

Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315; Section 73.3580, Local Public Notice of Filing of Broadcast Applications

SUPPORTING STATEMENT

Description of Information Collection:

A. Justification

1. **Circumstances Necessitating Change to Information Collection:** This submission is being made as a revision to an existing information collection pursuant to 44 U.S.C. § 3507. This submission contains revised FCC Forms 314 and 315 and their accompanying instructions and worksheets and revised section 47 CFR § 73.3555.

FCC Form 314 and the applicable exhibits/explanations are required to be filed when applying for consent for assignment of an AM, FM, LPFM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved assignment of a broadcast station construction permit or license has been consummated.

FCC Form 315 and applicable exhibits/explanations are required to be filed when applying for transfer of control of an entity holding an AM, FM, LPFM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated. Due to the similarities in the information collected by these two forms, OMB has assigned both forms OMB Control Number 3060-0031.

47 CFR Section 73.3580 requires local public notice in a newspaper of general circulation of the filing of all applications for transfer of control of license/permit. 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. Additionally, an applicant for transfer of control of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

Revised Information Collection Requirements Which Need OMB Approval:

LPFM: The Instructions to FCC Forms 314 and 315 have been revised to reflect the new ownership limits adopted in the *Third Report and Order and Second Notice of Proposed Rulemaking, Creation of a Low Power Radio Service*, FCC 07-204, MM Docket No. 99-25 (released Dec. 11, 2007), namely, that an entity may own only one LPFM station. By amending the Rules to permanently limit LPFM eligibility, the Commission is protecting the public interest in localism and fostering greater diversity of programming from community sources. Forms 314 and 315 have also been revised to reflect the three-year holding period of an LPFM license, as adopted in the *Third Report and Order*, during which a licensee cannot transfer or assign a license, and must operate the station. That restriction will prevent entities from using the LPFM assignment and transfer process to undermine the Commission's LPFM policies and will ensure that the benefits to the public which were the basis for the license grant will be realized.

Media Ownership: On December 18, 2007, the Commission adopted a *Report and Order and Order on Reconsideration, 2006 Quadrennial Regulatory Review of the Commission's Broadcast*

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Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, FCC 07-216, MB Docket Nos. 06-121, 02-277, 04-228, MM Docket Nos. 01-235, 01-317, 00-244 and 99-360. Section 202 requires the Commission to review its broadcast ownership rules every four years and determine whether any of such rules are necessary in the public interest. Further, Section 202 requires the Commission to repeal or modify any regulation it determines to be no longer in the public interest.

Consistent with actions taken by the Commission in the 2006 Quadrennial Regulatory Review, the following changes are made to Forms 314 and 315: The instructions to Forms 314 and 315 have been revised to include a reference to the 2006 Quadrennial Regulatory Review as a source of information regarding the Commission's multiple ownership attribution policies and standards. The language in Section A, IV of Worksheet #3 in Forms 314 and 315 is revised. This worksheet is used in connection with Section III, Item 6b of Form 314 and Section IV, Item 8b of Form 315 to determine the applicant's compliance with the Commission's multiple ownership rules and cross-ownership rules set forth in 47 C.F.R. § 73.3555. The revisions to the worksheet account for changes made by the Commission in the 2006 Quadrennial Review to 47 C.F.R. § 73.3555(d), the Daily Newspaper Cross-Ownership Rule. The revised rule changes the circumstances under which an entity may own a daily newspaper and a radio station or television station in the same designated market area. In Section B of Worksheet # 3 of Form 314, the description of a "Daily Newspaper" is changed to comport to the definition of "Newspaper" contained in 47 C.F.R. § 73.3555(c)(3)(iii) that the Commission revised in the 2006 Quadrennial Regulatory Review. In Section B of Worksheet # 3 of Form 315, language from 47 C.F.R. § 73.3555(d) is added to assist applicants in their determination of compliance with the Daily Newspaper Cross-Ownership Rule.

Therefore, 47 CFR 73.3555(d) states:

(1) No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in:

- (i) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with §73.183 or §73.186, encompassing the entire community in which such newspaper is published;
- or (ii) The predicted 1 mV/m contour for an FM station, computed in accordance with §73.313, encompassing the entire community in which such newspaper is published; or (iii) The Grade A contour of a TV station, computed in accordance with §73.684, encompassing the entire community in which such newspaper is published.

(2) Paragraph (d)(1) of this section shall not apply in cases where the Commission makes a finding pursuant to Section 310(d) of the Communications Act that the public interest, convenience, and necessity would be served by permitting an entity that owns, operates or controls a daily newspaper to own, operate or control an AM, FM, or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (d)(1) of this section.

