

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 07–294, MD Docket No. 10–234; FCC 17–42]

Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission expands the option to use Special Use FRNs on ownership reports for noncommercial educational broadcast stations (FCC Form 323–E). This action addresses several petitions for reconsideration of a prior Commission decision and properly balances the Commission's need to improve the integrity and usability of its broadcast ownership data with the concerns raised in the petitions for reconsideration.

DATES: Effective May 10, 2017.

FOR FURTHER INFORMATION CONTACT: Christopher Clark, Industry Analysis Division, Media Bureau, (202) 418–2330 or Christopher.Clark@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* in MB Docket No. 07–294 and MD Docket No. 10–234; FCC 17–42, was adopted on April 20, 2017, and released on April 21, 2017. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) Web page at https://apps.fcc.gov/edocs_public/. The complete document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. *Background.* Commercial and noncommercial broadcasters are required to submit ownership reports every two years and on other occasions specified in the Commission's rules. These reports must include information about the individuals and entities that

hold attributable interests in the station licensee, including officers and directors. Commercial broadcasters submit ownership reports on FCC Form 323, and noncommercial educational (NCE) broadcasters submit ownership reports on FCC Form 323–E.

2. In the *323 and 323–E Order* (81 FR 19431, Apr. 4, 2016, FCC 16–1, rel. Jan. 20, 2016), the Commission revised Forms 323 and 323–E to address issues with the Commission's data collection process that were identified previously by the United States Government Accountability Office (GAO), by researchers who wish to study the Commission's ownership data, and by the Third Circuit as part of its review of the Commission's Quadrennial Review proceeding. Among other things, the *323 and 323–E Order* revised Form 323–E to require that NCE filers provide a unique FCC Registration Number (FRN) generated by the Commission Registration System (CORES) for each attributable interest holder listed on Form 323–E, just as commercial broadcasters must do on Form 323. Importantly, the *323 and 323–E Order* also updated Form 323–E to collect information about the race, gender, and ethnicity of NCE attributable interest holders. These revisions addressed issues previously identified by GAO and harmonized Form 323–E with Form 323, which was revised in 2009 to collect such data.

3. In response to concerns that mandatory use of a traditional CORES FRN on Forms 323 and 323–E would require submission of individuals' full social security numbers (SSNs) to the Commission, the *323 and 323–E Order* provided for a Restricted Use FRN (RUFN) establishing an alternative means for obtaining a unique identifier for individual attributable interest holders that requires submission of an individual's full name, residential address, date of birth, and only the last four digits of his or her SSN. The applicant's name and CORES FRN/RUFN are available publicly, but the underlying identifying information is stored confidentially within the CORES database. The *323 and 323–E Order* allowed filers to report Special Use FRNs (SUFN), which do not require submission of personal information, for attributable individuals, but only if the filer first used reasonable and good-faith efforts to obtain RUFNs or CORES FRNs from such individuals, including informing the individual of the risk of enforcement action for failing to provide an RUFN or CORES FRN or to permit an RUFN or CORES FRN to be obtained on his or her behalf.

4. Following the release of the *323 and 323–E Order*, the American Public Media Group (APMG), the NCE Licensees, the Public Broadcasting Parties, and the State University of New York (SUNY) (together, the Petitioners) timely filed petitions for reconsideration (Petitions), Petitions for Reconsideration of Action in Rulemaking Proceeding, 81 FR 31223 (May 18, 2016). The Petitioners request that the Commission reconsider its decision to apply the CORES FRN/RUFN requirement to Form 323–E.

5. On January 4, 2017, the Media Bureau, acting on delegated authority, released the *323–E Order* (DA 17–5, rel. Jan. 4, 2017), dismissing and denying the Petitions pursuant to section 1.429(l) of the Commission's rules. Subsequently, the Bureau set aside the *323–E Order* pursuant to section 1.113 of the Commission's rules, concluding that it was more appropriate for the Petitions to be addressed at the Commission level. The Bureau returned the Petitions to pending status, stating that they would be considered by the Commission. Prior to the Bureau's action setting aside its *323–E Order*, the NCE Licensees and the University of Michigan filed applications for review of the *323–E Order*. Because the Bureau set aside the underlying order, we dismiss the applications for review as moot.

