

## SUPPORTING STATEMENT

### A. Justification:

1. The Commission auctions mutually exclusive applications<sup>1</sup> for full power commercial AM and FM radio, television services, Instructional Television Fixed Services (ITFS),<sup>2</sup> and all secondary commercial broadcast services (*e.g.*, Low Power TV (LPTV), FM translators and television translators). The Commission requires the use of the FCC Form 175 (OMB Control Number 3060-0600) to participate in all broadcast auctions.<sup>3</sup> Applicants are also required to submit certain exhibits which are covered in this information collection as discussed below.

To facilitate the identification of groups of mutually exclusive applicants for non-table services which include the AM radio, LPTV, and TV/FM translator services, the Commission requires applicants to **submit the engineering portions** of the pertinent long-form application (FCC Form 301 (OMB Control Number 3060-0027), FCC Form 346 (OMB Control Number 3060-0016), or FCC Form 349 (OMB Control Number 3060-0405) ) necessary to determine mutual exclusivity.<sup>4</sup> In instances where analog television licensees file major modification applications, the Commission requires that such applicants also **file the engineering data**. These applicants are required to file the electronic versions of FCC Forms 301, 346 or 349.

Supplemental engineering data would be unnecessary for FM and TV applicants, who would file only the FCC Form 175 for vacant allotments<sup>5</sup> specified in a public notice announcing the opening of an auction filing window. Applications specifying the same FM or TV vacant allotment would be mutually exclusive, and no supplemental engineering data would be necessary to make this determination. However, applicants for the FM service can **include a set of preferred site coordinates** on the FCC Form 175 as an alternative to the reference coordinates for the vacant FM allotment on which they intend to bid. Applicants are not required to submit these coordinates. However, if applicants choose to supplement the FCC Form 175, the preferred site coordinates will be protected at that site from subsequently filed applications. The Commission will issue a public notice announcing those applicants that are not mutually exclusive and the date for filing the appropriate long-form application.

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<sup>1</sup> 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.

<sup>2</sup> ITFS is a point-to-point or point-to-multipoint microwave service whose channels are allocated to educational organizations and are used primarily for the transmission on instructional, cultural, or other types of educational material. See 47 C.F.R. § 74.931.

<sup>3</sup> The Balanced Budget Act of 1997 expanded the Commission's auction authority under Section 309(j) of the Communications Act of 1934, by adding provisions governing auctions for broadcast services.

<sup>4</sup> See footnote 1. Applications to participate in an auction are filed during Commission-designated filing windows.

<sup>5</sup> Vacant allotments refer to channels assigned to the Table of Allotments, 47 C.F.R. § § 73.202 and 73.606, designated for use in the indicated communities.

To enhance participation by small businesses and other designated entities, including small businesses owned by women and minority group members, the Commission utilizes a tiered new entrant bidding credit<sup>6</sup> for entities with either no, or less than four, other media interests. Applicants who claim the new entrant bidding credit are required to **demonstrate eligibility for this designated entity status, and disclose the applicant's other media of mass communication.**<sup>7</sup>

Each applicant must also fully disclose the real party or parties in interest and ownership structure of the bidding entity in accordance with 47 CFR § 1.2112. If applicable, the applicant is required to **identify the parties involved in any bidding consortia or joint bidding agreements.**

**Circumstances Necessitating Change to the Information Collection:** This submission is being made as a revision to an existing information collection pursuant to 44 USC § 3507. This submission contains revised information submitted by applicants demonstrating their eligibility for the broadcast new entrant bidding credit. On December 18, 2007, the Commission adopted a Report and Order and Third Further Notice of Proposed Rulemaking (“the Diversity Order”) in MB Docket Nos. 07-294; 06-121; 02-277; 04-228, MM Docket Nos. 01-235; 01-317; 00-244; FCC 07-217, which expands opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority and women-owned businesses.

Currently, the media interests held by an individual or company with an equity and/or debt interest in an auction applicant are attributed to that applicant, for purposes of determining its eligibility for the new entrant bidding credit, if the equity and debt interests exceed 33 percent of the total asset value of the applicant. In order to make it easier for small businesses and new entrants to acquire broadcast licenses, and acquire the capital to compete in the marketplace with better financed companies, in the Diversity Order the Commission relaxed the rule standard, so to allow for higher investment opportunities in entities meeting the definition of “eligible entities.” An “eligible entity” is defined as an entity that would qualify as a small business consistent with the Small Business Administration (“SBA”) standards for its industry grouping, based on revenue.<sup>8</sup>

Pursuant to the Diversity Order, the Commission will now allow the holder of an equity or debt interest in the applicant to exceed the above-noted 33 percent threshold without triggering attribution provided: (1) the combined equity or debt in the “eligible entity” is less than 50

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<sup>6</sup> A bidding credit is a percentage discount applied to the high bid if the bidder meets criteria established in the broadcast auction rules.

<sup>7</sup> As defined by 47 CFR § 73.5008, a medium of mass communications means a daily newspaper; a cable television system; or a license or a construction permit for a television broadcast station, an AM or FM broadcast station, a direct broadcast satellite transponder or a multipoint distribution service station.

