

**Title: Application for Extension of Time to Construct a Digital Television Broadcast Station, FCC Form 337; Section 73.3598, Period of Construction****SUPPORTING STATEMENT****A. Justification:****Revised Information Collection Requirement:**

Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals.<sup>1</sup> On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking (“NPRM”) in the Matter of the Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07-91, FCC 07-70, to consider the procedures and rule changes necessary to complete the nation’s transition to DTV, including how best to ensure that broadcasters complete construction of their facilities<sup>2</sup> on their final, post-transition (digital) channel<sup>3</sup> by the statutory deadline.

The NPRM proposes the following for stations requesting an extension of time to construct DTV facilities:

1. For stations with construction deadlines occurring prior to February 17, 2009, the station must use the FCC Form 337 in accordance with 47 C.F.R. § 73.624(d)(3). The NPRM proposes to revise FCC Form 337 to accommodate stations requesting an extension of time to construct DTV facilities. **(OMB approval is needed for the proposed revisions to FCC Form 337).**
2. For stations with construction deadlines occurring on February 17, 2009 and later, the

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<sup>1</sup> See Digital Television and Public Safety Act of 2005 (“DTV Act”), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (“DRA”) (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)). DTV Act § 3002(a) amends Section 309(j)(14) of the Communications Act to establish February 17, 2009 as a new hard deadline for the end of analog transmissions by full-power TV stations. 47 U.S.C. § 309(j)(14)(A). DTV Act § 3002(b) directs the Commission to “take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, ... all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).” 47 U.S.C.A. § 309 Note.

<sup>2</sup> A station’s “post transition facilities” refers to the details of each station’s assignment, including technical facilities and predicted service and interference information.

<sup>3</sup> A station’s “post-transition channel” is the television channel that it will use for digital broadcasting after the transition deadline (i.e., February 17, 2009). The Commission proposed channel assignments and reference facilities for stations’ post-transition operations in a 2006 Notice of Proposed Rule Making in MB Docket No. 87-268. See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, MB Docket No. 87-268, Seventh Further Notice of Proposed Rule Making, 21 FCC Rcd 12100 (2006) (“Seventh FNPRM”). The Seventh FNPRM sets forth a channel for each eligible broadcast TV station in the proposed new DTV Table of Allotments, to be codified at 47 C.F.R. § 73.622(i).

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station must make a letter filing in accordance with 47 C.F.R. § 73.3598. **(OMB approval is needed for this collection of information).**

In addition, the Commission is consolidating information collection OMB Control Number 3060-1001 (Application for Extension of Time to Construct a Digital Television Broadcast Station, FCC Form 337) into this collection OMB Control Number 3060-0407 (Section 73.3598, Period of Construction). The Commission will submit an 83-D Form to discontinue information collection 3060-1001 once we receive OMB approval for this information collection (3060-0407) which is being revised. **(OMB approval is needed for the consolidation of information collection 3060-1001 into collection 3060-407).**

**BACKGROUND INFORMATION:**

- **FCC Form 337**

The FCC Form 337, Application for Extension of Time to Construct a Digital Television (DTV) Broadcast Station, is used by all DTV permittees to apply for extension of time within which to construct a commercial or noncommercial educational DTV broadcast station. This form must be filed at least sixty, but not more than ninety, days prior to the applicable construction deadline. Applicants who file this form based on financial hardships must retain documentation fully detailing and supporting their financial representations as well as any steps taken to overcome the circumstances preventing construction.

- **Section 73.3598**

When a permit is subject to tolling<sup>4</sup> because construction is encumbered due to an act of God, or when a construction permit is the subject of administrative or judicial review, 47 CFR on 73.3598(c) requires a permittee to notify the Commission as promptly as possible and, in any event, within 30 days, and to provide supporting documentation. All notifications must also be filed in the station's local public file.

In cases where the duration of the tolling event are not known at the time that tolling is granted, 47 CFR 73.3598(d) requires the permittee to notify the Commission promptly when a relevant administrative or judicial review is resolved and/or report progress at six month intervals.

47 CFR 73.3598(e) requires any construction permit for which construction has not been completed and which an application for license has not been filed shall be automatically forfeited upon

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<sup>4</sup> A broadcast construction permit is in "tolling" status when, pursuant to 47 CFR Section 73.3598(b) of the Commission's rules, the three-year construction period temporarily stops running due to factors enumerated in that rule, preventing construction.

