

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Promoting Diversification of Ownership In)	MB Docket No. 07-294
The Broadcasting Services)	
)	
2006 Quadrennial Regulatory Review –)	MB Docket No. 06-121
Review of the Commission’s Broadcast)	MB Docket No. 02-277
Ownership Rules and Other Rules Adopted)	MM Docket No. 01-235
Pursuant to Section 202 of the)	MM Docket No. 01-317
Telecommunications Act of 1996)	MM Docket No. 00-244
)	MB Docket No. 04-228

COMMENTS OF
NATIONAL FEDERATION OF COMMUNITY BROADCASTERS AND
PROMETHEUS RADIO PROJECT

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Summary

National Federation of Community Broadcasters (“NFCB”) and Prometheus Radio Project (Prometheus), as representatives of a significant portion of the smallest noncommercial radio broadcasters and low power radio broadcasters, support collection of diversity information from noncommercial radio stations, including low power radio stations. NFCB and Prometheus support these changes wholeheartedly as inherent to our missions to support and enhance diversity in broadcasting. In fact, because the Commission does not track the gender and race of those in control of noncommercial stations, NFCB and Prometheus lack basic data about the complexion of the NCE service as a whole and the LPFM service. Data would assist our organizations in pursuing our missions.

We believe that the boards of directors of non-profit organizations represent the logical entity about which to collect diversity data. We support a uniform biennial filing date at the same time as commercial filings are due. We endorse Native Public Media’s suggestion that the Commission include a separate designation for Tribal entities.

We also, however, encourage the Commission to implement these new obligations in a manner that minimize burdens on the smallest broadcasters, and encourage the Commission to reduce existing burdens to off-set the new obligation. Specifically, we encourage the Commission to alter its current treatment of the normal selection of directors as a transfer of control, because it reflects a basic misunderstanding of non-profit law.

We also recommend the Commission substantially improve the quality of its electronic filing system. We recommend a substantial revision of the current CDBS system, which has clearly outlived its usefulness. Furthermore, the Commission should make some relatively simple administrative changes to its forms to increase their consistency.

In addition, we encourage the Commission to specifically consider the impact of enforcement procedures on low power radio stations and smaller noncommercial broadcasters. Particularly for LPFM licensees that will be filing these forms for the first time, we encourage the Commission to issue warnings liberally in the initial implementation of this obligation. In addition, we believe the FCC should adopt a base fine of \$500 for failure to file required forms. Finally, we ask that the Commission permit noncommercial licensees to submit data about its operational budget when it first responds to a Notice of Apparent Liability to simplify the process by which the Commission takes ability to pay into account when assessing financial penalties.

Table of Contents

I.	All Noncommercial Radio Stations Should File Ownership Data to Enable the Commission to Promote Diversity of Participation in Broadcasting.....	2
II.	Boards of Directors Reflect the Logical and Legally Accountable Governing Bodies of Noncommercial Licensees and Should Be Used for Reporting.....	5
A.	Boards of Directors are the Legally Accountable Entity in Non-profit Organizations.	5
B.	Changes in Boards of Directors Do Not Reflect a Transfer of Control and Should Not Trigger Filings.	6
III.	The Commission Should Adopt Mechanisms to Assist Licensees so that Data Entry is Simple and Accurate.....	8
A.	The Commission Should Adopt a Single, Biennial Filing Date for Noncommercial Licensees.	9
B.	The Commission Should Use Form 323-E to Collect Diversity Data, Including Tribal Data, But Amend the Form To Simplify Its Use.	10
C.	The Commission Should Rework the CDBS System to Offer Simple User Accounts.....	13
IV.	The Commission Should Make Accommodations for Fines for Small Noncommercial Broadcasters.	15

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PROMETHEUS RADIO PROJECT AND
NATIVE PUBLIC MEDIA

The National Federation of Community Broadcasters (“NFCB”) and the Prometheus Radio Project (“Prometheus”) respectfully submit these comments in response to the Report and Order and Fourth Further Notice of Proposed Rule Making (“2009 Diversity Order”) in the above referenced proceeding.¹ NFCB² and Prometheus³ represent a significant portion of the smallest noncommercial radio broadcasters and low power radio broadcasters in the United States. In addition, NFCB and Prometheus both represent strongly held convictions in support of

¹ *Promoting Diversification of Ownership In The Broadcast Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 09-33 (rel. May 5, 2009) (“2009 Diversity Order”).

