

## SUPPORTING STATEMENT

### **A. Justification:**

1. On December 15, 1995, the Commission adopted a First Report and Order (1<sup>st</sup> R&O), Eighth Report and Order (8<sup>th</sup> R&O), and Second Further Notice of Proposed Rule Making (2<sup>nd</sup> FNPRM). By this action, the Commission adopted and proposed rules requiring licensees to submit certain information necessary to determine whether they are in compliance with certain regulatory requirements and eligible for special provisions available to small businesses. Specifically, the 1<sup>st</sup> R&O, 8<sup>th</sup> R&O, and 2<sup>nd</sup> FNPRM provided the following currently approved information collection requirements:
  - 1) applicants in the specific categories of 800 SMR spectrum may request an extended period of time within which to construct their radio systems provided that they demonstrate such additional time is needed and provide a timetable for completing such construction;
  - 2) licensees authorized to use a specified block of 800 MHz SMR frequencies within one of 175 Economic Areas (EAs), must notify the Commission of the technical parameters for any base stations operating on channels within their respective spectrum blocks that have been added, removed, relocated, or otherwise modified in accordance with the Commission's rules;
  - 3) licensees operating on 800 MHz SMR frequencies who do not hold EA licenses must notify the Commission of the technical parameters for any base stations which they operate that have been added, removed, relocated, or otherwise modified in accordance with the Commission's rules;
  - 4) incumbent licensees operating at multiple sites may exchange their multiple site licenses for a single license after the completion of the auction for the spectrum blocks within which their frequencies are included, provided they submit a showing that their authorized facilities have been constructed and placed in operation and the contours associated with these facilities are contiguous and overlapping;
  - 5) EA licensees must submit proof of their notification to incumbents operating on frequencies included within the EA licensees' spectrum blocks of their intention to relocate such incumbents;
  - 6) auction winners claiming status as a small business must submit detailed ownership and gross revenue information necessary to determine they qualify as a small business pursuant to the Commission's rules;
  - 7) auction winners must disclose the terms of any joint bidding agreements, if any, with other auction participants; and
  - 8) EA licensees who transfer or assign their license within 3 years are required to file, together with a transfer application, a statement indicating that the license was obtained through competitive bidding, as well as the associated contracts for sale, option

agreements, management agreements and all other documents disclosing the total consideration received in return for the transfer or assignment of the license.

*Background information:*

On September 17, 1998, the Commission adopted a Report and Order (13 FCC Rcd 21027). By this action, the Commission consolidated, revised, and streamlined its rules governing license application procedures for radio services licensed by the Wireless Telecommunication Bureau, and implemented the Universal Licensing System (ULS), a new automated licensing system and integrated database for wireless services. The Commission also clarified its definition of major and minor licensing actions and certain notification requirements for minor system changes. The Commission eliminated the requirement that 800 MHz SMR EA licensees automatically notify the Commission of any technical parameter changes for sites located within the EA that are added, removed, relocated or otherwise modified. EA licensees are required to provide such information upon request of the Commission or an incumbent licensee, or where required to comply with FAA rules, NEPA or international agreements.

On December 4, 1998, the Wireless Telecommunications Bureau issued a Public Notice (13 FCC Rcd 23381) announcing the commencement of the voluntary negotiation period for the relocation of incumbent licensees in the upper 200 channels of the 800 MHz band. The notice commenced the one-year voluntary negotiation period between EA licensees and 800 MHz SMR incumbents in the upper 200 channels. EA licensees were required to notify incumbents within 90 days of the release date of the December 4, 1998 Public Notice (*i.e.* March 4, 1999) of the EA licensee's intent to relocate an incumbent. EA licensees were also required to file a copy of the relocation notice within 10 days of such receipt. On or before the March 4, 1999 deadline, EA licensees notified applicable 800 MHz SMR incumbents of their intent to relocate incumbents from upper 200 channels.

On June 10, 1999, the Commission adopted a Memorandum Opinion and Order on Reconsideration in the ULS proceeding (14 FCC Rcd 11145). By this action, the Commission completed implementation of a new licensing framework for all services licensed by the Wireless Telecommunications Bureau. Further, the Commission specified the types of minor modifications that require Commission notification. Licensees in the 800 MHz band that are authorized on a site-by-site basis are no longer required, in all cases, to notify the Commission within 30 days of the technical parameters for base stations which they operate that have been added, removed, relocated or otherwise modified in accordance with Commission's rules for minor modifications. In general, site-by-site authorized licensees are now permitted to make internal site changes without notice or prior approval provided they do not expand their existing service area or interference contour of the system as a whole. However, 30-day notification of minor system changes is required where mandated by a specific rule section.

