

## SUPPORTING STATEMENT

### **A. Justification:**

1. Since enactment of Section 6002 of the Omnibus Budget Reconciliation Act of 1993, the Commission has conducted a series of spectrum auctions. On March 11, 1997, the Commission adopted the *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking* (“*Second Report and Order*”) in WT Docket No. 97-82. The *Second Report and Order* established service and auction rules for the Local Multipoint Distribution Service (LMDS). As required by the Paperwork Reduction Act of 1995, the Commission sought comment on the information collections contained in the *Second Report and Order*. These information collections for LMDS (which include the disclosures in 47 C.F.R. Part 1, Subpart Q of the Commission’s Rules, incorporating them by reference) were later applied for purposes of all future auctions. These information collections received clearance from OMB, in OMB No. 3060-0767, on May 5, 1997.

The auction rules, addressed in the *Second Report and Order*, among other things, require small business applicants to submit ownership and gross revenues information/calculations, and all applicants to identify the parties to joint bidding agreements (if any). Furthermore, when a licensee defaults or loses its license, the Commission retains the discretion to reauction such licenses. If licenses are reauctioned, corresponding categories of applicants in the reauction would be required to comply with the same requirements explained above. Licensees who transfer licenses within three years are required to submit certain information to the Commission. See 47 C.F.R. 1.2111(a). Small business license winners are required to submit an attachment to their long-form application disclosing certain ownership information and gross revenues calculations, as well as a description of how they meet the small business eligibility requirements. See also 47 C.F.R. 1.2110. In addition, they will be required to maintain certain information to insure compliance. Specifically: (1) small business license winners and their successors in interest as licensees will be required to maintain a file over the license term containing ownership and gross revenues information/calculations including a description explaining how small business status was established necessary to determine their eligibility as a small business, and (2) small business applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier. Lastly, winning bidders are required to submit an attachment, identifying the terms, conditions and parties to any joint bidding arrangements.

In 1997, the Commission also initiated a proceeding to expand the general competitive bidding rules, contained in Part 1, Subpart Q of the Commission’s rules, and replace any inconsistent or repetitive service-specific auction rules. The *Part 1 Third Report and Order*, WT Docket No. 97-82, released on December 31, 1997, which amended the Part 1 general competitive bidding rules by establishing procedures generally applicable to future Commission auctions. As required by the Paperwork Reduction Act of 1995, the Commission supplemented the justification previously provided for the *Second Report and Order*, in CC Docket No. 92-297. These information collections received updated clearance from OMB on March 3, 1998.

Specifically, the *Part 1 Third Report and Order* amended the auction rules to, among other things, require current and future licensees that receive (or will receive) bidding credits or are paying on an installment plan and wish to partition or disaggregate their licenses, to make certain disclosures to the Commission. These disclosures are designed to prevent unjust enrichment by the recipient of bidding preferences should that licensee transfer a portion of its license to an entity not entitled to such bidding preferences. 47 C.F.R. 1.2111(e). Second, the Commission amended section 1.2105(c) of its rules (regarding anti-collusion), permitting the holder of a non-controlling attributable interest in an applicant to obtain an ownership interest in or enter into a consortium agreement with another applicant for a license in the same geographic area provided that the original applicant has withdrawn from the auction, is no longer placing bids, and has no further eligibility. To meet the requirements of the exception, the attributable interest holder will be required to certify to the Commission that it did not communicate with the new applicant prior to the date the original applicant withdrew from the auction, and that it will not convey bidding information, or otherwise serve as a nexus between the previous and the new applicant. An applicant satisfies this requirement by submitting a letter signed by an appropriate official of the entity, certifying to compliance with the prerequisites for exercise of the exception. These information collections will apply for current licensees and in future auctions.

Additionally, in the *Part 1 Third Report and Order*, the Commission also adopted 47 C.F.R. 1.2112, which initiated the process of unifying many of the disclosure requirements. Each application for a license or authorization or for consent to assign or transfer control of the license or authorization must disclose fully the real party or parties in interest and must include in an exhibit certain detailed ownership information. In addition, each applicant for a license or authorization, claiming small business status, must make certain ownership disclosures, sufficient to determine eligibility for small business status, based upon a gross revenues calculation. This provision is applicable for all future auctions.

Subsequently, on August 14, 2000, the Commission released the *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making ("Part 1 Fifth Report and Order")*, WT Docket No. 97-82, which clarified and amended the Commission's general competitive bidding rules. Most notably, in that order, the Commission adopted as our general attribution rule a controlling interest standard, section 1.2110(c)(2). The controlling interest standard is used, among other things, to determine which applicants qualify as small businesses. In particular, the *Part 1 Fifth Report and Order* amended 47 C.F.R. § 1.2112 to reduce the ownership disclosure requirements for applicants filing short- and long-form applications.

