

SUPPORTING STATEMENT

A. Justification:

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.¹ On December 22, 2007, the Commission adopted a Report and Order 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 07-228, to establish the rules, policies and procedures necessary to complete the nation's transition to DTV. With the DTV transition deadline less than one year away, the Commission must ensure that broadcasters meet their statutory responsibilities and complete construction of, and begin operations on, the facility² on their final, post-transition (digital) channel³ that will reach viewers in their authorized service areas by the statutory transition deadline, when they must cease broadcasting in analog. The Commission wants to ensure that no consumers are left behind in the DTV transition.

Specifically, the Report and Order requires full-power commercial television stations to use revised FCC Form 301 to obtain the necessary Commission approvals (i.e., construction permits and licenses) in time to build their post-transition facility.

- Applications for post-transition facilities. Full-power commercial television stations without a construction permit for their final, post-transition (DTV) facility must file an application to construct or modify that facility using FCC Form 301.
- Requests to transition early to post-transition channel. Full-power commercial television stations may request authority to transition early to their post-transition channel using FCC Form 301.
- Revisions to FCC Form 301. FCC Form 301 was revised to accommodate the filing of post-transition applications.

The FCC received approval under the "emergency processing provisions" of the PRA on January 7, 2008.

¹ 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.

² A station's "post transition facilities" refers to the details of each station's assignment, including technical facilities and predicted service and interference information.

³ 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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The requirements for this collection have not changed since we received approval. **(The Commission is now seeking the full three year OMB approval/clearance for this information collection).**

FCC Form 301 is used to apply for authority to construct a new commercial AM, FM, or TV broadcast station, to make changes in existing facilities of such a station, and may be used to request a change of a station's community of license by AM and non-reserved band FM permittees and licensees.⁴ In addition, FM licensees or permittees may request, by filing an application on FCC Form 301, upgrades on adjacent⁵ and co-channels,⁶ modifications to adjacent channels of the same class, and downgrades to adjacent channels. All applicants using this one-step process must demonstrate that a suitable site exists which would comply with allotment standards with respect to minimum distance separation⁷ and principal community coverage⁸ and which would be suitable for tower construction. For applicants to seek a community of license change through this one-step process, the proposed facility must be mutually exclusive⁹ with the applicant's existing facility, and the new facility must comply with the Commission's standards with respect to minimum distance separation and principal community coverage. Applicants availing themselves of this procedure must also attach to FCC Form 301 an exhibit demonstrating that the proposed community of license change comports with the fair, efficient, and equitable distribution of radio service, pursuant to Section 307(b).¹⁰

To receive authorization for commencement of Digital Television ("DTV") operation, commercial broadcast licensees must file FCC Form 301 for a construction permit. This application may be filed anytime after receiving the initial DTV allotment but must be filed before mid-point in a particular applicant's required construction period. The Commission will consider these applications as minor changes in facilities. Applications will not have to supply full legal or financial qualification information.

This collection also includes the third party disclosure requirement of 47 CFR § 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for new or major changes in facilities and AM and non-reserved band FM minor change applications to change a station's community of license.¹¹ This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.

⁴ This is a requirement of the Commission's proposed rulemaking, FCC 05-120. If adopted by the Commission, AM and non-reserved band FM permittees and licensees will be allowed to request a change of a station's community of license by filing FCC Form 301.

⁵ An adjacent channel is a frequency that is 10 kHz (AM) or 200 kHz (FM) from the frequency assigned to a broadcast station. See 47 C.F.R. §§ 73.14, 73.201.

⁶ "Co-channel" means the same frequency as the one assigned to a broadcast station.

⁷ FM broadcast stations of a given class must be located a minimum distance from other FM broadcast stations, which distance depends on the class and frequency of the other stations. These minimum distance separation standards are set forth at 47 C.F.R. § 73.207.

⁸ The Commission's rules require that an FM broadcast station place a 70 dBu signal over the station's entire community of license. See 47 C.F.R. § 73.315(a).

⁹ A proposed facility is mutually exclusive with the existing facility if the proposed facility does not meet the minimum distance separation requirement with the existing facility.

¹⁰ This is a requirement of the Commission's proposed rulemaking, FCC 05-120.

¹¹ This is a requirement of the Commission's proposed rulemaking, FCC 05-120.

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History:

On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking 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 on their final, post-transition (digital) channel by the statutory deadline.

On June 9, 2005, the Commission adopted a *Notice of Proposed Rulemaking, Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, MB Docket No. 05-210, FCC 05-120. The Commission proposed to allow AM and non-reserved band FM permittees and licensees¹² to change their communities of license¹³ by filing minor modification application¹⁴ filed on FCC Form 301. Previously, to change the community of license, AM licensees went through an auction process¹⁵ and FM permittees went through a rulemaking process.