(3) In making a finding under paragraph (d)(2) of this section, there shall be a presumption that it is not inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper in a top 20 Nielsen DMA and one commercial AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published

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as set forth in paragraph (d)(1) of this section, provided that, with respect to a combination including a commercial TV station,

(i) The station is not ranked among the top four TV stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and (ii) At least 8 independently owned and operating major media voices would remain in the DMA in which the community of license of the TV station in question is located (for purposes of this provision major media voices include full-power TV broadcast stations and major newspapers).

(4) In making a finding under paragraph (d)(2) of this section, there shall be a presumption that it is inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper and an AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (d)(1) of this section in a DMA other than the top 20 Nielsen DMAs or in any circumstance not covered under paragraph (d)(3) of this section.

(5) In making a finding under paragraph (d)(2) of this section, the Commission shall consider:

(i) Whether the combined entity will significantly increase the amount of local news in the market; (ii) Whether the newspaper and the broadcast outlets each will continue to employ its own staff and each will exercise its own independent news judgment; (iii) The level of concentration in the Nielsen Designated Market Area (DMA); and (iv) The financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the proposed owner's commitment to invest significantly in newsroom operations.

(6) In order to overcome the negative presumption set forth in paragraph (d)(4) of this section with respect to the combination of a major newspaper and a television station, the applicant must show¹ by clear and convincing evidence that the co-owned major newspaper and station will increase the diversity of independent news outlets and increase competition among independent news sources in the market, and the factors set forth above in paragraph (d)(5) of this section will inform this decision.

(7) The negative presumption set forth in paragraph (d)(4) of this section shall be reversed under the following two circumstances:

(i) The newspaper or broadcast station is failed or failing; or (ii) The combination is with a broadcast station that was not offering local newscasts prior to the combination, and the station will initiate at least seven hours per week of local news programming after the combination.

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), 303 and 308 of the Communications Act of 1934, as amended.

2. Agency Use of Information: 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

¹ These showings are done via waiver showings/filings with the Commission.

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interest would be served by grant of the application.

3. **Consideration Given to Information Technology:** The Commission requires applicants to file FCC Forms 314 and 315 electronically.

4. **Effort to Identify Duplication and Similar Information:** This agency does not impose a similar information collection on the respondents. There are no similar data available.

5. **Effort to Reduce Small Business Burden:** In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents. Therefore, this information collection will not have a significant economic impact on a substantial number of small entities.

6. **Less Frequent Data Collections:** The frequency for this collection of information is determined by respondents, as necessary.

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

8. **Consultations with Persons outside the FCC:** Opportunity for public comment on this information collection requirement has been published in the *Federal Register* at 73 FR 15157, March 21, 2008.

9. **Payment or Gift:** No payment or gift was provided to respondents.

10. **Confidentiality of Information:** There is no need for confidentiality with this information collection.

11. **Justification for Sensitive Questions:** This information collection does not address any private matters of a sensitive nature.

12. **Estimate of Burden and Burden Hour Cost:** The following estimates are provided for public burden for this information collection:

<u>Services/Rule Sections</u>	<u>Number of Applications</u>	<u>Respondent's Hrly. Burden</u>	<u>Annual Burden Hours</u>
Single AM/FM/TV	920	1 hour	920

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LPFM Transactions	30	1 hour	30
LPFM Transactions	30	5 hours (<i>Revised</i>)	150
Multiple Station Transactions	2,880	3 hours (<i>Revised</i>)	8,640
Pending Applications	600	2 hours	1,200
Waivers	50	3 hours (<i>Revised</i>)	150
Sec. 73.3580(c) newspaper notice	3,850	1 hour	3,850
Sec. 73.3580(d) broadcast notice	<u>3,850</u>	1 hour	<u>3,850</u>
TOTALS:	12,210		18,790²
	Responses		Hours

Total Number of Annual Respondents: 4,510 Licensees/Permittees

Total Number of Annual Responses: 12,210 responses

Total Annual Burden Hours: 18,790 hours

The total annual burden hours were arrived based on the following data:

*We assume that the respondents would consult with an attorney to complete FCC Forms 314 and 315 applications for a single AM/FM/TV station. The consultations and review of the applications will take the respondent 1 hour per application.

* We assume that 50% of the respondents for LPFM stations (30 respondents) will consult with an attorney to complete an FCC Forms 314 and 315 applications. We estimate that these respondents will spend 1 hour in consultation with an attorney and in the review of the application.

*We also assume that 50% of the respondents for LPFM stations (30 respondents) will prepare the application themselves. We estimate that these respondents will spend 5 hours preparing the application.