² The National Federation of Community Broadcasters is a national alliance of stations, producers, and others committed to community radio. NFCB advocates for national public policy, funding, recognition, and resources on behalf of its membership, while providing services to empower and strengthen community broadcasters through the core values of localism, diversity and public service.

³ The Prometheus Radio Project is a 501(c)(3) organization that builds, supports, and advocates for community radio stations, which bring together and empower participatory community voices and movements for social change. Prometheus also aims to demystify the political process that governs access to the media system in the United States.

diversity in broadcasting. As such, although the interests we represent will likely experience some modest increases in burden as a result of the proposed changes in this docket, we nonetheless support those changes, provided adequate safeguards are adopted that will minimize those burdens.

I. All Noncommercial Radio Stations Should File Ownership Data to Enable the Commission to Promote Diversity of Participation in Broadcasting.

In the *2009 Diversity Order* the FCC adopted a number of reforms to the collection of data on minority and female ownership of broadcast stations, including expanding filing requirements to all full power commercial broadcast stations, removing exemptions for sole proprietorships and partnerships of natural born persons, adopting a uniform filing date, and implementing data quality and accessibility procedures.⁴ In addition to the adoption of these reforms, in the *2009 Diversity Order*, the Commission also seeks comment on whether, and how, to require reporting of race and gender information by non-commercial educational broadcasters (“NCEs”), including low power FM broadcasters (“LPFMs”).⁵

NFCB and Prometheus strongly support Commission efforts to promote diversity in broadcasting in deed as well as word. Both organizations’ central missions involve improving the diversity of broadcasters and providing practical help to aid those broadcasters. For example, nearly half of NFCB’s member stations are radio services controlled by people of color. NFCB has also been instrumental in founding Native Public Media, the preeminent organization representing the needs of American Indians in media, and the Latino Public Radio Consortium which represents 33 Latino Radio stations. Significant numbers of low power radio stations, similarly, are run by people of color and women.

⁴ *Id.* at ¶¶14-26.

⁵ *2009 Diversity Order* at ¶¶27-30.

Moreover, Prometheus was the lead party in litigation opposing prior Commission efforts to consolidate the media.⁶ In that case, one of the primary criticisms by the Third Circuit was the FCC's failure to address the dismal ownership record of women and people of color before the Commission made significant changes to allow additional media consolidation. The existence of the low power radio service itself, which currently comprises the central focus of Prometheus, was based on the Commission's goals, in part, to serve diversity. Prometheus' outreach efforts to promote the service have focused extensively on those who are underrepresented in broadcasting, from aiding stations that are run by the Coalition of Immokalee Workers in Florida to the Southern Development Foundation in Opelousas, Louisiana. However, because the Commission does not track the gender and race of those in control of noncommercial stations, NFCB and Prometheus lack basic data about the complexion of the NCE service as a whole and the LPFM service. Data would assist our organizations in pursuing our missions.

Thus, NFCB and Prometheus are solid in our support for increasing diversity in broadcasting. As the Commission has acknowledged and academics and other public interest advocates have explained, without solid data about current ownership interests, the Commission cannot create policy to promote that ownership. At a minimum, to track progress and the success (or failure) of its policies, the Commission requires data that is thorough and reliable. NFCB and Prometheus believe that noncommercial radio plays an important role in enhancing the diversity of media. While diverse ownership of commercial stations is essential to provide service to this country, noncommercial radio is also paramount. Noncommercial radio is the one sector of radio

⁶ *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004).

that is currently adding listeners.⁷ In addition, noncommercial radio is focused more on mission and not on advertising dollars, and thus is often capable of being more experimental and more focused on new and niche audiences. As such, it also provides a training ground for personnel who otherwise might not have their first opportunities in broadcasting. NFCB and Prometheus are willing to support participation in this data collection because the FCC requires this information to further policies designed to promote diversity.