6. *Discussion.* We find that the Petitioners and other NCEs participating in this proceeding have raised legitimate concerns that the CORES FRN/RUFN requirement, and the prospect of enforcement action for failing to comply with this requirement, may hinder their efforts to recruit volunteers to serve on their licensee boards and pose other unique challenges. Unlike their counterparts in the commercial context and certain not-for-profit entities, NCE governing board members are, in many cases, unpaid volunteers. Because unpaid NCE board members receive no fee or other remuneration for their services, they lack the financial incentive to serve on boards that paid directors or board members have. Indeed, the record indicates that some public broadcasters have difficulty finding qualified, committed individuals to donate their time and attention to station governance.

7. In the *323 and 323–E Order*, the Commission affirmed its commitment to protecting the privacy and security of personally identifiable information that the Commission collects, and we reaffirm that commitment here. Contrary to the Institute for Public Representation (IPR)'s supposition, our action here does not presume that Commission databases

are insecure and that individuals who obtain a CORES FRN or RUFN will expose themselves to identify theft, nor are such concerns the basis for the relief we grant today. However, we recognize that some NCE licensees may face unique circumstances with respect to their ability to recruit and retain qualified individuals to serve in governance positions.

8. We share the Petitioners' concern that individuals who are reluctant to disclose personal information may then decline to serve as unpaid board members or, to the extent they are able to do so, those already serving as unpaid board members may resign rather than risk a Commission enforcement action for failure to provide the information needed to report a CORES FRN or RUFN. Further, the Petitioners assert that many licensee board members—particularly those associated with colleges, universities, and state or local public broadcasting entities—are individuals chosen by public election or political appointment, or are *ex officio* members who serve by virtue of the public office they hold, such as Governor or State Superintendent of Education. The CORES FRN/RUFN requirement and prospect of enforcement action could pose particular challenges in instances where a public official refuses to provide the information needed to obtain a CORES FRN or RUFN but is unable to withdraw freely from the governing board.

9. We find that the *323 and 323-E Order* erred in rejecting the valid concerns raised by NCEs regarding the potential impact that the CORES FRN/RUFN requirement, including the threat of possible enforcement action, could have in the NCE context. In discussing the availability of SUFRNs for both commercial and noncommercial ownership reports, the *323 and 323-E Order* went so far as to state that the Commission may take enforcement action against the filer and/or the “recalcitrant individual” in the event an SUFRN is used. As the Petitioners note, there is consensus among NCE commenters in this proceeding that requiring NCE filers to report CORES FRNs or RUFNs for attributable individuals and inform such individuals about the risk of enforcement action could discourage volunteers from serving on the governing boards of NCE stations and pose unique challenges for board members who are politically elected or appointed. No commenter in this proceeding has disputed these assertions. The Petitioners contend that these assertions are based on the

reactions of unpaid board members to the Commission's actions in this proceeding to date.

10. The *323 and 323-E Order* should have given more credence to the concerns raised by NCE broadcasters, particularly given their representations that these concerns were based on their experience with the day-to-day operations of their stations and interactions with volunteers serving on their governing boards. For example, in dismissing these assertions, the *323 and 323-E Order* did not adequately consider claims that some noncommercial entities that hold commercial station licenses previously encountered difficulties when attempting to obtain similar identifying information from board members. Moreover, the *323 and 323-E Order* did not adequately consider whether, when faced with the prospect of a Commission enforcement action against the individual interest holder, current or prospective board-member volunteers would decline to participate on the board.

