

SUPPORTING STATEMENT

A. Justification:

1. When Congress granted auction authority¹ in the Balanced Budget Act for commercial broadcast² and secondary broadcast services³, it did not eliminate or revise 47 U.S.C. Section 307(b) of the Communications Act. Section 307(b) requires that the Commission effect a fair, efficient, and equitable distribution of radio stations throughout the United States.

Section 307(b) information was previously collected in the framework of comparative hearing proceedings⁴ when mutually exclusive AM applications⁵ proposing to serve different communities were filed, or when non-mutually exclusive AM applications⁶ proposed a change in community of license. Since the comparative hearing process was discontinued as a result of the implementation of competitive bidding,⁷ the Commission must now collect the 307(b) information and undertake a Section 307(b) analysis in the context of the auction proceedings.⁸ For example, for mutually exclusive AM applications proposing to serve different communities, the process is performed prior to conducting the auction.

In order to evaluate Section 307(b) considerations, the Commission requires the submission of supplemental information subsequent to the AM auction filing window application⁹ (FCC Form 175 and technical information) submission. Section 307(b) information is not collected in the initial auction filing window application because Section 307(b) considerations are not pertinent to all window filed application – Section 307(b) is relevant only when the mutually exclusive AM application group consists of applications to serve different communities of license, or when a non-mutually exclusive AM application proposes a major modification of facilities, seeking a community

¹ The Balanced Budget Act of 1997 expanded the Commission's auction authority under Section 309(j) of the Communications Act of 1934, 47 USC Section 309(j), by adding provisions governing auctions for broadcast services.

² Commercial broadcast service auctions include FM radio, AM radio and television.

³ Commercial secondary broadcast service auctions include low power television (LPTV) and FM and television translators.

⁴ Prior to the Balanced Budget Act, the Commission traditionally resolved competing applications for commercial broadcast stations by comparative hearing proceedings.

⁵ Mutually exclusive applications are those that either cause or receive prohibited contour overlap with other window-filed applications, thus preventing grant of more than one application.

⁶ Non-mutually exclusive applications are either those where only one applicant applied in the filing window, or those where the application is not adversely impacted by other applications filed in the window.

⁷ The terms "competitive bidding" and "auctions" are used interchangeably.

⁸ The Commission's authority to award spectrum licenses through auctions is set forth in Section 309(j) of the Communications Act. The Commission's general competitive bidding rules are set forth in Part 1, Subpart Q of the Commission's rules.

⁹ Applications to participate in an auction are filed during Commission-designated filing windows.

of license change.

Specifically, where the mutually exclusive group consists of proposals to serve different communities of license, each applicant within the group must submit an amendment containing supplemental information such as the following: (1) the area and population within the proposed 2 mV/m and 0.5 mV/m contours;¹⁰ (2) the number of stations licensed to the proposed community of license; (3) the number of stations providing protected service to the proposed community of license; (4) the population (according to the latest Census data) of the proposed community of license; (5) a description of the civic, cultural, religious, social or commercial attributes of the proposed community of license; and (6) any other information determined relevant. The Commission will dismiss, without further processing, the previously filed AM auction filing window application and technical proposal of any applicant that fails to file an amendment addressing the Section 307(b) criteria, where required. Mutually exclusive AM applicants may not use this as an opportunity to change the technical proposal specified in the AM auction filing window application. The Section 307(b) amendment must be based on the technical proposal as specified in the AM auction filing window application.

Non-mutually exclusive applicants proposing a change in community of license must provide Section 307(b) information, demonstrating the merits of locating the station in the new community, as opposed to the former community of license.

In addition, certain mutually exclusive application groups containing major modification applications are permitted to resolve their mutual exclusivities through settlement agreements. These agreements must comply with 47 CFR Section 73.3525, Agreements for Removing Application Conflicts (approved under OMB 3060-0213). To facilitate processing, eligible applicants who intend to settle should promptly notify the Commission in writing that a pre-auction settlement is forthcoming.

The Commission is requesting an extension of this information collection in order to receive the full three year OMB clearance/approval for this collection.

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 authority for this collection of information is contained in Sections 154(i), 307(b) and 309 of the Communications Act of 1934, as amended.