At the same time that NFCB and Prometheus are supportive and interested in assisting the FCC obtain the data it needs to adopt policies that we support, we strongly urge the Commission to make appropriate accommodations to its processes and information collections so that noncommercial radio broadcasters, particularly small noncommercial broadcasters, are able to easily submit their data to the Commission. With a simple and routine process that includes a minimal regulatory burden, licensees will be able to meet their obligations without a significant drain on resources, and the Commission will similarly be able to devote its resources toward analyzing the data and developing solutions, rather than on enforcement or other administrative matters.

NFCB and Prometheus also are sure that some parties will be concerned that submission of diversity data could jeopardize their licenses. While NFCB and Prometheus support policies that might, in the future, assist applicants with diverse boards in obtaining licenses as a means to promote diversity, it is also important for the Commission to clarify that no licensee's status will be imperiled by submission of diversity data.

⁷ Radio Research Consortium, Two Hopeful Signs, (May 23, 2008) found at http://www.rrconline.org/reports/reports_list.php?ID=25.

II. Boards of Directors Reflect the Logical and Legally Accountable Governing Bodies of Noncommercial Licensees and Should Be Used for Reporting.

In the NPRM portion of the *2009 Diversity Order*, the Commission asks “how to define ownership, including minority and/or female ownership, in the NCE context.”⁸ It recognizes that organizational documents, such as bylaws or charters, might play a role in directing the focus of the organization, particularly with respect to identifying obligations to serve traditionally underserved audiences. The Commission asks whether “looking at the composition of the board of directors or other governing entity of an NCE station would be adequate” to determine female and minority control of such stations.⁹

A. Boards of Directors are the Legally Accountable Entity in Non-profit Organizations.

NFCB and Prometheus believe that requiring noncommercial licensees to report on the gender and race of the members of their board of directors or comparable governing body would be a valuable and minimally burdensome method of ascertaining female and minority control. Governing boards are the basic unit of accountability and structure for noncommercial entities. Members of boards of directors have final authority over those organizations, and they have legally enforceable obligations toward the non-profits they serve. For example, they are liable pursuant to IRS code for compliance with 501(c)(3) regulations. They are responsible for hiring and firing staff, and ensuring the financial viability of the organization. Boards of directors are legally bound to enforce the bylaws, charters, and other organizational documents.¹⁰

Other organizations that track ownership and control or diversity use the Board of Directors as a measure. For example, the Corporation for Public Broadcasting collects diversity

⁸ *2009 Diversity Order* at ¶ 29.

⁹ *2009 Diversity Order* at ¶29.

¹⁰ Marion R. Fremont-Smith, *GOVERNING NON-PROFIT ORGANIZATIONS, FEDERAL AND STATE LAW AND REGULATION* (Harvard University Press, 2004) at 161-62.

information about the boards of directors for its grantees,¹¹ as do many philanthropic organizations.¹² It is important to point out that, for these reasons, while many noncommercial licensees are likely tracking this information anyway for other purposes, not all licensees are doing so—particularly low power radio stations. Some of the smallest licensees operate on budgets of several thousand dollars which they obtain directly through fundraising and underwriting and not through either CPB or institutional support.¹³

B. Changes in Boards of Directors Do Not Reflect a Transfer of Control and Should Not Trigger Filings.

As part of this proceeding, the Commission should take the opportunity to simplify the filing obligations of noncommercial licensees by revising its current staff guidance about transfers of control for non-stock organizations, which currently trigger an obligation to file Form 323-E (as well as Form 316 and 315).

In 1989, the Commission issued a *Notice of Inquiry* that described a series of proposals with regard to non-stock organizations and ownership interests.¹⁴ The Commission never proceeded to adopt a notice of proposed rulemaking or final rules based on those proposals.¹⁵ Nonetheless, the Commission continues to rely upon these concepts and use them as staff guidance and thus most licensees are compelled to follow them.