On May 8, 2003, the Commission released the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, WT Docket No. 97-82, which revised certain rules pertaining to the collection of information on the short-form (FCC Form 175), long-form applications (FCC Form 601) and transfer of control and assignment applications (FCC Form 603), and made certain ministerial conforming amendments and rule revisions to the Part 1 general competitive bidding rules. As noted above, the Commission, in the *Part 1 Fifth Report and Order*, amended and reorganized section 1.2112 of the Part 1 general competitive bidding rules. Further, in the *Second Order on Reconsideration of the Third Report and Order*, the Commission reordered section 1.2112 to move the requirement that each application for competitive bidding, or for a license, authorization, assignment or transfer for control fully disclose all "real party or parties in interest" from section 1.2112(a) to subsection 1.2112(a)(1). Lastly, the Commission made conforming edits to section 1.2112(b) to fully implement its intent that all applicants, claiming small business status, including those filing

applications for a license, authorization, assignment, or transfer of control as well as those filing short-form applications, are required to disclose the controlling interest information.

Further, in the *Order on Reconsideration of the Part 1 Fifth Report and Order*, based upon the petitions for reconsideration, the Commission adopted a narrow exemption for rural telephone cooperatives from the requirement that the gross revenues of entities controlled by an applicant's officers and directors are attributed to the applicant. As a result of this action, auction applicants seeking an exemption from this requirement must establish eligibility for this exemption, in the FCC Form 601, based upon the four factors listed under 47 C.F.R. § 1.2110.

On January 31, 2005, the Commission released the *Second Order on Reconsideration of the Fifth Report and Order*, WT Docket No. 97-82, which revised one of the eligibility factors pertaining to a limited exemption from the attribution rules that are part of the Commission's Part 1 competitive bidding rules. Specifically, based on petitions for reconsideration of the *Reconsideration of the Part 1 Fifth Report and Order*, the Commission revises the third element of the exemption, by permitting a rural telephone cooperative applicant (or its controlling interest) to demonstrate that the rural telephone cooperatives in question is eligible for tax-exempt status pursuant to Section 501(c)(12) of the Internal Revenue Code or that it (or its controlling interest) adheres to the cooperative principles articulated in the *Puget Sound*.

Statutory authorization for this collection of information is contained in 47 U.S.C. 154(i) and 309(j).

2. Disclosures regarding ownership and gross revenues information and calculations are designed to ensure that applicants are qualified to participate in Commission auctions and to ensure that license winners are entitled to receive small business preferences. Disclosures regarding joint bidding agreements and the associated certification are designed to prevent collusion. Disclosure of information regarding license transfers and partitioning is designed to deter unjust enrichment. Finally, records retention and maintenance by small business licensees is designed to prevent unjust enrichment and to facilitate enforcement efforts, if necessary.

3. Ownership and gross revenues information/calculations for small businesses, and identification of the parties to joint bidding agreements/arrangements, etc. are filed as exhibits to the FCC Form 175 (OMB Control Number 3060-0600) prior to the beginning of the auction. Auction participants are required to electronically file the FCC Form 175 and exhibits. Additional ownership information for all applicants, gross revenues information/calculations for small businesses and the terms, conditions and parties to joint bidding agreements/arrangements, etc. are attached as exhibits to the FCC Form 601 (OMB Control Number 3060-0798). License winners are required to electronically file the FCC Form 601 and exhibits electronically. Transfer and disclosure information is also required to be electronically filed.

The certification regarding the exception to the Commission's anti-collusion rules may be submitted by an auction participant to the Commission during the course of an auction in the form of a letter notifying the Commission of changes in the applicant's ownership information as contained in FCC Form 175, previously approved by OMB. The certification letter will be filed manually by the auction participant, wishing to exercise the exception to the anti-collusion rule.

4. The Commission does not obtain this information or similar information in any other collection. 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, regardless of size. The Commission has limited the information requirement to that which is absolutely necessary for evaluating and processing the application and to deter possible abuses of the processes.

6. The respondents will determine whether to participate in competitive bidding. Thus, the frequency of filing is generally determined by the applicant. Small business ownership and gross revenues information/calculations must be updated when its status changes, so it is generally determined by the applicant. Transfer disclosure requirements will be required when the respondent chooses to transfer the license. Transfer disclosure information also will be required when the respondent chooses to partition or disaggregate the license.