The Commission proposed to revise FCC Form 301 as follows: (1) to encompass the filing of change of community of license applications, (2) to reflect the requirement that applicants provide an exhibit demonstrating that the proposed new community of license comports with the fair, efficient, and equitable distribution of radio service under Section 307(b) of the Communications Act of 1934, as amended, and (3) to add a certification to the form, applicable only to those applicants simultaneously filing a petition or counterproposal to add a new allotment to the FM Table of Allotments¹⁶ that the applicant intends to apply to participate in the auction for the new channel if allotted. On November 29, 2006, the Commission released a Report and Order, FCC 06-163. In this proceeding, the Commission adopted the information collection requirements as proposed in FCC 05-120 (NPRM).

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.

¹² A "permittee" is a party that has received a construction permit for an AM or FM broadcast station. Once the permittee has constructed the station facilities according to the construction permit, it will file an application for a broadcast license. When the license application is granted, the permittee becomes a licensee.

¹³ Every broadcast station is permitted or licensed to a designated community, the needs and interests of which the station primarily serves. The station is required to place a signal of a certain strength over the entirety of its community of license, and is required to provide programming to serve its community of license. See, e.g., 47 U.S.C. § 307(b); 47 C.F.R. §§ 73.24(i), 73.315(a).

¹⁴ The Commission's rules define those applications that are deemed to propose a major modification to a station's facilities. All other proposed changes are considered minor modification. Examples of major changes currently include an AM station's change of frequency to any other than a first, second, or third adjacent channel. Examples of minor changes include certain changes of transmitter power, antenna location, and antenna height. Currently, changes of community of license are considered to be major changes. See 47 C.F.R. §§73.3571(a), 73.3573(a).

¹⁵ In the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251, § 3002(a) (1997) (codified at 47 U.S.C. § 309(j)(4)(F)), Congress mandated that the Commission select commercial broadcast permittees by means of competitive bidding. Accordingly, applicants for new commercial broadcast facilities must file FCC Form 175, Application to Participate in an FCC Auction, and must comply with the Commission's auction procedures for that broadcast service. Applicants proposing major modifications to AM facilities must also apply on FCC Form 175 and comply with auction procedures. See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order*, 13 FCC Rcd 15920, 15925-26 (1998) ("*Broadcast First Report and Order*"), on recon., *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999), on further recon., *Memorandum Opinion and Order*, 14 FCC Rcd 14521(1999).

¹⁶ 47 C.F.R. § 73.202. The FM Table of Allotments lists the communities in the United States and territories to which FM channels have been allotted. The FM Table of Allotments also lists the channels and power classes that have been allotted to those communities.

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Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

2. The data is used by FCC staff to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be served by grant of the application.

3. The Commission requires applicants to file FCC Form 301 electronically.¹⁷

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 Commission has limited the information requirements to those that are absolutely necessary for evaluating and processing the amendments to determine the community having the greater need and to deter possible abuses of the processes. Therefore, this information collection will not have a significant economic impact on small entities/businesses.

6. The frequency for filing the DTV station application will vary depending on the market. For all other uses of FCC Form 301, the frequency of filing is determined by the respondents. However, no new or modified AM, FM, TV or DTV facilities can be obtained without using FCC Form 301.

7. This collection of information is consistent with the guidelines in 5 CFR § 1320.5(d)(2).

8. The Commission published a Federal Register Notice (73 FR 6504) on February 4, 2008 seeking public comment for the information collection requirements contained in this information collection. No comments were received from the public.

9. No payment or gift was provided to respondents.

10. There is no need for confidentiality.

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

12. The following estimates are provided for public burden for this information collection:

<u>Services</u>	<u>Number of</u>	<u>Applicants</u>
AM New & Major	451	
AM Minor Change	250	
With AM Multiple		
Ownership Showings	275	
AM Community of License Minor Change Applications	70	

¹⁷ On February 2, 2001, the Commission released Public Notice DA 01-283 announcing the mandatory electronic filing of FCC Form 301. Mandatory electronic filing for this form began on February 15, 2001. Paper-filed copies of FCC Form 301 will be accepted only if accompanied by an appropriate request for waiver of the electronic filing requirement. Filers must plead with particularity the facts and circumstances warranting grant of a waiver. Waivers will not be routinely granted.