¹¹ See Corporation for Public Broadcasting, Station Annual Survey, Section 3.2 (2008).

¹² See, e.g., Jennifer C. Berkshire, *Chronicle of Philanthropy*, “Ford Foundation Seeks to Set Example for Grantees” (October 18, 2007).

¹³ For example, to qualify for CPB funds, stations must have at least 1 full time employee. See, e.g., Corporation for Public Broadcasting, Radio Community Service Grant, General Provisions & Eligibility Criteria, Section 2(F).

¹⁴ *Transfer of Control of Certain Licensed Non-Stock Entities, Notice of Inquiry*, 4 FCC Rcd 3403 (1989).

¹⁵ The Commission terminated this proceeding without adopting an order. See *In the Matter of Termination of Rulemaking Proceedings*, 17 FCC Rcd 1390 (2002).

Unfortunately, not only has a proceeding that was never consummated acquired the force of law, but the concepts behind those proposals fundamentally misunderstood the concept of ownership and control as it relates to non-profit corporations. Most pertinent to this proceeding, it creates a significant burden for conscientious licensees that follow the staff guidance.

Specifically, while Boards of directors are the final legally bound individuals for a non-profit organization, they do not represent the “owners” in the same way that stock-holders are owners of a for-profit enterprise. Under the state laws which govern non-profit entities, a non-profit corporation does not change its identity or become a new organization when its board of directors changes in an orderly procession under its existing governing documents, such as a charter, bylaws, or articles of incorporation.¹⁶ In fact the rules about merger or dissolution of a non-profit are specific and governed under each state’s individual laws.¹⁷ Thus, the Commission’s treatment of changes in boards of directors as a transfer of control is incorrect as a matter of the state laws under which non-profit corporations are created. The Commission has begun to recognize as much in the low power radio rules, where it modified the transfer of control rules to a limited degree as they apply to those organizations because the Commission recognized it was a normal course of business for a non-profit to experience changes in their boards of directors.¹⁸

We thus request, at least at this stage, the Commission retract the current staff guidance and replace the guidance with something that relies upon existing state law to determine when a non-profit corporation has become a new corporation for the purposes of transfer of control

¹⁶ *See generally*, Marion R. Fremont-Smith, GOVERNING NON-PROFIT ORGANIZATIONS, FEDERAL AND STATE LAW AND REGULATION (Harvard University Press, 2004).

¹⁷ *Id.*

¹⁸ Creation of a Low Power Radio Service, *Third Report and Order*, 22 FCC Rcd. 21912, 21918, ¶ 13 (2007).

analysis at the FCC, and that a transfer of control does not occur when members of a board of directors change, in any proportion, under the existing governing documents of that organization. This would mean that the ownership reports, due every other year, would be the complete record of ownership changes at the FCC and would accurately reflect ownership interests as a matter of non-profit law, and additional filings of Form 315 and 316 would be unnecessary.

III. The Commission Should Adopt Mechanisms to Assist Licensees so that Data Entry is Simple and Accurate.

The Commission asks how it can promote data quality and accuracy in filing this data.¹⁹ NFCB and Prometheus recommend that the Commission adopt a single, biennial filing date for ownership forms. We also recommend the Commission substantially improve the quality of its electronic filing system. We recommend a substantial revision of the current CDBS system, which has clearly outlived its usefulness. In light of the current emphasis on transparency, use of the Internet to facilitate citizen interaction with government, and technological innovation, the current CDBS system could use some improvement. These changes are particularly important given that LPFM stations will likely be subject to a filing obligation for the first time and they are not likely to hire counsel or other experts to file for them. Regardless of whether a licensee has resources to hire counsel, it is inappropriate for the Commission to have a data collection system that is so complicated that specialized training is needed for its use. Furthermore, the Commission should make some relatively simple administrative changes to its forms to increase their consistency.

¹⁹ 2009 Diversity Order at ¶ 29.