7. Respondents would only have to make a one-time filing of the requested information. This collection of information is consistent with the guidelines in 5 C.F.R. § 1320.6.

8. This is an extension of a currently approved collection. Pursuant to the requirements of 5 CFR 1320.5, the Commission initiated a 60-day comment period on August 14, 2007. See 72 FR 47039 (August 22, 2007). No comments were received as a result of the notice. A reference to the notice is available with this submission to the OMB.

9. Respondents will not receive any payments.

10. There is no need for confidentiality. However, if applicants want to seek confidential treatment of their filing, they may do so pursuant to 47 CFR 0.459 of the Commission's rules.

11. This information collection does not address any private matters of a sensitive nature.

12. *Respondent Burden:* No more than 22,000 applicants will be required to submit/maintain ownership and gross revenues information/calculations and/or to submit information regarding any joint bidding agreements. These applicants include 16,500 FCC Form 175 filers and 5,500 Form 601 filers. Twenty-two thousand applicants (in the same numbers and categories) will make similar submissions/disclosures in FCC reactions. No more than 4,000 applicants will be required to submit certifications associated with ownership information required in order to comply with the exception to the anti-collusion rule. These 4,000 certifiers include applicants in both auctions and reactions. No more than 22,000 applicants will be required to submit files regarding transfers of licenses. No more than 11,000 additional applicants will be required to submit files regarding transfers of licenses in connection with partitioning or disaggregation of licenses. The average burden on the applicant is .75-5.25 hours for the information necessary to determine compliance with the ownership and gross revenues requirements and an average of .25 hours for disclosing the terms (either identifying the parties to or specifying the terms, conditions, or parties to) of any joint bidding agreements. The average burden on the applicant is .75 hours for completing and submitting the certification associated with the exception to the anti-collusion rules. The burden for updating/maintaining ownership and gross revenues information/calculations is 20 hours per respondent. The estimated burdens are based on our prior experience with the FCC Form 175 and FCC Form 601. The average burden on the applicant is .25 hours for submitting the transfer disclosure information. This estimate is based on FCC staffs knowledge of and familiarity with the availability of the data required.

Auction Applicants:

Ownership and Gross Revenues Information/Calculations

22,000 applications

The Commission estimates 75% of respondents will contract out the burden of responding. The remaining 25% of respondents are estimated to employ in-house staff to provide the information. We estimate that it will take approximately .50-5.25 hours to complete this task.

16,500 applications (75% contracting out) X .25 hours = 4,125 hours

5,500 applications (25% in-house) X 5.25 hours = 28,875 hours

Total Burden = 4,125 hours + 28,875 hours = **33,000 hours**

Submission of Certification Associated with Ownership Information

4,000 applications

The Commission estimates that it would take the same amount of time to provide the information with in-house staff or coordinate with an outside contractor, and this work will be contracted-out.

**4,000 applications X .75 hours = 3,000 hours**

Joint Bidding Agreements

22,000 applications

The Commission estimates that it would take the same amount of time to provide the information with in-house staff or coordinate with an outside contractor.

22,000 applications X .5 hours = **11,000 hours**

Maintaining Ownership and Gross Revenues Information/Calculations

16,500 applications

Applicants will be required to maintain at their places of business an updated file of information regarding gross revenues and total assets. Updating must occur for one to ten years. We estimate that this will require 4 hours per year. Only applicants for small business status need meet this requirement.

16,500 applications X 4 hours X 5 years (median time) = **330,000 hours**

Transfer Disclosures

22,000 applications

The Commission estimates that it would take the same amount of time to provide the information with in-house staff or coordinate with an outside contractor.

22,000 applications X .5 hours = **11,000 hours**

Transfer Disclosures (partitioning and disaggregation)

5,500 applications

The Commission estimates that it would take the same amount of time to provide the information with in-house staff or coordinate with an outside contractor.

5,500 applications X .5 hours = **2,750 hours**

Total burden for Auction Applicants

33,000 + 3,000 + 11,000 + 330,000 + 11,000 + 2,750 = **390,750 hours**

13. *Cost to the Respondent:*

Auction Applicants:

FCC Form 175

Applicants will incur a \$2.30 per minute online charge for filing of the FCC Form 175 electronically. On-line time should amount to no more than 45 minutes.

16,500 X \$2.30/minute X 45 minutes = **\$1,707,750**

FCC Form 601

Applicants will incur a \$2.30 per minute online charge for filing of the FCC Form 601 electronically. On-line time should amount to no more than 1 hour.