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expiration of the construction permit.

**HISTORY:**

On March 17, 2005, the Commission released a *Second Order on Reconsideration and Further Notice of Proposed Rulemaking (FNPRM)*, In the Matter of the Creation of a Low Power Radio Service, MM Docket No. 99-25, FCC 05-75. The “Second Order on Reconsideration” established an interim waiver policy to increase the likelihood that permittees will complete construction and commence operation. The Commission delegated to the Media Bureau the authority to consider requests for waivers of the construction period as specified in 47 CFR Section 73.3598(a) even if the requirements under the tolling rules are not met. An Low Power FM (LPFM) permittee may request a waiver and the waiver may be granted if the permittee demonstrates that construction of its broadcast facilities cannot be completed within the allotted 18 months for reasons beyond its control, that the permittee expects to be able to complete construction within the additional 18 months that the construction extension would provide, and that the public interest would be served by the extension.

As noted on the OMB Form 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authorities for this collection of information are contained in Sections 154(i), 303, 308, 309, 319 and 337 of the Communications Act of 1934, as amended.

2. The data is used by FCC staff to ensure that legitimate obstacles are preventing permittees from the construction of broadcast facilities and to determine, on a case-by-case basis, whether a broadcaster should be afforded additional time to construct its DTV facilities.
3. The Commission requires applicants to file responses/requests (i.e., FCC Form 337, waivers, letter filings, notifications) electronically.
4. This agency 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 the burden on all respondents. The time to complete construction of a new broadcast station or a modification to a licensed station is three years.<sup>5</sup> This construction period provides all permittees an adequate and realistic time to construct their facilities. This information collection will not have a significant economic impact on a substantial number of small entities/businesses. The Commission has limited the information requirements to that which is absolutely necessary to determine if an extension is necessary.

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<sup>5</sup> See 47 C.F.R. § 73.3598(a).

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6. The frequency for this collection of information is determined by respondents, as necessary.
7. This collection of information is consistent with the guidelines in 5 CFR 1320.5(d)(2).
8. The Commission submitted the Notice of Proposed Rulemaking and Federal Register Notice (“Notice”) to the Federal Register for publication. The Notice will seek public comments on the collection of information contained in this information collection.
9. No payment or gift was provided to respondents.
10. Applicants often seek confidential treatment for the material included in FCC Form 337.
11. This collection of information does not address any private matters of a sensitive nature.
12. The public burden is estimated as follows:

**Total Number of Respondents: 160 Full-power TV Broadcast Stations**

**Total Number of Responses:**

100 FCC Form 337 filings<sup>6</sup>

40 notifications

40 waivers

**180 responses**

- **Burden for FCC Form 337:**

It is estimated that the respondent would spend a total of 1 hour in consultation with an attorney and also to complete the FCC Form 337. We estimate that the respondent would have an average salary of \$100,000/year (\$48.07/hour).

**Annual Burden Hours for FCC Form 337: 250 hours**

100 extensions x 1 hour/extension = 100 hours

**Annual “In-House” Costs for FCC Form 337: \$4,807.00**

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<sup>6</sup> These forms take into account the letter filings that will be filed on February 17, 2009 or later.

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100 extensions x 1 hour/extension x \$48.07/hour = \$ 4,807.00

- **Burden for Section 73.3598:**

We estimate that 40 notifications (20 routine; 20 non-routine) and 40 waivers for additional time to construct will be filed and processed.

We estimate that 50% of respondents will notify the Commission themselves. The average burden for a routine notification is 0.75 hours and for a non-routine notification is 2.0 hours. The average burden for waiver requests without legal consultation is 3.0 hours. This estimate is based on FCC staff's knowledge and familiarity with the availability of the data required.

We also estimate that 50% of respondents will consult with a communications attorney to coordinate information for routine and non-routine notifications. We estimate that it will take approximately 15 minutes (0.25 hours) to coordinate information for a routine notification with these attorneys. We also estimate that it will take approximately 1.0 hour to gather and coordinate information for a non-routine notification with these attorneys. However, the respondents will spend 3.0 hours gathering and coordinating information for waiver requests with these attorneys. We estimate that the respondent would have an average salary of \$100,000/year (\$48.07/hour).

