

New Collection entitled: Licensing, Operation, and Transition of the 2500-2690 MHz Band

SUPPORTING STATEMENT

A. Justification:

1. The Commission seeks Office of Management and Budget (OMB) approval of certain information collections and third-party disclosures associated with a *2004 Order*¹ as modified by a *2006 Order*² in the Commission's "BRS/EBS proceeding." By these actions, the Commission continues its efforts to transform rules and policies governing the licensing of the Educational Broadband Service (EBS) and the Broadband Radio Service (BRS) (collectively, the Services) in the 2495-2690 MHz band.³ Specifically, the transition plan creates a process for relocating EBS licensees and BRS licensees from their current channel locations to their new spectrum blocks in the Lower Band Segment (LBS), Middle band Segment (MBS), or Upper Band Segment (UBS). The transition occurs by Basic Trading Area (BTA) and is undertaken by a "proponent." A proponent must pay the cost of transitioning EBS licensees. The transition occurs in the following three phases: the Initiation Phase, the Transition Planning Phase, and the Transition Completion Phase. The Commission also adopted substantial service requirements and safe harbors for BRS and EBS licensees and established new rules for grandfathered EBS stations operating on the E and F channel groups.

The Commission's actions in this proceeding are designed to provide both incumbent licensees and potential new entrants in the 2495-2690 MHz band with greatly enhanced flexibility to encourage the efficient and effective use of spectrum domestically and internationally, and the growth and rapid deployment of innovative and efficient communications technologies and services. Specifically, we provide the opportunity for operators using different technologies and/or services to have access to the same spectrum. Moreover, we facilitate the development of wireless broadband systems in this band that could offer consumers another choice for broadband access -- competing in price and features with existing landline offerings, reaching areas not currently served by landline networks, and offering consumers portability or mobility. In addition,

¹ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 19 FCC Rcd 14165, 14169 ¶ 6 (*2004 Order*).

² Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Memorandum Opinion and Order and Second Report and Order*, WT Docket No. 03-66, 21 FCC Rcd. 5606 (2006) (*2006 Order*).

³ The two services in the 2500-2690 MHz band, the Instructional Television Fixed Service (ITFS) and the Multichannel Multipoint Distribution Service (MMDS), and the Multipoint Distribution Service (MDS) in the 2150-2162 MHz band were renamed by the Commission in 2004. The ITFS service became the Educational Broadband Service (EBS) and the MMDS and MDS services became the Broadband Radio Service (BRS). See *2004 Order*, 19 FCC Rcd at 14169 ¶ 5.

we facilitate use of this band by educational institutions, thereby improving the ability of educators to serve America's students through wireless technology. Accordingly, through these actions, we make further progress towards our goal of providing all Americans with universal, affordable access to broadband technology.⁴

The information collection requirements are as follows:

- 1) the pre-transition data request (47 CFR § 27.1231(e)), the information collected in the pre-transition data request is necessary to assist the proponent transition the 2500-2690 MHz band from old band plan to the new band plan by relocating licensees. Because EBS licensees will be receiving new equipment that will enable them to continue providing video programming from a new channel location and they are not required to pay their relocation costs, the proponent must gather information that will allow it to determine how and where to move each licensee and the kind of equipment each EBS licensee will receive.
- 2) the transition notice (47 CFR § 27.1231(e)), the information collected in the transition notice is necessary to inform BRS and EBS licensees that the BTA is being transitioned by the proponent. The transition notice gives licensees the contact information of the proponent.
- 3) the Initiation Plan (47 CFR § 27.1231(f)), and
- 4) the post-transition notification (47 CFR § 27.1235).

The Initiation Plan and the Post-transition notification are collected by the FCC to enable it to assess when transitions have begun and when they have ended. The Commission will collect the Initiation Plan and the Post-transition Notification electronically through our electronic comment and filing system (ECFS) database. The Commission is also collecting information to determine whether licensees have met their performance requirements for the 2500-2690 MHz band. This information will be collected electronically through our Universal Licensing System (ULS) under FCC Form 601. This is a one-time only filing requirement.