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FM New & Major	288
FM Minor Change	1,200
With FM Multiple	
Ownership Showings	264
FM Community of License Minor Change	
Applications	50
TV Minor Change	200
DTV	1,210
With TV Multiple	
Ownership Showings	<u>20</u>
Total Number of Respondents:	4,278 Licensees/Permittees

<u>Number of Services</u>	<u>Respondent's Applications</u>	<u>Annual Hrly. Burden</u>	<u>Burden Hours</u>
AM New & Major	451	3 hours	1,353 hours
AM Minor Change	250	2 hours	500 hours
With AM Multiple			
Ownership Showings	275	4 hours	1,100 hours
AM Community of License			
Minor Change Applications	70	3 hours	210 hours
FM New & Major	288	3 hours	864 hours
FM Minor Change	1,200	2 hours	2,400 hours
With FM Multiple			
Ownership Showings	264	4 hours	1,056 hours
FM Community of License			
Minor Change Applications	50	3 hours	150 hours
TV Minor Change	200	2 hours	400 hours
DTV	1,210	2 hours	2,420 hours
With TV Multiple Ownership			
Showings	<u>20</u>	3 hours	<u>60 hours</u>
Totals:	4,278		10,513 hours
	(responses)		

Total Number of Responses: 4,278 FCC Form 301 Filings

Total Annual Burden Hours: 10,513 hours

We assume that the respondent would consult with an outside attorney and a consulting engineer to complete an FCC Form 301. The time spent in consultation with these attorneys and consulting engineer will vary depending upon the application type.

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We also estimate that the respondent would spend 2 hours in consultation with a consulting engineer in the preparation of a multiple ownership analysis in connection with an application, or a waiver of the multiple ownership rules and cross-ownership rules.

We estimate that the respondent would have an average salary of \$70,000/year (\$33.65/ hour)

<u>Services</u>	<u>Number of Applications</u>	<u>Respondent's Hrly. Burden</u>	<u>Hrly. Wage of Respondent</u>	<u>Annual In-House Cost</u>
AM New & Major	451	3 hours	\$33.65	\$45,528.45
AM Minor Change	250	2 hours	\$33.65	\$16,825.00
AM Ownership Showings	275	4 hours	\$33.65	\$37,015.00
AM Community of License Change	70	3 hours	\$33.65	\$ 7,066.50
FM New & Major	288	3 hours	\$33.65	\$29,073.60
FM Minor Change	1,200	2 hours	\$33.65	\$80,760.00
FM Ownership Showings	264	4 hours	\$33.65	\$35,534.40
FM Community of License Change	50	3 hours	\$33.65	\$ 5,047.50
TV Minor Change	200	2 hours	\$33.65	\$13,460.00
DTV	1,210	2 hours	\$33.65	\$81,433.00
TV Multiple Ownership Showings	20	3 hours	\$33.65	<u>\$ 2,019.00</u>
Total Annual "In House" Cost:				\$353,762.45

These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

13. We assume that the applicant would use an attorney (\$200/hour) and a consulting engineer (\$150/hour) to complete the FCC Form 301.

All applicants must complete Item 4 regarding the multiple ownership rules and cross-ownership rules, and submit at least a textual explanation in response.

We expect that the vast majority (90% or more) of applicants will need to submit a very brief narrative response explaining rule compliance, and such explanations will require insignificant amounts of additional attorney and engineering time. The remainder will need to submit an expansive "showing" of compliance under our rules, including a contour overlap study where applicable.

We estimate that applications that require expansive multiple ownership showings will require two additional hours of an engineer's time and ten additional hours of an attorney's time.

An AM, FM, or TV applicant must give local public notice of the filing of its application for a new station or for a major change in facilities. Additionally, in the *2005 Allocations NPRM*, the Commission proposed that AM and non-reserved band FM minor change applicants for changes of community of license be required to give local public notice. This notice must be published in a local newspaper of general circulation at least twice a week for two consecutive weeks in a three-week period. The cost of this publication is estimated to be \$113.25.

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<u>Services</u>	<u>Hrly. Wage of Consultant</u>	<u>Consultant's Hrly. Burden</u>	<u>Number of Applications</u>	<u>Annual Cost Burden</u>
<u>AM:</u>				
New & Major	\$200	6 hours	451	\$ 541,200
	\$150	89 hours	451	\$6,020,850
Minor Change	\$200	1 hour	250	\$ 50,000
	\$150	88 hours	250	\$3,300,000
Multiple Ownership Showings	\$200	16 hours	275	\$ 880,000
	\$150	91 hours	275	\$3,753,750
Community of License Change	\$200	7 hours	70	\$ 98,000
	\$150	90 hours	70	\$ 945,000
<u>FM:</u>				
New & Major	\$200	6 hours	288	\$ 345,600
	\$150	70 hours	288	\$3,024,000
Minor Change	\$200	1 hour	1,200	\$ 240,000
	\$150	69 hours	1,200	\$12,420,000
Multiple Ownership Showings	\$200	26 hours	264	\$1,372,800
	\$150	72 hours	264	\$2,851,200
Community of License Change	\$200	1 hour	50	\$ 10,000
	\$150	70 hours	50	\$ 525,000
<u>TV:</u>				
Minor Change	\$200	1 hour	200	\$ 40,000
	\$150	45 hours	200	\$1,350,000
<u>DTV:</u>				
	\$200	1 hour	1,210	\$ 242,000
	\$150	34 hours	1,210	\$6,171,000
Multiple Ownership Showings	\$200	11 hours	20	\$ 44,000
	\$150	47 hours	20	\$ 141,000
Total AM/FM TV and DTV:				\$44,365,400