11. As noted above, no party opposed the petitions for reconsideration. Parties filing as UCC et al. submitted an *ex parte* filing belatedly arguing that concerns about the chilling effect of the FRN requirement are speculative. In effect, the *ex parte* is an untimely opposition to the petitions for reconsideration, and we reject it for that reason. Alternatively and independently, we reject this claim on the merits for the reasons set forth above.

12. While use of unique identifiers improves the integrity and usability of the Commission's broadcast ownership data, we believe that the potential chilling effect on participation in NCE station governance, and the potentially deleterious effect that loss of NCE leaders could have on the noncommercial broadcast service to the public, outweigh this benefit in the NCE context. Commenters claim that difficulties retaining or attracting qualified individuals to serve in leadership positions will adversely affect station operations. Therefore, we conclude that the better course is to make reporting of CORES FRNs and RUFNs optional for individuals who hold an attributable interest in an NCE station. Accordingly, NCE filers may report an SUFRN on Form 323-E for an attributable individual who has not obtained a CORES FRN or RUFN at the time the filer submits its ownership report, without the need to first use reasonable and good-faith efforts to obtain the information needed to report a CORES FRN or RUFN, including

informing individuals about the threat of enforcement action.

13. In the *323 and 323-E Order*, the Commission noted that, in the limited cases where a non-profit entity holds a commercial license, the Commission will deem the filing of Form 323-E, in accordance with the standards set forth in the *Order*, compliant with the Commission's biennial filing obligation in those circumstances and the non-profit entity would not be required to file Form 323. Accordingly, we will deem the filing of Form 323-E, in accordance with the standards set forth herein and in the *323 and 323-E Order*, compliant with our biennial reporting requirement where a non-profit entity holds a commercial license.

14. We conclude that our action today will address the concerns raised by the Petitioners and NCE commenters in this proceeding. Unlike registering for a CORES FRN or RUFN, obtaining an SUFRN does not require submission of any personal information, be it an SSN, date of birth, or residential address. Filers can generate an SUFRN simply by clicking a button within the electronic Form 323-E as the noncommercial ownership report is being prepared. Use of an SUFRN therefore does not involve any of the types of information that the Petitioners and other NCE commenters assert would discourage participation in NCE station governance. By allowing NCE filers to report SUFRNs without first using reasonable and good-faith efforts to obtain the information needed to report a CORES FRN or RUFN, we will avoid the potential chilling effect that the prospect of enforcement action could have on participation in NCE station governance for unpaid board members who choose not to provide their personal information to the Commission.

15. We find that our action today properly balances the need to improve the integrity and usability of the Commission's broadcast ownership data with the public interest in avoiding the potential chilling effect that a mandatory reporting requirement could have on participation in NCE station governance. In the *323 and 323-E Order*, the Commission concluded that requiring unique identifiers for parties that hold attributable interests in broadcast stations helps ensure that the Commission's ownership data is reliable and usable for studies and analyses. We affirm these conclusions and deny the Petitions to the extent they suggest that we abandon entirely the use of CORES FRNs and RUFNs in the NCE context. In light of the relief afforded by our action herein expanding the option to use SUFRNs on Form 323-E, there is no

justification for removing the option for NCE filers to report a CORES FRN or RUFNR for attributable individuals on Form 323-E.

16. We expect that allowing NCE filers greater flexibility to report SUFRNs will not delay or significantly limit the value of our data collection. Because expanded use of SUFRNs on Form 323-E will not require significant changes to the revised form, we do not believe that our action today will delay implementation of revised Form 323-E. Moreover, we expect that, due to the nature of our ruling, the use of SUFRNs and the resulting collective impact on our broadcast ownership data will be limited. In this regard, we emphasize that our ruling today applies only to noncommercial broadcasters. Commercial broadcasters remain subject to the CORES FRN and RUFNR requirements set forth in the *323 and 323-E Order*. Further, because SUFRNs are available only for *individuals*, unique FRNs will be reported for *entities* on Forms 323 and 323-E.