2. The data submitted will be used to determine the community having the greater need for an AM radio service. If the Section 307(b) determination is dispositive, the staff will grant the application proposing to serve the community with the greater need. If no Section 307(b) determination is

¹⁰ The 2mV/m and 0.5mV/m contours are daytime predicted service contours used to evaluate AM applications.

dispositive, the mutually exclusive applications must be included in an auction. If the Section 307(b) information was not collected, our statutory mandate under Section 307(b) could not be fulfilled.

3. Applicants can use electronic software to develop the information for the Section 307(b) determination such as proposed contour, area and population calculations. However, the information can not be electronically filed with the Commission at this time.
4. No other agency imposes a similar information collection on the respondents. There is 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 Commission has limited the information requirements to that which is absolutely necessary for evaluating and processing the amendments to determine the community having the greater need and to deter possible abuses of the processes. The information is collected only from applicants to which a Section 307(b) determination is applicable. Therefore, this information collection will not have a significant economic impact on a substantial number of small entities/businesses.
6. The Commission will issue a public notice informing the public of mutually exclusive applications. This public notice will identify groups needing to file 307(b) amendments. Non-mutually exclusive applicants that need to file Section 307(b) information will be appropriately notified.
7. This collection of information is consistent with the guidelines in 5 CFR 1320.5(d)(2).
8. The Commission published a Notice (72 FR 73819) in the *Federal Register* on December 28, 2007. No comments were generated as a result of the Notice. A copy of the Notice is attached.
9. No payment or gift was provided to respondents.
10. There is no need for confidentiality for this collection of information.
11. This collection of information does not address any private matters of a sensitive nature.

12. The following estimates are provided for public burden:

Total Number of Respondents: 450 Mutually Exclusive Applicants and Non-Mutually Exclusive Applicants

Total Number of Responses:

350 Submissions Under Section 307(b) + 100 Notifications of Settlement = **450 responses**

Annual Burden Hours:

350 Submissions Under Section 307(b) x 3.0 hours/submission = 1,050 hours
100 Settlement Notifications x 0.5 hours/notification = 50 hours
TOTAL ANNUAL BURDEN HOURS = 1,100 hours

Annual In-House Cost: We assume that the average respondent would consult with consulting engineers and/or attorneys in a law firm to complete these submissions. We estimate that an average broadcast licensee has an annual salary of \$70,000 (\$33.65/hour).

350 Submissions Under Section 307(b) x 3.0 hours x \$33.65/hour = \$35,332.50
100 Settlement Notifications x 0.5 hours x \$33.65/hour = \$ 1,682.50
TOTAL ANNUAL "IN-HOUSE" COSTS = \$37,015.00

13. ANNUAL COST BURDEN: We assume that the average respondent would contract with consulting engineers (\$150/hour) and attorneys in a law firm (\$200/hour) to complete their submissions.

350 Submissions under Section 307(b) x 1.0 hours x \$200/hour = \$70,000
350 Submissions under Section 307(b) submissions x 1.0 hours x \$150/hour = \$52,500
100 Settlement Notifications x 0.5 hours x \$200/hour = \$10,000
TOTAL ANNUAL COST BURDEN = \$132,500

14. **Cost to the Federal Government:** The Commission will use professionals at the GS-14 grade level (\$53.24/hour) to process these Section 307(b) submissions, and it will take the staff 5 hours to process each submission. Clerical staff at the GS-5 grade level (\$17.24/hour) will also be used to process the settlement notifications. It will staff members appropriately 0.25 hours (15 minutes) per notification.

350 Submissions under Section 307(b) x 5.0 hours x \$53.24/hour = \$93,170.00
100 Settlement Notifications x 0.25 hours x \$17.24/ hour = \$ 431.00
TOTAL COST TO FEDERAL GOVERNMENT = \$93,601.00

15. There are no program changes. There is an adjustment to the total annual burden cost. This adjustment was due to rounding adjustments due to ROCIS.

16. The data will not be published.

17. OMB approval of the expiration date of the information collection will be displayed at 47 C.F.R. Section 0.408.

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

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.