A. The Commission Should Adopt a Single, Biennial Filing Date for Noncommercial Licensees.

The Commission seeks comment on an appropriate filing date for Form 323-E.²⁰ The Commission adopted a single universal, biennial filing date for commercial broadcasters to file form 323. NFCB and Prometheus support the same treatment for noncommercial filings.

A regular uniform filing date is often the easiest to track by small organizations. In addition, supporting organizations such as NFCB and Prometheus (as well as the Commission) can most easily remind members and others of a single filing date. Moreover, for organizations whose information has not changed over a two-year period, we support a check-box that permits a simple filing certifying that no change has occurred.

It is also important to consider that LPFM licensees will be filing these forms for the first time since they first obtained their licenses, and thus this will be a very new process for the smallest licensees. As such, a significant period of notice and preparation is warranted for those licensees so that they will be able to come into compliance with the Commission's rules. It is imperative that licensees of good will and good intent to comply not be penalized for lack of resources. These organizations almost uniformly cannot afford counsel, do not subscribe to tracking services, and lack the capacity to routinely monitor the Commission's public releases for information. They will be relying on word of mouth and information from organizations like NFCB and Prometheus to understand their obligations.

Special consideration should be given to the first filing date of LPFM stations. LPFM stations should receive 270 days or 9 months to learn about their obligations and prepare their materials, learn about the FCC's electronic filing system, verify or obtain passwords and train staff and volunteers, before they are required to file. In addition, as outlined below, NFCB and

²⁰ 2009 Diversity Order at ¶ 29.

Prometheus recommend special considerations for enforcement of this obligation for low power radio stations.

B. The Commission Should Use Form 323-E to Collect Diversity Data, Including Tribal Data, But Amend the Form To Simplify Its Use.

NFCB and Prometheus believe that the Commission should continue to require NCE stations to file Form 323-E with the addition of race and gender information, and that low power radio licensees should also be required to file a Form 323-E reporting on the race and gender composition of their boards of directors or similar governing entities.

The existing form is a logical vehicle for collecting this information. The FCC already requires NCEs to report general information (i.e., name, address, citizenship, positional interest, and percentage of votes) on their board members in Form 323-E ownership reports.²¹ This information is similar to the information collected in construction permit applications for both full-power NCE stations and LPFM stations in Forms 316 and 318.²²

In addition to being efficient and relatively simple to implement, requiring non-commercial stations to report on the race and gender compositions of their boards is consistent with the information that the FCC already collects from commercial broadcasters regarding the race and gender of attributable interests in their stations.²³ Therefore, it would be most easily compared between the two sets of entities, despite other differences in their structures.

NFCB and Prometheus endorse Native Public Media's suggestion that the Commission include a separate designation for Tribal entities.²⁴ This would allow licensees to not only

²¹ See FCC Form 323-E, *Ownership Report*, at Section II(5).

²² See FCC Form 318, *Application for Construction Permit for a Low Power FM Broadcast Station*, at Section II(3).

²³ Form 323, *Ownership Report*, at Section II(9).

²⁴ Comments of Native Public Media in this docket.

indicate that a Native American or other person of color has an ownership interest in his or her company, but to further specify whether that entity is a Tribal entity. Tribal entities are a different classification than a standard demographic designation, but, they are critically important for evaluating participation by Native Americans in broadcasting.

In addition, several improvements in Form 323-E, and similar forms, are necessary to improve administration and data collection. Improving the functionality of all the forms submitted by noncommercial licensees will also have the advantage of off-setting the increased burden of diversity reporting by streamlining the current reporting obligations. A number of relatively minor administrative changes could make the FCC's forms easier for licensees to complete accurately and therefore will make the data more accurate when submitted. Simpler forms will increase compliance and reduce the need for enforcement. Moreover, if Form 323-E is consistent with other similar forms used by the Commission, it will be easier to transfer data from one form to another within the Commission's electronic filing system as recommended below.