*We also estimate that the respondent will spend 1 hour in consultation with an attorney and 1 hour in consultation with a consulting engineer for a total of 3 hours each for the preparation of a multiple ownership analysis in connection with a multiple station transaction, in the preparation to amend a pending application, or the preparation of a waiver of the multiple ownership rules and cross-ownership rules.

*We also estimate that the respondent will spend ½ an hour in consultation with an attorney and ½ an hour an consulting engineer for a total of 1 hour in the preparation of newspaper notices.

*We estimate that it will take the respondent 1 hour to compile data and give notice to the public of the filing of a renewal application by broadcasting the announcement over the air.

*We estimate that the respondent would have an average salary of \$100,000/year (\$48.08/ hour)

Annual “In-house” Cost:

² The additional burden hours that have been added to this information collection is due to extra time that is needed for the respondent to complete FCC Forms 314 and 315 and also to attach waiver showings/filings to the forms.

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<u>Services/Rule Sections</u>	<u>Number of Applications</u>	<u>Respondent's Hrly. Burden</u>	<u>Respondent's Hrly. Wage</u>	<u>Annual "In-House Cost"</u>
Single AM/FM/TV	920	1 hour	\$48.08	\$ 44,233.60
LPFM Transactions	30	1 hour	\$48.08	\$ 1,442.40
LPFM Transactions	30	5 hours	\$48.08	\$ 7,212.00
Multiple Station Transactions	2,880	3 hours	\$48.08	\$415,411.20
Pending Applications	600	2 hours	\$48.08	\$ 57,696.00
Waivers	50	3 hours	\$48.08	\$ 7,212.00
§73.3580(c) newspaper notice	3,850	1 hour	\$48.08	\$185,108.00
§73.3580(d) broadcast notice	3,850	1 hour	\$48.08	\$185,108.00
Total Annual In-House Cost:				\$903,423.20

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

13. **Annual Cost Burden:** We assume that the respondents would use an attorney to prepare and file an application for a single station. We also assume that the respondents would use an attorney and an engineer to prepare and file applications for multiple station transactions, amendments to pending applications, or applications with waivers.

*We estimate that an application for assignment of a single AM/FM/TV station will take an attorney an average of 12 hours per application. We estimate that an application for assignment of an LPFM station will take an attorney an average of 3 hours per application. An assignment of multiple AM/FM/TV stations will now take an attorney an average of 44 hours per application.

*Of the assignment of multiple AM/FM stations, applicants will demonstrate compliance with the rule in each Arbitron Metro.³ Stations not within an Arbitron Metro demonstrate compliance by using the interim contour methodology.⁴ We estimate that 60% of applications with multiple station transactions will take an engineer an average of 1 hour to determine the number of full-power radio stations in an Arbitron Metro market, as reported by the consulting firm of BIA. The other 40% will take 3 hours of an engineer's time to prepare a contour-overlap map.

*We estimate that an application with a waiver of the new multiple ownership rules and cross-media limits will take an attorney an average of 45 hours per application and an engineer an average of 3 hours.

³ Arbitron Metro Survey Areas generally correspond to the federal government's Metropolitan Areas. A Metropolitan Area includes a city (or cities) whose population is specified as that of the central city together with the county or counties in which it is located. Metropolitan Areas may also include additional or contiguous counties when their economic and social relationships meet the criteria specified for metropolitan integration. Commuting, population density, urbanization and other data supplied by the U.S. Bureau of the Census are used to define Metropolitan Areas. A Metropolitan Area may cross state lines.

⁴ The contour-overlap method define the total number of stations existing in the "market" as (i) the stations owned by the entity and (ii) all other stations whose city-grade contours overlapped any part of any of the contours of the stations owned by the entity.

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* We estimate that it will take an attorney 1 hour to file amendments to pending applications and an engineer 2 hours to prepare the data that will be used to amend pending applications.

*An applicant must also submit a fee (\$830/station) with the filing of a new application. Additionally, an applicant must give local public notice of the filing of its application for an assignment of license/permit using a specific text for publication in a local newspaper as proposed in the 2005 NPRM.

*Also, the 2005 NPRM proposed that non-commercial educational (“NCE”) stations and stations that are the only operating station in their broadcast service in their community of license be required to give local public notice in a newspaper of the filing of applications for an assignment of license/permit. 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/publication.

*Broadcast notices require a broadcast station licensee to give notice of the filing of a renewal application by broadcasting announcements on the broadcaster’s station.

*We estimate that the average cost for an attorney is \$200/hour and the average cost for a consulting engineer is \$150/hour.