17. Importantly, as we have previously emphasized, filers that report an SUFRN for an attributable individual must do so consistently. If an SUFRN was reported previously for an individual and the individual does not have a CORES FRN or RUFNR, the filer must use the same SUFRN that was reported previously for that individual. Furthermore, if an individual is reported on multiple reports, the filer must ensure that the same SUFRN is reported consistently for that individual, assuming that the individual does not have a CORES FRN or RUFNR.

18. We also note that the Commission's prior decision to collect data on the race, ethnicity, and gender of individuals holding attributable interests in NCE licensees remains undisturbed, and this data will be available to the Commission and researchers for purposes of evaluating ownership diversity issues. To the extent IPR and UCC et al. state that the Commission will not collect race, gender, and ethnicity information from NCEs as a result of our action today, these belated pleadings are wrong. Although we will not require NCE licensees to report unique identifiers for all individuals holding attributable interests, the data on race, ethnicity, and gender will not be "useless," as we will still be able to determine which licensees, stations, and markets have minorities and women in NCE leadership positions.

19. In addition, although we are expanding the option to use SUFRNs on Form 323-E, in many cases an NCE filer will continue to nonetheless report a

CORES FRN or RUFNR for an attributable individual. For instance, some individuals with attributable interests in NCE stations may not object to obtaining a CORES FRN or RUFNR. Also, if an individual with an attributable interest in an NCE station has already obtained a CORES FRN or RUFNR for another reason (for example, because the individual also appears on one or more commercial Form 323 filings), filers must report that FRN for the individual on Forms 323 and 323-E. In such circumstances, use of the CORES FRN or RUFNR could not be expected to have a chilling effect on the individual's participation in NCE station governance. This further supports our conclusion that expanded use of SUFRNs on Form 323-E will have a limited collective impact on our data collection.

20. Because we are relieving NCE licensees of the obligation to report a CORES FRN or RUFNR for individuals holding attributable interests, we need not address NCE Licensees' and Public Broadcasting Petitioners' claim that the statutory authority the Commission relied on in adopting the requirement does not apply to NCE stations. These arguments are moot. Thus, we dismiss these portions of the NCE Licensees Petition and Public Broadcasting Parties Petition. SUNY's argument that the Privacy Act bars mandatory collection of SSNs from individuals holding attributable interests in NCE licensees is moot for the same reason, and we dismiss this aspect of the SUNY Petition.

21. In opposing the CORES FRN/RUFNR requirement, some commenters to this proceeding suggest that certain individuals serving on NCE boards may be uninvolved with the licensing, operation, or ultimate disposition of the noncommercial broadcast license and that it is not necessary to include information about these individuals on broadcast ownership reports. We take this opportunity to reiterate that, as discussed in the *323 and 323-E Order*, our rules already contemplate that circumstance and afford appropriate relief. Our attribution standards, including the standards applicable to attribution exemptions for officers and directors, apply to both commercial and NCE stations. Specifically, an officer or director can be exempted from attribution in the licensee if his or her duties are wholly unrelated to the operation of the broadcast station(s) at issue. Exempted officers and directors would not be reported as attributable interest holders on the Form 323-E and thus would not need to obtain a CORES FRN or RUFNR for Form 323 or Form

323-E reporting purposes. Appropriate use of this existing exemption would further reduce the burden on NCE licensees and potentially avoid the concern of a chilling effect raised by the Petitioners. We therefore encourage NCE filers to avail themselves of this exemption in order to avoid reporting potential interest holders who are uninvolved with the operation of the station(s) and whose interests therefore need not be reported.