Form 323-E and Form 340 are inconsistent in their treatment of the share of votes held by each director. Form 323-E does not include information about the voting percentage held by each director, while Form 340 does request that information. However, form 340 requests that information in a confusing manner.²⁵ It is important to know whether a particular person of color or woman has a majority vote in an organization--it is valuable information when evaluating the control exerted by women or people of color on noncommercial licensees. Therefore, Form 323-E should include the same information as Form 340, but both should be

²⁵ Form 340, Section 6a(e), listing "% of: Ownership (O) or Voting Stock (VS) or Membership (M)."

modified to use the more understandable term that is used on Form 316 and 318 – “percentage of votes.”²⁶

Form 323-E should also be revised to reflect the non-profit nature of NCE licensees. Specifically, it seeks information on ownership interests of Board of Directors.²⁷ It is extremely unlikely for a director of a non-profit entity to have an ownership interest in the organization (it is often prohibited). The same problem is present on Form 318 and 340, where it should also be modified.²⁸ The equity portion of the equity plus debt column is also not relevant to non-profits.²⁹

Two elements of Form 323-E should be clarified for LPFM filers. Form 323-E and Form 318 are inconsistent in that Form 323-E identifies anyone with more than a 1% interest as a party in interest, while Form 318 identifies anyone with more than a 5% interest. The relevance of Form 323-E, Section 5 with respect to LPFM stations should be clarified.³⁰

Finally, Form 323-E should also include a text box that will allow submission of information to the Commission to help a licensee explain items in the form, or reasons that a form is filed. This is necessary because Form 323-E has a dual use. While some of it is merely about data collection, it also a form submitted to a licensee’s regulating entity, and thus at time licensees may want to submit explanatory information with their filing. Although the

²⁶ Form 318, Section 3a(4) and Form 315, Section 6a(4).

²⁷ See Form 323-E, Section 7(d).

²⁸ See Form 340, Section 6a (f), Form 318, Section 3a(5). While Form 323-E labels the section “percent of interest held,” Form 340 and 318 labels the same section “percent of total assets.” They appear to not have been altered for noncommercial applications from the original Form 301. While there are hypothetically some non-profits that could utilize ownership stakes, these are extremely rare among NCE licensees. It would be better for the vast majority of the filers to simplify the short-hand used on the forms and provide more explanation in the directions to the form in the case of the tiny handful of non-profits with a less traditional structure.

²⁹ Form 318, section 3a, Form 323-E, section 7a.

³⁰ Section 5 requires a list of all contracts and other instruments required to be filed pursuant to 47 C.F.R. § 73.3613. Form 323-E, Section 5.

Commission was criticized for allowing the use of attachments in submission of data, permitting licensees to submit text in a box that is searchable by researchers would ensure the information is accessible to all. Moreover, the text box would be in addition to, not a replacement for, the data that must be submitted. Thus the addition of a text box would not impair the completeness of the data in any way. In fact, such explanatory messages might aid researchers trying to track particular ownership records or the efficacy of filing.

C. The Commission Should Rework the CDBS System to Offer Simple User Accounts.

We envision an online account, similar to those used by innumerable retail and other entities. A licensee could log in, make changes to its current data and certify its new accuracy. The account would recognize which type of licensee holds the account, and therefore an NCE licensee would only see forms that are applicable to NCE licensees. The same would be true for television licensees and radio licensees, etc. Such an account would ideally include relevant filing dates and forms, and permit users to set up options for electronic reminders to be automatically generated by the FCC. It could show a licensee all the forms it has filed at the FCC for easy retrieval.

In such an account, all existing information could be pre-populated in the form, so that no reentry of old data would be necessary. For example, an LPFM station will already have submitted basic information about its board of directors on Form 318. If that information appears in Form 323-E, the licensee will merely need to delete old members and add new members, without having to reenter all the other information. Similarly, current information from a Form 323-E would be available to populate a new Form 318.

By limiting the information that a licensee sees to the information relevant to it, this will improve accuracy. For example, a number of forms have similar titles, but refer to different

services. Even the difference between Form 323 and 323-E could cause someone to inadvertently file the wrong form. By listing dates and previously filed forms, the Commission would facilitate compliance and consistency because it would be easier to notice when a form was omitted and easier to refer to a prior filing to see how it has been completed in the past. This is particularly important for licensees that are staffed by volunteers or lower-paid professionals who may turn over with some frequency.