Statutory authority for this collection is contained in 47 U.S.C. §§ 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 316.

As noted on OMB Form 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act (see response to Item 11 for additional information).

2. The Pre-transition data request will be collected by a third-party proponent (proponent) to assist it in transitioning the 2500-2690 MHz band. The proponent may use a variety of methods, including a computerized data base. The proponent will send the transition notice to all BRS and EBS licensees in the BTA that the proponent is transitioning. The FCC will collect the Initiation Plan and the Post-transition Notification from the proponent to enable the FCC to assess when transitions have begun and when they have ended. The FCC will use our electronic comment and filing system (ECFS) database to collect this information from the proponents.

⁴ *Id.*

3. Proponents will probably use electronic means to collect the information contained in the pre-transition data request. The proponent will probably send the transition notice via mail. The FCC will use our electronic comment and filing system (ECFS) database to collect the Initiation Plan and the Post-transition notification from the proponents, where it will be made available to the public. The Commission will require licensees to provide the performance requirements information electronically through ULS, where it is made available to the public. Specifically, although this collection concerns information not collected on Form 601 for BRS, the Commission has modified ULS programming to allow licensees to file their data electronically on ULS by attaching a text file. Neither the FCC nor the proponents can obtain or computer-generate the required information, which must be reliable and current, from existing data bases in the Commission or other Federal agencies. Having licensees file this information on ULS or on ECFS is the least burdensome method on respondents as well as the Commission. Proponents will also use a computerized database to reduce the burden on themselves as well as the BRS and EBS licensees in the BTA being transitioned.
4. The Commission does not impose a similar information collection on the respondents. There are no similar data available.
5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize burdens on all respondents, regardless of size. The Commission has limited the information requirements to those necessary for the purposes for which the information will be used while deterring against possible abuses of the Commission's processes.
6. Neither the Commission nor the public has reliable, up-to-date information on the construction status and/or operational parameters of each BRS system in the 2500-2690 MHz band that will be subject to relocation. As discussed above (see Item 1), reliable, public data on each incumbent BRS system that will be subject to relocation is essential to enable the 2500-2690 MHz band to be transitioned. The proposed recordkeeping, reporting, and third-party contact requirements under the data collection are needed by the Proponents and the Commission to determine how and where to relocate BRS and EBS licensees. Also, the information to be required would ultimately be necessary in the context of relocation negotiations.
7. No special circumstances exist. This collection of information is consistent with the guidelines in 5 CFR§ 1320.6.
8. The Commission published a proposed rule (NPRM) in the Federal Register, 69 FR 72048 (Dec. 10, 2004), soliciting comments on the information collection prior to submission to OMB. A copy of the Federal Register publication is attached. No comments were received.
9. Respondents will not receive any payments.
10. There is no need for confidentiality. Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR § 0.459 of the FCC's rules.
11. These records will be filed under the FCC's ULS and ECFS systems. Disclosure of this information is governed by the requirements of a system of records, FCC/WTB-1, "Wireless Services Licensing Records." To the extent that these licenses are held by individuals, the information for which OMB approval is sought herein would be retrievable by the name of the

individual licensee. However, these individuals would be submitting this information in their entrepreneurial rather than personal capacity. Accordingly, as noted on OMB Form 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

12. The Commission estimates that there could be 2500 respondents (10 proponents and 2490 applicants/licenseses) in 2500-2690 MHz Transition bands who will be required to provide supplemental data, either to the Commission or to third parties, that is not currently collected on the FCC Form 601. Approximately 1500 of the respondents are BRS licensees, from whom we estimate there will be ten proponents, leaving 1490 BRS licensees. Approximately 1000 respondents are EBS licensees.