<u>Fees:</u>	<u>Number of Applications</u>	<u>Fee Cost</u>	<u>Total Fee Cost</u>
AM New & Major	451	\$3,310	\$1,492,810
AM Minor Change	250	\$ 830	\$ 207,500
AM Multiple			

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Ownership Showings	275	\$3,310	\$ 910,250
AM Community of License Change	70	\$ 830	\$ 58,100
FM New & Major	288	\$2,980	\$ 858,240
FM Minor Change	1,200	\$ 830	\$ 996,000
FM Multiple Ownership Showings	264	\$2,980	\$ 786,720
FM Community of License Change	50	\$ 830	\$ 41,500
TV Minor Change	200	\$ 830	\$ 166,000
DTV	1,210	\$ 830	\$ 1,004,300
TV Multiple Ownership Showings	20	\$3,720	\$ 74,400
		Fee Total:	\$6,595,820

859¹⁸ new/major/community of license change applications x 4 x \$113.25 = **\$389,127** in publication costs

Annual Cost Burden: \$44,365,400 + 6,595,820 + \$389,127 = **\$51,350,347**

14. The Commission will use legal and engineering staff at the GS-14/Step 5 level (\$50.95/hour), paraprofessional staff at the GS-11/Step 5 level (\$30.25/hour), and clerical staff at the GS-5 level/Step 5 level (\$16.50/hour) to process these applications.

New & Major Change AM/FM/TV Applications = 739¹⁹

739 applications x \$50.95/hour x 40 hours =	\$1,506,082.00
739 applications x \$50.95/hour x 20 hours =	\$ 753,041.00
739 applications x \$30.25/hour x 1 hour =	\$ 22,354.75
739 applications x \$16.50/hour x 2 hours =	<u>\$ 24,387.00</u>
	\$2,305,864.75

Minor AM Applications = 250
 AM Multiple Ownership Showings = 275
 AM Community of License Change Minor Applications = 70

¹⁸ This number was calculated as follows: 451 AM New & Major Applications + 288 FM New & Major Applications + 70 AM Community of License Change Applications + 50 FM Community of License Change Applications = 859 Applications.

¹⁹ This number was calculated as follows: 451 AM New & Major Applications + 288 FM New & Major Applications = 739 Applications.

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(No GS-14 Step-5 legal review required)	
595 applications x \$50.95/hour x 30 hours =	\$909,457.50
(No GS-11 Step-5 paraprofessional review required)	
595 applications x \$16.50/hour x 2 hours =	<u>\$ 19,635.00</u>
	\$929,092.50

Minor FM Applications = 1,200
 FM Multiple Ownership Showings = 264
 FM Community of License Change Minor Applications = 50

(No GS-14 Step 5 legal review required)	
1,514 applications x \$50.95/hour x 20 hours =	\$1,542,766.00
(No GS-11 Step 5 paraprofessional review required)	
1,514 applications x \$16.50/hour x 2 hours =	<u>\$ 49,962.00</u>
	\$1,592,728.00

Minor TV Applications = 200
 DTV Applications = 1210
 DTV Multiple Ownership Showings = 20

(No GS-14 Step 5 legal review required)	
1430 applications x \$50.95/hour x 20 hours =	\$1,457,170.00
1430 applications x \$30.25/hour x 6 hours =	\$ 259,545.00
1430 applications x \$16.50/hour x 2 hours =	<u>\$ 47,190.00</u>
	\$1,763,905.00

Total Cost to the Federal Government: \$6,591,590.25

15. There are no program changes or adjustments to this information collection.

16. The data will not be published.

17. We request extension of the waiver not to publish the expiration date on the form. This will obviate the need for the Commission to update electronic forms upon the expiration of the clearance. OMB approval of the expiration date of the information collection will be displayed at 47 CFR § 0.408.

18. The Commission published a Federal Register Notice (73 FR 6504) on February 4, 2008 seeking public comment for the information collection requirements contained in this supporting statement. The estimated time per response was published as 2- 4 hours. The Commission corrects that estimate to read 1 – 4 hours. There are no exceptions to the Certification Statement in Item 19 of the OMB Form 83-I.

B. Collections of Information Employing Statistical Methods

This information collection does not employ any statistical methods.