22. Although some petitioners argue that differences between NCEs and commercial licensees make the collection of NCE data unnecessary, the Commission previously rejected this argument, and, as we have granted reconsideration regarding the specific aspect of our data collection that petitioners challenge, we need not revisit the Commission's response to this argument. We note that even though the Commission's multiple ownership rules do not apply to NCE stations, collecting race, gender, and ethnicity information from NCEs will enable the Commission, as well as GAO and other outside researchers, to more fully understand and analyze the broadcasting industry, and thereby support the Commission's efforts to promote diversity of ownership in broadcasting. In an *ex parte* filed well after the close of the pleading cycle, public broadcasting representatives filing as "Public Broadcasters" ask the Commission to consider returning to the *status quo ante* by reversing its prior decision to adopt new rules for noncommercial stations in this proceeding. To the extent this request applies to other improvements adopted in the *323 and 323-E Order*, including the collection of race, gender, and ethnicity information from NCE Licensees, Public Broadcasters' request is untimely and is procedurally barred.

23. *Procedural Matters*. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order, which is summarized below.

24. *Paperwork Reduction Act Analysis*. This document contains a non-substantive and non-material modification of information collection requirements that were previously reviewed and approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4), the Commission previously

sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

25. In this present document, we have assessed the effects of requiring NCE filers to report a CORES FRN or RUFNRN for each attributable interest holder on ownership reports filed with the Commission, and we have expanded the option for such filers to report SUFRNs for attributable individuals by eliminating the requirement that NCE filers first use reasonable and good-faith efforts to obtain the personal information needed to report a CORES FRN or RUFNRN before using a SUFRN. We find that this action properly balances the need to improve the integrity and usability of the Commission's broadcast ownership data with the potential chilling effects that a mandatory reporting requirement could have on participation in NCE station governance, and that our action will have the effect of reducing the burden on NCE filers, including those with fewer than 25 employees.

26. *Supplemental Final Regulatory Flexibility Analysis.* 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 rules adopted in this Order on Reconsideration. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 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 Small Business Administration (SBA). The FRFA accompanying the *323 and 323-E Order* described and estimated the number of small entities that would be affected by the revisions to FCC Forms 323 and 323-E. The actions taken in this Order on Reconsideration apply to the same entities affected by the revisions to Form 323-E that the Commission adopted in the *323 and 323-E Order*.

27. *Television Broadcasting.* This Economic Census category comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations,

which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having \$38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of less than \$25,000,000, 25 had annual receipts ranging from \$25,000,000 to \$49,999,999, and 70 had annual receipts of \$50,000,000 or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

28. The Commission has estimated the number of licensed commercial television stations to be 1,383. Of this total, 1,275 stations (or about 92 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on March 9, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed NCE television stations to be 394. The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

29. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

30. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated

network, or from external sources. The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts. The 2012 Economic Census reports that 2,849 firms in this category operated in that year. Of that number, 2,806 had annual receipts of less than \$25,000,000, 17 had annual receipts ranging from \$25,000,000 to \$49,999,999, and 26 had annual receipts of \$50,000,000 or more. Based on this data we therefore estimate that the majority of commercial radio stations are small entities under the applicable SBA size standard.

31. The Commission has estimated the number of licensed commercial radio stations to be 11,420. Of this total, 11,506 stations (or about 99.9 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on March 9, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed NCE radio stations to be 4,112. The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

32. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We further note that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis; thus, our estimate of small businesses may therefore be over-inclusive.

33. *Class A TV and LPTV Stations.* The same SBA definition that applies to television broadcast licensees would apply to Class A TV stations and other low power television (LPTV) stations. The SBA defines a television broadcast station as a small business if such station has no more than \$38.5 million in annual receipts. As of March 31, 2017, there are approximately 417 licensed Class A stations and 1,965

licensed LPTV stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that 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. Our 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.

34. The Order on Reconsideration provides NCE filers with greater flexibility to report SUFRNs than previously allowed by the *323 and 323-E Order*. It does not adopt additional reporting, recordkeeping, other compliance requirements.