The following is a breakdown of the estimated burden hours along with estimated internal annual-costs to respondents associated with these burden hours. (Estimates for external costs to respondents are shown in Item 13 below.)

Pre-Transition Data Request or EBS Self-Transition Notice:

Number of respondents = 2500

Number of responses = 2500 (third-party disclosures)

Number of hours =

1490 (BRS) responses @ 0.25 hrs./response = 372.5 hrs.

- Internal annual cost = nontechnical staff @ \$35/hr. = \$ 4,345.83

1000 (EBS) responses @ 1 hr. /response = 1000 hrs.

- Internal annual cost = nontechnical staff @ \$35/hr. = \$11,666.67

- External costs are shown in Item 13

10 (proponent) respondents @ 5 hours to send requests = 50 hrs.

- Internal annual cost = nontechnical staff @ \$35/hr. = \$ 583.33

Total hours for Pre-Transition Data Request or EBS Self-Transition Notice = 1422.5 hrs.

ANNUAL BURDEN HOURS for Pre-Transition data request or EBS Self-Transition Notice (1422.5 **divided by 3**) = **474 hours** (for which the internal annual cost = \$16,595.83)

Transition Notice:

Number of respondents = 25 (proponents or BRS self-transitioning licensees)

- approx. one proponent or BRS self-transitioning licensee per each of 493 BTAs

Number of responses = 2475-2490 (third-party disclosures) – what are the number of responses?

Number of hours per response = 0.25 hrs.

Total hours for the Transition Notice = 622.5 hrs.

- Internal annual cost = nontechnical staff @ \$35/hr. = \$ 7,262.50

ANNUAL BURDEN HOURS for Transition Notice
(622.5 **divided by** 3) = **208 hours** (for which the internal annual cost = \$ 7,262.50)

Initiation (or self-transition) Plan:

Number of respondents = 25 (proponents or self-transitioning licensees)

Number of responses = 493 (reporting)

- approx. one proponent or self-transitioning licensee per each of 493 BTAs files an initiation (or self-transition) plan with FCC

Number of hours per response = 2.25 hrs. (2 hrs. legal/engineering, 0.25 hr. nontech.)

- Internal annual cost = engineering and legal staff @ \$200/hr. = \$65,733.33

- Internal annual cost = nontechnical staff @ \$35/hr. = \$1,437.92

Total hours for the Initiation Plan = 1,109.25 hrs.

ANNUAL BURDEN HOURS for Initiation Plan

(1109.25 **divided by** 3) = **370 hours** (for which the internal annual cost = \$67,171.25)

Transition Plan:

Number of respondents = 10 (proponents)

Number of responses = 5000 (reporting; third-party disclosures)

- approx. one proponent per BTA sends Transition Plan to all licensees in the BTA. If a licensee(s) submits a counterproposal(s) that the proponent accepts, the proponent must send the modified Transition Plan to all licensees in the BTA.

- the number of counterproposals that will be made and accepted is unknown; for purposes of the instant submission, we are estimating that, on average, proponents will have to send licensees one original Transition Plan and one modified Transition Plan, *i.e.*, 2490 x 2 = 4980, rounded up to 5000).

Number of hours per response = 3.5 hrs. (3 hrs. legal/engineering, 0.5 hr. nontech.)

- Internal annual cost = engineering and legal staff @ \$200/hr. = \$1,000,000.00

- Internal annual cost = nontechnical staff @ \$35/hr. = \$29,166.67

Total hours for the Transition Plan (5000 x 3.5 hrs.) = 17,500 hrs.

ANNUAL BURDEN HOURS for Transition Plan

(17,500 **divided by** 3) = **5,833 hours** (for which the Internal annual cost = \$1,029,166.67)

Post Transition Notification:

Number of respondents = 10 (proponents)

Number of responses = 493 (reporting)

Number of hours per response: 2 hrs.

- Internal annual cost = nontechnical staff @ \$35/hr. = \$11,503.33

Total hours for the Post Transition Notification = 986 hrs.