<sup>8</sup> At present, the SBA defines as a “small business” a television broadcasting station that has no more than \$13 million in annual receipts and a radio broadcasting entity that has no more than \$6.5 million in annual receipts.

percent, or (2) the total debt in the “eligible entity” does not exceed 80 percent and the interest holder does not hold any option to acquire an additional interest in the “eligible entity.”

**Revised Information Collection Requirements:** Consistent with actions taken by the Commission in the Diversity Order, a new question has been added to the new entrant bidding credit section of the broadcast auction application form. It simply requires applicants to make explicit any claim that they are “eligible entities,” as a basis for claiming a bidding credit. The question states: “Does the applicant claim to be an ‘eligible entity’ as defined in 47 CFR § 73.5008(c), for purposes of claiming eligibility for the new entrant bidding credit?” Additional information showing proof of compliance is not required at the pre-auction application stage. **The revision to the new entrant bidding credit eligibility section of the broadcast auction application needs OMB approval.** The Commission also foresees a new universe of respondents to the collection – those broadcast auction applicants claiming eligibility for the new entrant bidding credit based on their status as an “eligible entity.”

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) and 309 of the Communications Act of 1934, as amended.

**2. Agency Use of Information.** Ownership information is designed to ensure that applicants are qualified to participate in Commission auctions and to ensure that winning bidders are entitled to receive the new entrant bidding credit, if applicable. Joint bidding agreement information is designed to prevent collusion. Submission of engineering data for non-table services enables the Commission to determine which applications are mutually exclusive, and thus subject to auction.

**3. Consideration Given to Information Technology.** These information collections will be filed as exhibits to the FCC Form 175 (OMB Control Number 3060-0600) prior to the beginning of the auction. Auction participants will file the FCC Form 175 and exhibits electronically. The Commission has developed an electronic filing system for broadcast auction applications based on the data and other information contained in the forms.

**4. Effort to Identify Duplication and Use Similar Information.** This agency does not impose a similar information collection on the respondents. There is 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. The Commission has limited the information requirements to that which is absolutely necessary for evaluating and processing the application and to deter possible abuses of the processes.

Therefore, this information collection does not have a significant economic impact on a substantial number of small entities/businesses.

**6. Less Frequent Data Collection.** The respondents will determine whether to participate in competitive bidding. 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 the information collection requirements contained in this supporting statement was published in the Federal Register on August 28, 2008 (*see* 73 FR 50813).

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

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

**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:

| <u>Service</u>                      | <u>Annual Number of Responses</u> | <u>Respondent's Burden Hrs.</u> | <u>Total Annual Burden Hrs.</u> | <u>Hrly. In-House Cost</u> | <u>Total In-House Cost</u> |
|-------------------------------------|-----------------------------------|---------------------------------|---------------------------------|----------------------------|----------------------------|
| Ownership Information Exhibits      | 3,000                             | 0.5 hours                       | 1,500 hrs.                      | \$48.08                    | \$ 72,120.00               |
| New Entrant Bidding Credit Exhibits | 2,000 <sup>9</sup>                | 1.0 hours <sup>10</sup>         | 2,000 hrs. <sup>11</sup>        | \$48.08                    | \$ 96,160.00               |
| Bidding Consortia Exhibits          | 55                                | 0.5 hours                       | 28 hrs.                         | \$48.08                    | \$ 1,346.24                |

<sup>9</sup> FCC 07-217 adds an additional 500 responses to this information collection.

<sup>10</sup> Due to the Commission adopting FCC 07-217 an additional hourly burden of 0.5 hours was added to this information collection.

<sup>11</sup> FCC 07-217 adds an additional 1,250 burden hours to this information collection.

**OMB Control Number: 3060-0896**  
**Title: Broadcast Auction Form Exhibits**

**October 2008**

|                       |                    |         |                   |         |                     |
|-----------------------|--------------------|---------|-------------------|---------|---------------------|
| Engineering Exhibits  |                    |         |                   |         |                     |
| FM Site Coordinates   | 250                | 2 hours | 500 hrs.          | \$48.08 | \$ 24,040.00        |
| AM Engineering        | 300                | 2 hours | 600 hrs.          | \$48.08 | \$ 28,848.00        |
| FM Trans. Engineering | <u>2,000</u>       | 2 hours | <u>4,000 hrs.</u> | \$48.08 | <u>\$192,320.00</u> |
| <b>Totals:</b>        | <b>7,605</b>       |         | <b>8,628 hrs.</b> |         | <b>\$414,834.24</b> |
|                       | <b>(responses)</b> |         | <b>(Burden)</b>   |         |                     |

**Total Annual Number of Respondents: 3,500 Applicants<sup>12</sup>**

**Total Number of Responses: 7,605 Exhibits**

**Total Annual Burden Hours: 8,628 hrs.**

**Total Annual “In-house” Cost: \$414,834.24**

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 average respondent would contract with consulting engineers (\$150/hour) and attorneys in a law firm (\$200/hour) to complete their exhibit applications.