5,500 X \$2.30/minute X 60 minutes = \$759,000

a. Total Annualized Capital Start-Up Costs For Auction Applicants:

**\$1,707,750 + \$759,000 = \$2,466,750.**

b. Total Operation and Maintenance and Purchase of Services:

The Commission assumes that respondents contracting out the information would use an attorney or engineer (\$200/hour) to prepare the information. As noted above, we estimate that 75% of respondents will contract out for the service. However, for records maintenance of ownership and gross revenues information/calculations, we assume that only 5% of applicants will contract out.

Auction Applicants:

FCC Form 175

Ownership and Gross Revenues Information/Calculations  
\$200/hour X 12,375 X 4 hours = \$9,900,000

Joint Bidding Agreements

\$200/hour X 12,375 X .5 hours = \$1,237,500

Records Maintenance

$\$200/\text{hour} \times 825 \times 4 \text{ hours} \times 5 \text{ years (median time)} = \$3,300,000$

Costs associated with FCC Form 175 =  $\$9,900,000 + \$1,237,500 + \$3,300,000 = \mathbf{\$14,437,500}$

FCC Form 175 (Certification Associated with Ownership Interest)

$\$200/\text{hour} \times 4,000 \times .75 = \mathbf{\$600,000}$

FCC Form 601

Ownership and Gross Revenues Information/Calculations

$\$200/\text{hour} \times 4,125 \times 4 \text{ hours} = \$3,300,000$

Joint Bidding Agreements

$\$200/\text{hour} \times 4,125 \times .5 \text{ hours} = \$412,500$

Costs associated with FCC Form 601 =  $\$3,300,000 + \$412,500 = \mathbf{\$3,712,500}$

Transfer Disclosures

$\$200/\text{hour} \times 22,000 \times .5 \text{ hours} = \mathbf{\$2,200,000}$

Transfer Disclosures (partitioning and disaggregation)

$\$200/\text{hour} \times 5,500 \times .5 \text{ hours} = \mathbf{\$550,000}$

Total operation and maintenance and purchase of services for Auction Applicants

$\$14,437,500 + \$600,000 + \$3,712,500 + \$2,200,000 + \$550,000 = \mathbf{\$21,500,000}$ .

**Total Cost to Respondents =  $\$21,500,000 + \$2,466,750 = \$23,966,750$ .**

14. *Annualized Cost To Federal Government:*

Government Costs to Process Auction Applicants

FCC Form 175

Attorney approximately  $\$45/\text{hour} \times 2 \text{ hours} \times 16,500 = \$1,485,000$  (ownership and gross revenues)

Attorney approximately  $\$45/\text{hour} \times .5 \text{ hours} \times 16,500 = \$371,250$  (joint bidding agreements)

FCC Form 175 (Certification Associated with Ownership Information)

Attorney approximately  $\$45/\text{hour} \times .5 \text{ hours} \times 4,000 = \$90,000$

FCC Form 601

Attorney approximately \$45/hour X 1.5 hours X 5,500 = \$371,250 (ownership and gross revenues)

Attorney approximately \$45/hour X .5 hours X 5,500 = \$123,750 (joint bidding agreements)

Transfer Disclosures

Attorney approximately \$45/hour X 3 hours X 22,000 = \$2,970,000 (transfer disclosures)

Transfer Disclosures (partitioning and disaggregation)

Attorney approximately \$45/hour X 3 hours X 5,500 = \$742,500

**Total Annualized Cost to Federal Government for Auction Applicants**

\$1,485,000 + \$371,250 + \$90,000 + \$371,250 + \$123,750 + \$2,970,000 + \$742,500 =  
**\$6,153,750.**

15. There was an over estimate of the number of burden hours and the annual cost to the respondent. The burden and cost calculations for respondents applying to participate in spectrum auctions during the three-year period should not have distinguished between auctions of licenses for new spectrum and auctions of licenses for spectrum offered in a previous auction. This adjustment eliminated that duplication. There is a change of -379,500 burden hours and a change of -\$23,366,250 in the annual cost burden.

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

17. The Commission is not seeking approval to avoid displaying the expiration date for OMB approval of the information collection. The OMB Control Number and expiration date for this IC and other OMB-approved ICs, see 47 CFR 0.408.

18. There are exceptions to the Certification Statement. When the 60 day notice was published, the burden hours and cost to the respondent were over estimated (see item 15 above). With this submission to OMB, we are reporting more accurate burden estimates.

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

No statistical methods are employed.