**Annual Burden Hours for Section 73.3598: 163 hours (as calculated below)**

**Respondents Burden for Completing Notifications without Legal Consultation:**

10 routine notifications (50% of routine notifications) x 0.75 hours = 10.75 hours

10 non-routine notifications (50% of non-routine notifications) x 2 hours = 20 hours

20 waiver requests (50% of waiver requests) x 3 hours = 60 hours

**Respondents Burden for Completing Notifications with Outside Consultation:**

10 routine notifications (50% of routine notifications) x 0.25 hours = 2.5 hours

10 non-routine notifications (50% of non-routine notifications) x 1.0 hour = 10 hours

20 waiver requests (50% of waiver requests) x 3 hours = 60 hours

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**Annual “In-House Cost” for Section 73.3598: \$7,691.21**

10 routine notifications x 0.75 hours x \$48.07/hour = \$360.53

10 non-routine notifications x 2 hours x 48.07/hour = \$961.40

10 routine notifications x 0.25 hours x \$48.07/hour = \$120.18

10 non-routine notifications x 1.0 hour x \$48.07/hour = \$480.70

40 waiver requests x 3 hours/request x \$48.07/hour = \$5,768.40

**Total Annual Burden Hours:**

For Form 337 - 100 hours + For Section 73.3598 – 163 hours = **263 hours**

**Total Annual “In-House Cost”:**

For Form 337 - \$4,807.00 + For Section 73.3598 - \$7,691.21 = **\$12,498.21**

**13. Annual Cost Burden:**

- **For FCC Form 337:**

We assume that the respondents would consult with an attorney before completing the FCC Form 337 and the attorney would review the completed form before it is transmitted to the Commission. It will take the attorney an hour per extension request to complete the review of each form.

100 extensions x 1 hour/extension request x \$200/hour = \$20,000

- **For Section 73.3598:**

We estimate that 50% of respondents will use a communications attorney to complete the notifications. We estimate that it will take the attorney 0.5 hours to complete routine notifications and 2 hours to complete non-routine notifications. We also estimate that it will take an average salary of \$200/hour. It also will take the attorney 3 hours to complete waiver requests.

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10 routine notifications (50% of routine notifications) x 0.5 hours x \$200/hour = \$1,000

10 non-routine notifications (50% of non-routine notifications) x 2.0 hour x \$200/hour = \$4,000

20 waiver requests (50% of waiver requests) x 3.0 hours x \$200 = \$12,000

**Total Annual Cost Burden:**

\$20,000 + \$1,000 + \$4,000 + \$12,000 = **\$37,000**

14. Cost to the Federal Government: The Commission will use professionals at the GS-13, step 5 (\$40.61/hour) to process FCC Form 337 and processing will take four hours per application.

4 hours x \$43.12/hour x 100 extensions = \$17,248.00

The Commission will use paraprofessional staff at the GS-13, step 5 (\$43.12/hour) to process routine and non-routine notifications. The processing time is 0.5 hours for routine notifications and 2 hours for non-routine notifications.

Non-routine notifications require additional analysis to determine if they qualify for tolling or requiring a consideration of whether a waiver is warranted or consideration of opposing pleadings. The Commission will use professional staff at the GS-15, step 5 (\$59.93/hour) to complete this work and it will take one hour. Waiver requests will require 4 hours for review by professional staff at the GS-15 grade level (\$59.93/hour).

20 routine notifications x 0.5 hours x \$43.12/hour	= \$	431.20
20 non-routine notifications x 2.0 hours x \$43.12/hour	=	\$1,724.80
20 non-routine notifications x 1.0 hours x \$59.93/hour	=	\$1,198.60
40 waivers x 4.0 hours x \$59.93/hour	=	<u>\$9,588.80</u>
		\$12,943.40

**Total Cost to the Federal Government:** \$17,248.00 + \$12,943.40 = **\$30,191.40**

15. On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking -- Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital TV, MB Docket No. 07-91, FCC 07-70. The NPRM adds additional burden hours and annual cost burden to this collection. The Commission also consolidated information collection 3060-1001 into collection 3060-0407. While consolidating the two collections into one, the Commission reevaluated the burden hours and cost burden which both were overestimated in the Commission's previous submission. The burdens are accurately accounted for in this submission.

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16. The data will not be published.

17. The expiration date of OMB approval for this information collection will be displayed at 47 CFR 0.408.

18. There are no exceptions to Item 19 of the Certification Statement.

**B. Collections of Information Employing Statistical Methods**

No statistical methods are employed.