3615 and FCC Form 323, published May 27, 2009, 74 FR 25163, are effective on October 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** For additional information, please contact Cathy Williams, [cathy.williams@fcc.gov](mailto:cathy.williams@fcc.gov) or on (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** This document announces that, on October 19, 2009, OMB approved, for a period of three years, the information collection, FCC Form 323, associated with Section 73.3615 of the FCC rules. The Commission publishes this notice to announce the effective date of these rules and Form 323.

### Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on October 19, 2009, for the information collection, FCC Form 323, associated with 47 CFR 73.3615.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

The OMB Control Number is 3060–0010 and the total annual reporting burdens for respondents for this information collection are as follows:  
**OMB Control Number:** 3060–0010.  
**OMB Approval Date:** October 19, 2009.

**Expiration Date:** October 31, 2012.

**Title:** Ownership Report for Commercial Broadcast Stations.

**Form Number:** FCC Form 323.

**Type of Review:** Revision of a currently approved collection.

**Respondents:** Business or other for-profit entities; not-for-profit institutions; State, Local or Tribal Governments.

**Number of Respondents/Responses:** 9,250 respondents; 9,250 responses.

**Estimated Time per Response:** 2.5 hours to 4.5 hours.

**Frequency of Response:** Recordkeeping requirement; on occasion reporting requirement; biennial reporting requirement.

**Total Annual Burden:** 38,125 hours.

**Total Annual Costs:** \$26,940,000.

**Obligation to Respond:** Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303 and 310 of the Communications Act of 1934, as amended.

**Nature and Extent of Confidentiality:** Form 323 collects two types of information (among others) from respondents: (a) Personal information in the form of names, addresses, job titles and demographic information; and (b) FCC Registration Numbers (FRNs).

Confidentiality is an issue to the extent that individuals provide personally identifiable information which will be covered under the FCC's pending system of records (SORN), FCC/MB–1, "Ownership Report for Commercial Broadcast Stations." FRNs are covered under FCC's system of records (SORN), FCC/OMD–9, "Commission Registration System (CORES)."

**Privacy Act Impact Assessment:** This information collection contains personally identifiable information on individuals ("PII").

(a) As noted above, the FCC is in the process of establishing a System of Records, FCC/MB–1, "Ownership Report for Commercial Broadcast Stations," to cover the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323.

(b) The SORN will be published in the **Federal Register** at a subsequent date.

**Needs and Uses:** On April 8, 2009, the Commission adopted a *Report and Order and Fourth Further Notice of Proposed Rulemaking* in MB Docket Nos. 07–294, 06–121, 02–277, 01–235, 01–317, 00–244, 04–228; FCC 09–33; 24 FCC Rcd 5896 (2009). The *323 Order* directs the Commission to revise Form 323 to improve the quality of the data collected in order to obtain an accurate, reliable, and comprehensive assessment of minority and female broadcast ownership in the United States. Specifically, the Commission changed the biennial reporting requirements on Form 323 so that there is a uniform filing date; broadened the biennial reporting requirements to include commercial broadcast licensees that are sole proprietorships and partnerships comprised of natural persons; expanded the class of persons and entities that must file to include low power