On September 30, 1999, the Commission adopted a Memorandum Opinion and Order on Reconsideration (14 FCC Rcd 17556). By this action, the Commission completed the implementation of a new licensing framework for the 800 MHz SMR services. Specifically, the Commission revised and clarified its rules concerning: (a) the channel plan for General Category channels, (b) the modification of incumbent licensee systems, and (c) the mandatory relocation of incumbent licensee systems from the upper 200 channels to the lower 230 channels. Additionally, the Commission retained its current construction and coverage requirements and clarified its rules concerning co-channel interference protection, the definition of incumbent, and the applicability of partitioning and disaggregation rules to Private Mobile Radio (PMRS) licensees in the 800 and 900 MHz SMR services. The Commission also reaffirmed its conclusion that competitive bidding is an appropriate tool to resolve mutually exclusive license applications for the General Category and lower 80 channels of the 800 MHz SMR service.

On December 17, 1999, the Commission adopted a Memorandum Opinion and Order on Remand (14 FCC Rcd 21679). This action was taken pursuant to an order issued by the United States Court of Appeals for the District of Columbia in *Fresno Mobile Radio, Inc., et al. v. Federal Communications Commission* (“*Fresno*”), 165 F. 3d 965 (D.C. Cir. 1999), wherein the Court remanded for further consideration the Commission’s prior decision maintaining the requirement that incumbent wide-area SMR licensees, which had received “extended implementation” authorizations, must construct and operate all sites and frequencies by the construction deadline. Upon further reconsideration, the Commission allowed incumbent wide-area 800 MHz SMR, licensees who were within their construction periods at the time *Fresno* was decided, to satisfy construction requirements similar to those given to EA licensees in the 800 MHz band, and required that they choose to apply the existing site-by-site, frequency-by-frequency construction requirements, or the EA construction requirements. Those who chose the latter were required to file a certification with the Commission that they had complied with the EA construction requirements within the later of 15 days from their applicable construction benchmarks or 60 days from the effective date of the MO&O on Remand. All of the extended implementation licensees completed their required certifications in 2000 and 2001.

On August 6, 2004, the Commission released the 800 MHz Rebanding Order and adopted technical and procedural measures designed to address the ongoing and growing problem of interference to public safety communications in the 800 MHz band (see *In the Matter of Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004); *In the Matter of Improving Public Safety Communications in the 800 MHz Band, Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005)). In addition, the 800 MHz Rebanding Order revised rule section 90.617 to provide that no further auctioning of 800 MHz spectrum will occur.

On July 22, 2005, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking to streamline and harmonize licensing provisions in the

wireless radio services pursuant to biennial regulatory review responsibilities. See In the Matter of Biennial Regulatory Review -- Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, 20 FCC Rcd 13900 (2005). In its Order, the Commission modified section 90.693 of its rules, 47 C.F.R. § 90.693, to eliminate the necessity of incumbent 800 MHz SMR licensees filing notifications of minor modifications where a licensee locates its facilities closer than the minimum required distance separation but nonetheless falls within the parameters of the Short Spacing Separation Table under section 90.621, 47 C.F.R. § 90.621.

**For this submission to OMB, the Commission is requesting approval for an extension with no changes to reporting or third-party disclosure requirements. The Commission has adjusted the number of respondents based on its experience with application receipts over the past three years. In addition, the Commission is no longer auctioning 800 MHz spectrum and thus, there will be no respondents for information collections associated with 800 MHz auctions. We also note that the three-year time period for filing transfer disclosure information following the auction of 800 MHz licenses has passed for all three 800 MHz auctions (upper, lower and general). Therefore, there will be no respondents for information collections associated with transfer disclosures during the next collection period.**

Statutory authority for this collection of information is contained in 47 U.S.C. §§ 154(i), 309(j), and 332 as amended.

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

2. The information will be used by the Commission to update the Commission's licensing database and thereby facilitate the successful coexistence of EA licensees and incumbents in the 800 MHz SMR band.
3. Requests for a consolidated authorization and required notification of changes in technical parameters of base stations must be filed electronically via the FCC Form 601.
4. This agency does not impose similar 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, regardless of size. The Commission has limited the information requirements to those absolutely necessary for evaluating and processing applications and to deter against possible abuse of the Commission's processes.