35. The Order on Reconsideration provides relief to NCE filers by allowing them wider latitude to report SUFRNs—which do not require disclosure of an SSN, date of birth, or other personal information—for individual attributable interest holders reported on Form 323-E. Accordingly, NCE filers may report an SUFRN on Form 323-E for an attributable individual who has not obtained a CORES FRN or RUFNRN at the time the filer submits its ownership report, without the need to first use reasonable and good-faith efforts to obtain the information needed to report a CORES FRN or RUFNRN. The Commission concludes that allowing NCEs greater flexibility to report an SUFRN for an attributable individual, in lieu of a CORES FRN or RUFNRN, will address the concerns that have been raised regarding the potential impact of the CORES FRN/RUFNRN requirement on NCE stations, including small entities. The Chief Counsel for Advocacy of the SBA did not file any comments in response to the proposed rules in this proceeding.

36. The Commission will send a copy of this *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

37. *Ordering Clauses*. Accordingly, it is ordered that, pursuant to the authority contained in sections 1, 2(a), 4(i), 257, 303(r), 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303(r), 307, 309, and 310, this Order on Reconsideration IS ADOPTED.

38. It is further ordered that, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, that the petitions

for reconsideration filed by the American Public Media Group, the NCE Licensees, the Public Broadcasting Parties, and Lisa S. Campo on behalf of the State University of New York, are granted in part, dismissed to the extent discussed in footnote 42, and otherwise are denied, to the extent stated herein.

39. It is further ordered that the applications for review filed by the NCE Licensees and the University of Michigan are dismissed as moot.

40. It is further ordered that, pursuant to section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), and section 1.427(b) of the Commission's rules, 47 CFR 1.427(b), this Order on Reconsideration shall be effective May 10, 2017, except those provisions that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act will become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 150909839-7369-02]

RIN 0648-XE184

Endangered and Threatened Wildlife and Plants; Final Rule to List 6 Foreign Species of Elasmobranchs Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: We, NMFS, issue a final rule to list six foreign marine elasmobranch species under the Endangered Species Act (ESA). These six species are the daggernose shark (*Isogomphodon oxyrinchus*), Brazilian guitarfish (*Rhinobatos horkelii*), striped smoothhound shark (*Mustelus fasciatus*), narrownose smoothhound shark (*Mustelus schmitti*), spiny angelshark (*Squatina guggenheim*), and Argentine angelshark (*Squatina*

argentina). We are publishing this final rule to implement our final determination to list the daggernose shark, Brazilian guitarfish, striped smoothhound shark, spiny angelshark and Argentine angelshark as endangered species under the ESA, and the narrownose smoothhound shark as a threatened species under the ESA. We have reviewed the status of these six species, including efforts being made to protect these species, and considered public comments submitted on the proposed rule as well as new information received since publication of the proposed rule. We have made our final determinations based on the best scientific and commercial data available. We will not designate critical habitat for any of these species because the geographical areas occupied by these species are entirely outside U.S. jurisdiction, and we have not identified any unoccupied areas within U.S. jurisdiction that are essential to the conservation of any of these species.

DATES: This final rule is effective June 9, 2017.

ADDRESSES: Chief, Endangered Species Division, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Maggie Miller, NMFS, Office of Protected Resources (OPR), (301) 427-8403. Copies of the petition, status review reports, **Federal Register** notices, and the list of references are available on our Web site at <http://www.nmfs.noaa.gov/pr/species/petition81.htm>.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2013, we received a petition from WildEarth Guardians to list 81 marine species or subpopulations as threatened or endangered under the ESA. This petition included species from many different taxonomic groups, and we prepared our 90-day findings in batches by taxonomic group. We found that the petitioned actions may be warranted for 24 of the species and 3 of the subpopulations and announced the initiation of status reviews for each of the 24 species and 3 subpopulations (78 FR 63941, October 25, 2013; 78 FR 66675, November 6, 2013; 78 FR 69376, November 19, 2013; 79 FR 9880, February 21, 2014; and 79 FR 10104, February 24, 2014). On December 7, 2015, we published a proposed rule to list the daggernose shark, Brazilian guitarfish, striped smoothhound shark, and Argentine angelshark as endangered species under the ESA, and the narrownose smoothhound shark and