| <b>Service</b>                      | <b>Annual Number of Responses</b> | <b>Consultant’s Burden Hrs.</b> | <b>Annual Consultant’s Burden Hrs.</b> | <b>Hrly. Cost</b> | <b>Total Cost</b>        |
|-------------------------------------|-----------------------------------|---------------------------------|--|-------------------|--------------------------|
| Ownership Information Exhibits      | 3,000                             | 0.5 hours                       | 1,500 hrs.                             | \$200             | \$ 300,000               |
| New Entrant Bidding Credit Exhibits | 2,000                             | 1.0 hours                       | 2,000 hrs.                             | \$200             | \$ 400,000 <sup>13</sup> |
| Bidding Consortia Exhibits          | 55                                | 0.5 hours                       | 28 hrs.                                | \$200             | \$ 5,600                 |
| Engineering Exhibits                |                                   |                                 |  |                   |                          |
| FM Site Coordinates                 | 250                               | 1 hour                          | 250 hrs.                               | \$200             | \$ 50,000                |
| FM Site Coordinates                 | 250                               | 69 hours                        | 17,250 hrs.                            | \$150             | \$2,587,500              |
| AM Engineering                      | 300                               | 1 hour                          | 300 hrs.                               | \$200             | \$ 60,000                |

<sup>12</sup> FCC 07-217 adds an additional 500 new universe of respondents to this information collection, broadcast auction applicants claiming eligibility for the new entrant bidding credit based on their status as an “eligible entity.”

<sup>13</sup> FCC 07-217 adds an additional cost burden of \$250,100 to this information collection.

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|                                   |       |          |             |       |                     |
|-----------------------------------|-------|----------|-------------|-------|---------------------|
| AM Engineering                    | 300   | 88 hours | 26,400 hrs. | \$150 | \$3,960,000         |
| FM Trans. Engineering             | 2,000 | 1 hour   | 2,000 hrs.  | \$200 | \$ 400,000          |
| FM Trans. Engineering             | 2,000 | 8 hours  | 16,000 hrs. | \$150 | <u>\$2,400,000</u>  |
| <b>Totals Annual Cost Burden:</b> |       |          |             |       | <b>\$10,163,100</b> |

**14. Cost to the Federal Government.** The Commission will use professionals at the GS-14 level step 5 grade level (\$53.24/hour) to process these exhibits.

| <u>Service</u>                                       | <u>Annual Number of Responses</u> | <u>Federal Gov't Burden Hrs.</u> | <u>Total Annual Burden Hrs.</u> | <u>Hrly. Cost</u> | <u>Total Cost</u>   |
|--|-----------------------------------|----------------------------------|---------------------------------|-------------------|---------------------|
| Ownership Information Exhibits                       | 3,000                             | 1 hour                           | 3,000 hrs.                      | \$53.24           | \$159,720.00        |
| New Entrant Bidding Credit Exhibits                  | 2,000                             | 1 hour                           | 2,000 hrs.                      | \$53.24           | \$106,480.00        |
| Bidding Consortia Exhibits                           | 55                                | 1 hour                           | 55 hrs.                         | \$53.24           | \$ 2,928.20         |
| Engineering Exhibits                                 |                                   |                                  |                                 |                   |                     |
| FM Site Coordinates                                  | 250                               | 0.5 hours                        | 125 hrs.                        | \$53.24           | \$ 6,655.00         |
| AM Engineering                                       | 300                               | 0.5 hours                        | 150 hrs.                        | \$53.24           | \$ 7,986.00         |
| FM Trans Engineering                                 | 2,000                             | 0.5 hours                        | 1,000 hrs.                      | \$53.24           | <u>\$ 53,240.00</u> |
| <b>Totals Annual Cost To the Federal Government:</b> |                                   |                                  |                                 |                   | <b>\$337,009.20</b> |

**15. Reason for Changes in Burden or Cost.** The Commission has program changes to the annual burden hours and cost burdens due to the Commission adopting the Diversity Order, FCC 07-217. A new question has been added to the new entrant bidding credit section of the broadcast auction application form, requiring applicants to make explicit any claim that they are “eligible entities,” as a basis for claiming a bidding credit. This change reflects an increase by .5 hours for applicants and/or their attorneys to assess whether they may claim “eligible entity” status in applying for the broadcast new entrant bidding credit. In addition, there are increases in the projected number of annual respondents and responses, these increases are due to the new universe of respondents to the collection – those broadcast auction applicants claiming eligibility for the new entrant bidding credit based on their status as an “eligible entity.” Therefore, these revisions to the information collection resulted in a program change of +1,250 hours and + \$250,100 annual cost burden.

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

**17. Display of OMB Approval Date.** OMB approval of the expiration date of the information

collection will be displayed at 47 C.F.R. Section 0.408.

**18. Exceptions to the Certification Statement.** The Commission published a Federal Register Notice on August 28, 2008 (*see* 73 FR 50813) seeking public comment for the information collections contained in this supporting statement. The number of respondents was published in the Notice as 3,000. The Commission corrects that number to read “3,500” respondents. There are not other exceptions to the Certification Statement.

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

This information collection does not employ any statistical methods.