6. Respondents will determine whether they want to turn in their multiple site authorizations for a consolidated authorization or change the technical parameters of the base stations associated with their authorizations.
7. Respondents would only have to make a one-time filing of the requested information with respect to requests for a consolidated authorization. Where required, notification of changes in technical parameters for base stations must be filed each time a change is made. This information collection is consistent with the guidelines in 5 C.F.R. § 1320.6.
8. The Commission published a Notice requesting comments on this information collection on October 29, 2009 (74 FR 55845). We received no comments pertaining to this notice.
9. Respondents will not receive any payments or gifts.
10. There is no need for confidentiality.
11. This collection does not address any private matters of a sensitive nature.
12. Respondent Burden:

Notifications of Changes in Technical Parameters by EA Licensees

25% of 12 applications = 3 (in-house) x 2.5 hours = 7.5 hours

Total Annual Hour Burden = 7.5 hours

Notifications of Changes in Technical Parameters by Incumbent non-EA Licensees

25% of 250 applications = 62.5 (in-house) x 2.5 hour = 156.25 hours

Total Annual Hour Burden = 156.25 hours

Request for Single Authorizations for Multiple Site Licenses

25% of 10 applications = 2.5 (in-house) x 3.5 hours = 8.75 hours

Total Annual Hour Burden = 8.75 hours

**Total Hour Burdens: 7.5 + 156.25 + 8.75 = 172.5 (rounded to 173 hours)**

**Total Annual Hour Burdens: 173 hours**

NOTE: We estimate 25% of the all applicants will employ in-house staff to respond to the information collection. The remaining 75% of all applicants (see Item 13,

below), will contract out the burden of responding. We estimate that it will take approximately 30 minutes to coordinate the information with those contractors. These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required and our prior experience with the above-referenced showings.

13. We assume that the respondents contracting out the information collection would use an outside attorney @ \$200/hr, or an engineer @ \$150/hr to prepare the information collection. The following are outside contracting costs to the respondent:

Notification of Changes in Technical Parameters by EA Licensees

9 applications x 2.5 hrs x \$150 (engineer) = \$3,375

Notification of Changes in Technical Parameters by Incumbent non-EA Licensees

187.5 applications x 2.5 hrs x \$150 (engineer) = \$70, 312.50

Request for Single Authorization for Multiple Site Licenses

7.5 applications x 3.5 hrs x \$150 (engineer) = \$3,938

**Total Cost Burden:** \$3,375 + \$70, 312.50 + \$3,938 = \$77,625.50

**Total Annual Cost Burden is:** \$77,625.50 (rounded to \$78,000)

14. Costs to the Federal Government:

Notification of Changes in Technical Parameters by EA Licensees

Engineer at \$150/hr x 12 applications x 2 hours = **\$3,600**

Notification of Changes in Technical Parameters by Incumbent non-EA Licensees

Engineer at \$150/hr x 250 applications x 2 hours = **\$75,000**

Request for Single Authorization for Multiple Site Licenses

Engineer at \$150/hr x 10 applications x 1.5 hours = **\$2,250**

**Total Federal Government Costs:** \$3,600 + \$75,000 + \$2,250 = **\$80,850.00**

15. This is a request for approval for an extension with no changes to reporting or third-party disclosure requirements. The Commission has adjusted the number of respondents based on its experience with application receipts over the past three years. In addition, the Commission is no longer auctioning 800 MHz (Upper, Lower

or General) licenses and thus, there will be no respondents for information collections associated with 800 MHz auctions (*e.g.*, notification of construction for new auction winners, disclosure of any joint bidding agreement terms, information necessary to determine compliance with the small business ownership and gross revenue requirements). We also note that the 800 MHz upper 200 channel auction was completed more than three-years ago and therefore all information required to be filed pertaining to license transfers within that period has been filed with the Commission. Further, the three year period with respect to the lower 80 and general category channel auctions also expired during this collection period and therefore we do not anticipate that transfer disclosure information will be filed during this next collection period. The Commission has recalculated the hourly and cost burdens accordingly.

16. This data will not be published for statistical use.
17. We do not seek approval to not display the expiration date for OMB approval of the information collection.
18. There are no exceptions to Item 19.

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

No statistical methods are employed.