In addition, the current CDBS system is very difficult to use. A user must not only “save” but also “validate” each entry on Form 323-E. While the system will not allow a user to file a form that contains errors, the system does not always indicate to a user which errors are preventing filing. Thus, for example, a user who has entered 23 board members, but has forgotten to “save” and “validate” one of those board members must re-save and resubmit each one of those entries in order to find the error preventing final filing of the form. The user interface is sometimes not intuitive when compared with other data collection systems commonly in use today.

The directions for CDBS are also not presented in a user-friendly manner. While the Commission is to be commended for its completeness, unfortunately the lack of subheadings, a table of contents, or a simple set of instructions for the simplest filings make the directions intimidating to many users.³¹

Finally, the Commission should ensure that its electronic filing systems are easily usable by organizations without access to broadband Internet. A more simplified filing system will reduce the burden on licensees without access to more advanced telecommunications.

³¹ See CDBS Electronic Filing System User’s Guide, found at http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/cdbs_ug.htm

While wholesale changes to CDBS may take a long time, the ultimate goal should be a much more user-friendly system than the current one. The Commission should embark on this process now. Delay in starting the process is inappropriate. The simpler it is for licensees to file their reports and information with the Commission, the more accurate they will be. Less time will be wasted on inadvertent errors by licensees which then must be corrected by Commission staff. As the Commission considers a range of changes to its filing system for licensees, it is incumbent upon the Commission to make submission of information as simple as possible.³²

IV. The Commission Should Make Accommodations for Fines for Small Noncommercial Broadcasters.

Many noncommercial stations, particularly LPFM stations, operate on very small budgets. Some LPFM stations have annual operating budgets as low as \$10,000. Thus, since many LPFMs will be filing these forms for the first time, we encourage the Commission to issue warnings liberally in the initial implementation of this obligation.

In addition, we believe the FCC should reevaluate the base fine for LPFM stations. Non-compliance fines tend to be a large flat fee designed as a powerful deterrent to their large commercial counterpoints. As such, we also believe that a non-compliance fee of \$3,000 for "failure to file required forms or information" is overly burdensome for a small station.³³ Accordingly, we ask the Commission to make two modifications. First, we ask that the base fine for failure to file required forms for LPFM stations be reduced to \$500.

In addition, we ask that the Commission take budget size into consideration when assigning non-compliance fees for failing to complete diversity reporting. The Commission can accomplish this by giving stations an option to submit, under penalty of perjury, financial records

³² See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensees, Public Interest Obligations, *Report & Order*, 23 FCC Rcd. 1274 (2008).

³³ 47 C.F.R. § 1.80, note section I.

showing their annual operating budget when responding to a Commission Notice of Apparent Liability (NAL). The Commission can then evaluate this budget information before determining the size of the fine if it is issued in accordance with current Commission policy indicating downward adjustment to fines if there is little ability to pay.³⁴ The benefit of this option is that a small station will not have to endure a disproportionate fine and then return to the Commission to seek a lower fine. For a small organization, it would be vastly preferable to submit all the information necessary to the FCC in one filing in response to an NAL, rather than two rounds, one regarding the substance and one regarding the appropriate amount of the fine.

In addition, the Commission should take into account a station's operating budget, not total gross revenue of the licensee when setting a fine. A radio station that is part of a larger entity rarely has access to that entity's total assets. A university, a local government, or Native American Tribe may have substantial assets, but they also have substantial obligations over a large organization. In the same way that the FCC does not have access to the assets of the U.S. Government, licensees of this type are not able to simply move assets from one function to another.

³⁴ *Id.* at note, section II.

Conclusion

In sum, NFCB and Prometheus support the proposed collection of diversity information if implemented as described above. We respectfully request any such action as is indicated by our comments herein.

Respectfully Submitted,

_____/s/_____

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