920 single AM/FM/TV applications x \$200/hour x 12 hours =	\$ 2,208,000
30 LPFM applications (50% of the Applications) x \$200/hour x 3 hours =	\$ 18,000
2,880 multiple AM/FM/TV applications x \$200/hour x 44 hours =	\$25,344,000
600 pending applications x \$200/hour x 1 hour =	\$ 120,000
50 waiver applications x \$200/hour x 45 hours =	<u>\$ 450,000</u>
Annual Cost Burden (Attorney):	\$28,020,120

(Single applications and LPFM applications do not require engineering consultations).	
1,728 multiple AM/FM/TV applications x \$150/hour x 1 hour =	\$259,200
1,152 multiple AM/FM/TV applications x \$150/hour x 3 hours =	\$518,400
600 pending applications x \$150/hour x 2 hours =	\$180,000
50 waiver applications x \$150/hour x 3 hours =	<u>\$ 22,500</u>
Annual Cost Burden (Engineer):	\$980,100

(There is no fee required for pending applications).	
920 single applications x \$830 filing fee/station =	\$ 763,600
60 LPFM applications x \$830 filing fee/station =	\$ 49,800
2,880 multiple AM/FM/TV applications x \$830 filing fee/station =	\$2,390,400
50 waivers x \$830 filing fee/station =	\$ 41,500
3,850 ⁵ newspaper notices x 4 publications x \$113.25/publication =	<u>\$1,744,050</u>
Annual Cost Burden (Fees):	\$4,989,350

⁵ The Commission arrived at the numbers of 3,850 newspaper notices and 3,850 broadcast announcements/notices based on the total number of applications that will need a notice filed in the newspaper and broadcasted over the air. All applications in this information collection need notices published in the newspaper and notices broadcasted over the air except Low Power FM Transactions (LPFM) applications.

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Total Annual Cost Burden: \$28,020,120 + \$980,100 + \$4,989,350 = **\$33,989,570**

14. **Cost to Federal Government:** The Commission will use professional staff at the GS-14/Step 5 level (\$53.24/hour), paraprofessional staff at the GS-11/Step 5 level (\$31.61/hour) and clerical staff at the GS-5/Step 5 level (\$17.24/hour) to process these applications.

Single AM/FM/TV applications:

(No GS-14/Step 5 review is required)

920 applications x \$31.61/hour x 1 hour = \$29,081.20

920 applications x \$17.24/hour x 0.5 hour = \$ 7,930.40
\$37,011.60

Single LPFM applications:

60 applications x \$31.61/hour x 1 hour = \$ 1,896.60

Multiple Station applications:

2,880 applications x \$53.24/hour x 40 hours = \$6,133,248.00

2,880 applications x \$31.61/hour x 1 hour = \$ 91,036.80

2,880 applications x \$17.24/hour x 0.5 hours = \$ 24,825.60
\$6,249,110.40

Pending Applications:

600 applications x \$53.24/hour x 40 hours = \$1,277,760.00

600 applications x \$31.61/hour x 1 hour = \$ 18,966.00

600 applications x \$17.24/hour x 0.5 hours = \$ 5,172.00
\$1,301,898.00

Waivers:

50 applications x \$53.24/hour x 40 hours = \$106,480.00

50 applications x \$31.61/hour x 1 hour = \$ 1,580.50

50 applications x \$17.24/hour x 0.5 hours = \$ 431.00
\$108,491.50

Total Cost to the Federal Government: \$7,698,408.10

15. **Reason for Changes in Burden or Cost:** We have a decrease in the annual burden hours and annual costs as a result of the Commission's action in the *Second Order on Reconsideration and Further Notice of Proposed Rulemaking*, Creation of a Low Power Radio Service, MB Docket No. 99-25, FCC. The Commission decreased the amount of time required for LPFM transactions due to revisions to the form which now makes it easier understood by the public. The Commission made this a main focus point when revising the Forms for LPFM transitions.

There was a increase in the total annual burden hours and annual cost for this information due to form revisions and information collection requirements contained in FCC 07-216, *2006 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules to Section 202 of the Telecommunications Act of 1996*.

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16. **Plans for Publication:** The data will not be published.

17. **Display of OMB Approval Date:** 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. **Exceptions to the Certification Statement:** The Commission published a Federal Register Notice on March 21, 2008 (73 FR 15157). The Notice stated the total annual burden hours 15,860 hours and total annual cost burden as \$33,343,150. We correct those figures to read 18,790 hours and \$33,989,570. Lastly, the total number of responses is 12,210 instead of 4,510 as stated in the Notice. There are no other 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.