

SUPPORTING STATEMENT

A. Justification:

1. 47 CFR Section 73.3525 states (a) except as provided in §73.3523 regarding dismissal of applications in comparative renewal proceedings, whenever applicants for a construction permit for a broadcast station enter into an agreement to procure the removal of a conflict between applications pending before the FCC by withdrawal or amendment of an application or by its dismissal pursuant to §73.3568, all parties thereto shall, within 5 days after entering into the agreement, file with the FCC a joint request for approval of such agreement. The joint request shall be accompanied by a copy of the agreement, including any ancillary agreements, and an affidavit of each party to the agreement setting forth:

- (1) The reasons why it is considered that such agreement is in the public interest;
- (2) A statement that its application was not filed for the purpose of reaching or carrying out such agreement;
- (3) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant; *Provided That this provision shall not apply to bona fide merger agreements;*
- (4) The exact nature and amount of any consideration paid or promised;
- (5) An itemized accounting of the expenses for which it seeks reimbursement; and
- (6) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

(b) Whenever two or more conflicting applications for construction permits for broadcast stations pending before the FCC involve a determination of fair, efficient and equitable distribution of service pursuant to section 307(b) of the Communications Act, and an agreement is made to procure the withdrawal (by amendment to specify a different community or by dismissal pursuant to §73.3568) of the only application or applications seeking the same facilities for one of the communities involved, all parties thereto shall file the joint request and affidavits specified in paragraph (a) of this section.

(1) If upon examination of the proposed agreement the FCC finds that withdrawal of one of the applications would unduly impede achievement of a fair, efficient and equitable distribution of radio service among the several States and communities, then the FCC shall order that further opportunity be afforded for other persons to apply for the facilities specified in the application or applications to be withdrawn before acting upon the pending request for approval of the agreement.

(2) Upon release of such order, any party proposing to withdraw its application shall cause to be published a notice of such proposed withdrawal at least twice a week for 2 consecutive weeks within the 3-week period immediately following release of the FCC's order, in a daily newspaper of general circulation published in the community in which it

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was proposed to locate the station. However, if there is no such daily newspaper published in the community, the notice shall be published as follows:

(i) If one or more weekly newspapers of general circulation are published in the community in which the station was proposed to be located, notice shall be published in such a weekly newspaper once a week for 3 consecutive weeks within the 4-week period immediately following the release of the FCC's order.

which (ii) If no weekly newspaper of general circulation is published in the community in the station was proposed to be located, notice shall be published at least twice a week for 2 consecutive weeks within the 3-week period immediately following the release of the FCC's order in the daily newspaper having the greatest general circulation in the community in which the station was proposed to be located.

(3) The notice shall state the name of the applicant; the location, frequency and power of the facilities proposed in the application; the location of the station or stations proposed in the applications with which it is in conflict; the fact that the applicant proposes to withdraw the application; and the date upon which the last day of publication shall take place.

(4) Such notice shall additionally include a statement that new applications for a broadcast station on the same frequency, in the same community, with substantially the same engineering characteristics and proposing to serve substantially the same service area as the application sought to be withdrawn, timely filed pursuant to the FCC's rules, or filed, in any event, within 30 days from the last date of publication of the notice (notwithstanding any provisions normally requiring earlier filing of a competing application), will be entitled to comparative consideration with other pending mutually exclusive affidavits.

in (5) Within 7 days of the last day of publication of the notice, the applicant proposing to withdraw shall file a statement in triplicate with the FCC giving the dates on which the notice was published, the text of the notice and the name and location of the newspaper in which the notice was published.

As noted on the OMB 83-I, this information collection does not affect individuals, thus there are no Privacy Act impacts.

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

Statutory authority for this collection of information is contained in Sections 154(i) and 311 of the Communications Act of 1934, as amended.

2. FCC staff will use the requested data to ensure that the agreement complies with its rules and regulations and Section 311 of the Communications Act of 1934, as amended. The newspaper publication gives interested parties an opportunity to apply for the facilities specified in the withdrawn application(s).

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Section 311(c) of the Communications Act of 1934, as amended, provides that it shall be unlawful for any applicants for broadcast facilities to affect by agreement the removal of any mutually exclusive applications without approval of the Commission and that the Commission shall approve such agreement only if it finds it to be consistent with the public interest, convenience and necessity.

3. The request for approval should contain a copy of the agreement and the required affidavits. The notice in 47 CFR Section 73.3525(b)(2) is published in a newspaper publication. The use of information technology is not feasible in these situations.
4. This agency does not impose a similar information collection on the applicants. 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. Therefore, this information collection will not have a significant economic impact on a substantial number of small businesses/entities.
6. The frequency for the request for approval is determined by respondents, as necessary. If this collection were not conducted, the Commission would be unable to enforce its rules designed to eliminate abuse of our comparative processes. The notice of withdrawal must be published twice a week for two consecutive weeks within the three-week period immediately following release of the FCC's order.
7. The requirements in this collection of information are consistent with the guidelines in 5 CFR 1320.5(d)(2).
8. The Commission published a Notice (74 FR 13207) in the *Federal Register* on March 26, 2009. No comments were generated as a result of the Notice.
9. No payment or gift was provided to respondent.
10. There is no need for confidentiality with this collection of information.
11. This information collection does not address any private matters of a sensitive nature.
12. We estimate 38 respondents will request approval to withdraw, dismiss or amend their applications. We expect only one (1) applicant to withdraw from the application process which will require additional documentation.

	<u>Number of Responses</u>	<u>Respondent Burden Hours</u>	<u>Total Burden Hours</u>
Requests for Approval	38	1 hour	38 hours
Newspaper publication	1	0.25 hours	0.25 hours
FCC Notice	<u>1</u>	0.25 hours	<u>0.25 hours</u>

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TOTALS: 40 responses 38.50 hours

Total Number of Annual Respondents: 38 Broadcast Stations

Total Number of Annual Responses: 40 responses

Total Annual Burden Hours: 38.50 hours (rounded 39 hours)

Annual "In-house cost": The respondents will require consultation time with contract attorneys to complete approval requests, local newspaper publication and FCC notice. We estimate the respondent's salary at \$100,000/year (\$48.08/hour).

38 approval requests x 1.0. hour x \$48.08/hour	=	\$1,827.04
1 newspaper publication x 0.25 hours x \$48.08/hour	=	12.02
1 FCC Notice x 0.25 hours x \$33.65/hour	=	<u>12.02</u>
Total annual in house cost	=	\$1,851.08

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

13. **Annual Cost Burden:** The respondents will incur costs for contract attorneys and newspaper publication. We estimate contract attorney salary at \$200/hour.

38 approval requests x 8.0 hours x \$200/hour	=	\$60,800
1 newspaper notice x 0.5 hours x \$200/hour	=	\$ 100
1 FCC notice x 0.5 hours x \$200/hour	=	\$ 100
\$113.25/publication x 2 times/week x 2 weeks x 1	=	<u>\$ 453</u>
Total annual cost burden	=	\$61,453

14. **Cost to the Federal Government:** The Commission will use professionals at the GS-14, step 5 level (\$55.78/hour) to process requests for approval.

38 requests x 3 hours x \$55.78/hour =	\$6,358.92
Total Cost to the Federal Government:	\$6,358.92

15. There are no program changes to this information collection. There is an adjustment of -\$1 to the annual cost burden.

16. The data will not be published.

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

18. There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

This information collection does not employ any statistical methods.