ANNUAL BURDEN HOURS for Post-Transition Notifications
(986 **divided by** 3) = **329 hours** (for which the internal annual cost = \$11,503.33)

Reimbursement Costs of Transitioning:

Number of respondents = 25 (proponents or EBS self-transitioning licensees)

Number of responses = 1490 (third-party disclosures; recordkeeping)

- approx. one proponent or EBS self-transitioning licensee per BTA sends reimbursement claim to all BRS/commercial licensees in the relevant BTA(s)

Number of hours per response: 2.25 hrs. (2 hrs. legal/engineering; 0.25 hr. nontech.)

- Internal annual cost = engineering and legal staff @ \$200/hr. = \$198,666.67

- Internal annual cost = nontechnical staff @ \$35/hr. = \$4,345.83

Total hours for Reimbursement Costs of Transitioning = 3,352.5 hrs.

ANNUAL BURDEN HOURS for Post-Transition Notifications
(3352.5 **divided by** 3) = **1,118 hours** (for which the internal annual cost = \$203,012.50)

MVPD Opt Out (Waiver Requests):

Number of respondents = 10

Number of responses = 10 (reporting)

- MVPDs that seek to opt-out of the transition must request a waiver

Number of hours per response: 1 hour

- Internal annual cost = nontechnical staff @ \$35/hr. = \$116.67)

- External costs are shown in Item 13

Total hours for the MVPD Opt Out Requests = 10 hrs.

ANNUAL BURDEN HOURS for Post-Transition Notifications
(10 **divided by** 3) = **3 hours** (for which the internal annual cost = \$116.67)

<p>TOTAL ANNUAL BURDEN HOURS (474 + 208 + 370 + 5,833 + 329 + 1,118 + 3 = 8,335 hours) (for which the internal annual cost = \$1,334,828.67)</p>
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13. The following is the estimated external cost to respondents (internal cost is shown in Item 12):

a. Total annualized capital/start-up costs: 0.

b. Total annualized cost request to prepare FCC 601 Main Form Substantial Service Requirement (containing the data required by the collection are: \$0.00.

There is no electronic filing cost to file these applications electronically with the FCC other than the cost of a long distance phone call or Internet access. These applications will be treated as minor modifications that do not require payment of a fee if the required information is submitted without making additional changes to the license.

c. Additional costs.

Pre-Transition data request:

Number of respondents = 2500

Number of responses = 2500

Engineering consultants @ \$200/hr. and 4 hrs./response x 1000 responses = \$800,000.00

- We estimate that all 1000 EBS licensees will hire **outside** engineering consultants to complete the pre-transition data request.

Cost for Pre-Transition Data Request = \$800,000.00

ANNUAL COST for Transition Data Request (800,000 **divided by** 3) = \$266,667.

MVPD Opt Out (Waiver Requests):

Number of respondents = 10

Number of responses = 10 (reporting)

We estimate that 100% of the respondents will hire a **outside** law firm to prepare and file a waiver request @ \$200/hr. x 10 hrs x 10 respondents = \$20,000

Cost for MVPD Opt Out (Waiver Requests) = \$20,000.00

ANNUAL COST for MVPD Opt Out (Waiver Requests) (20000 **divided by** 3) = \$6,667.

TOTAL ANNUAL COST = \$273,334

14. There are no costs to the government.

15. This is a new collection resulting in a program change increase of **8,335** annual burden hours and **\$273,334** in annual costs.

16. The data will not be published for statistical use.

17. Display of the expiration date for OMB approval would not be applicable because the requirements are set forth in rule sections. The Commission publishes a comprehensive listing of all OMB approved information collections in 47 CFR 0.408. The listing “displays” the title of the collection, its OMB control number and OMB expiration date.

18. There are no exceptions.

B. Collections of Information Employing Statistical Methods:

This information collection does not use any statistical methods.