

New collection: Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations (Wireless Microphones)

SUPPORTING STATEMENT

A. Justification:

1. With the completion of the Digital Television (DTV) transition, all full-power television stations that were operating in the 700 MHz Band (698-806 MHz) have transitioned out of the band, making it available for use by public safety entities such as police, fire, and emergency services, as well as by commercial licensees such as wireless broadband providers. Wireless microphones and other devices are certified as low power auxiliary stations (“wireless microphones”), and a number of them are operating in the 700 MHz Band. Although some of the operators of these devices are licensed under Part 74 of the Commission’s rules, most are not eligible for a Commission license and are operating on an unauthorized basis. There are a wide variety of users that operate wireless microphones on an unauthorized basis, including theaters, churches, schools, sports facilities, entertainment venues, and meeting and conference facilities.

The operation of wireless microphones in the 700 MHz Band has the potential to cause harmful interference to new public safety and commercial licensees in the band. In light of this, the Commission is taking steps to clear wireless microphones from the 700 MHz Band as soon as possible, while providing entities currently operating wireless microphones with an opportunity to relocate and provide them a home in the core TV spectrum (television channels 2-51, excluding channel 37), where many wireless microphones are already operating.

To effectuate the Commission’s plan to clear wireless microphones from the 700 MHz Band, the Commission released a Report and Order¹ that requires all wireless microphones to cease operations in the 700 MHz Band no later than June 12, 2010. The Report and Order also provides an early clearing mechanism for the 700 MHz Band. Although under the new rules all wireless microphones must transition out of the 700 MHz Band no later than June 12, 2010, the early clearing mechanism provides that wireless microphone users must transition out of the band before that date in some circumstances. Specifically, a 700 MHz public safety or commercial licensee may notify the Commission that it will be initiating operation on specified frequencies in particular market(s). Upon such notification, the Commission will issue a public notice that identifies the affected market area(s). Wireless microphone users in those areas must cease operation within 60 days of the release of the public notice. A 700 MHz public

¹ Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition; Amendment of Parts 15, 74 and 90 of the Commission’s Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones, WT Docket Nos. 08-166, 08-167, ET Docket No. 10-24, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 10-16 (rel. January 15, 2010).

safety or commercial licensee, at its option, also may notify wireless microphone users directly of the licensee's intention to commence operation. Wireless microphone users must clear the band within 60 days after receiving such notice. The rules adopted by the Commission in the Report and Order with respect to the clearing of the 700 MHz Band by June 12, 2010 and the early clearing procedures will take effect upon the publication of a summary of the Report and Order in the Federal Register.

The Report and Order also provides that any person who manufactures wireless microphones or sells, leases, or offers them for sale or lease must display a disclosure at the point of sale or lease that informs consumers of the conditions that apply to the operation of wireless microphones that vacate the 700 MHz Band and relocate to the core TV spectrum. This consumer disclosure also must be displayed on the website of wireless microphone manufacturers and of dealers, distributors, retailers, and anyone else selling or leasing the devices. The disclosure will inform consumers of the conditions that apply to operation in the core TV spectrum, such as the applicable power limit, the fact that the device must not cause harmful interference and must accept interference, and the fact that the rules for unlicensed use of wireless microphones may change as the FCC continues to evaluate them. One way to fulfill the disclosure requirement is to display the consumer advisory on the product box by using a label, sticker, or other means. The Commission is requiring manufacturers, dealers, distributors, and other entities that sell or lease wireless microphone devices for operation in the core TV bands to comply with the disclosure requirements no later than February 28, 2010, and the Commission is encouraging these entities to provide consumers with the required information earlier.

In a related companion order,² the Wireless Telecommunications Bureau and Consumer and Governmental Affairs Bureau of the Federal Communications Commission have adopted the specific text that must be used in the consumer disclosure. The text is as follows:

CONSUMER ALERT

Most users do not need a license to operate this wireless microphone system. Nevertheless, operating this microphone system without a license is subject to certain restrictions: the system may not cause harmful interference; it must operate at a low power level (not in excess of 50 milliwatts); and it has no protection from interference received from any other device. Purchasers should also be aware that the FCC is currently evaluating use of wireless microphone systems, and these rules are subject to change. For more information, call the FCC at 1-888-CALL-FCC (TTY: 1-888-TELL-FCC) or visit the FCC's wireless microphone website at www.fcc.gov/cgb/wirelessmicrophones.

² Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition; Amendment of Parts 15, 74 and 90 of the Commission's Rules Regarding Low Power Auxiliary Stations, Including Wireless Microphones, WT Docket Nos. 08-166, 08-167, ET Docket No. 10-24, *Order*, DA 10-92 (rel. January 15, 2010).

In addition, the Report and Order prohibits the manufacture, import, sale, or lease of wireless microphones capable of operating in the 700 MHz Band in the United States. Manufacturers are not prohibited from manufacturing wireless microphones for export. The Commission provides that any person who manufactures, sells, or leases wireless microphones in the U.S. that are destined for non-U.S. markets and that are capable of operating in the 700 MHz Band must include labeling in all sales, marketing, and packaging materials, including online materials, related to such devices. The labeling must make clear that the devices cannot be used in the United States. The rules relating to the prohibition on the manufacture, import, sale, lease, offer for sale or lease, or shipment of low power auxiliary stations that operate in the 700 MHz Band will take effect upon the publication of a summary of the Report and Order in the Federal Register, except the labeling requirement for devices manufactured solely for export. The labeling requirement for devices manufactured solely for export will take effect 90 days after release of the Report and Order (*i.e.*, April 15, 2010). This period provides sufficient time for entities that manufacture, sell, lease, or offer for sale or lease low power auxiliary stations that are destined for non-U.S. markets and that are capable of operating in the 700 MHz Band to comply with the labeling requirement.

The Commission is requesting OMB emergency approval for these requirements by February 12, 2010. The Commission determined that there is a need to establish expeditious time frames and procedures for clearing wireless microphones from the 700 MHz Band to provide an interference-free environment for new services in the 700 MHz Band, especially public safety services that are used to protect safety of life, health, or property. The Commission found in the Report and Order that wireless microphones could interfere with public safety and commercial base and mobile receivers. Such interference raises the potential for a disruption of vital public safety services and commercial services.

The point-of-sale disclosure requirement is also essential for a successful transition of wireless microphones out of the 700 MHz Band. The Commission anticipates that many wireless microphone users currently operating in the 700 MHz Band will have to purchase or lease new equipment capable of operating in the core TV spectrum. The point-of-sale disclosure requirement will help these consumers make an educated decision as they obtain new microphones, and it will help them operate in the core TV spectrum without causing interference to other services in that spectrum.

The requirement that there be a label on 700 MHz wireless microphones bound for export is also important because it will help to ensure that these wireless microphones do not continue to be made available for use in the United States, in contravention of the Commission's efforts to remove them from the band. For the reasons stated above, we find that there is good cause to obtain emergency OMB approval for these collections within one week of publication of the emergency processing notice in the *Federal Register*, so that the requirements may take effect in the manner provided in the Report and Order.

Statutory authority for this collection of information is contained in 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 302a, 303, 304, 307, 308, 309, 316, 332, 336, and 337.

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

2. The information in the early clearing mechanism will be used by 700 MHz public safety and commercial licensees to notify wireless microphone users in the band that they must transition out of the band before the June 12, 2010 deadline. (It will also be used by wireless microphone users to determine whether and, if so, when they must transition out of the band prior to June 12, 2010.) The information in the point-of-sale disclosure will be used by consumers to help them make educated decisions about the purchase or lease of wireless microphone devices, and it will help them to operate in the core TV spectrum without causing interference to other services in that spectrum. The information in the label for 700 MHz wireless microphones bound for export will be used by consumers and will help to ensure that these microphones do not continue to be used or made available for use in the United States, in contravention of our efforts to remove them from the 700 MHz Band.

3. These are notice, disclosure, and labeling requirements. The use of information technology is feasible in this situation.

4. This agency does not impose a similar information collection on the respondents. There are no similar data available.

5. The early clearing mechanism applies to small and large 700 MHz licensees alike. In addition, it benefits these entities because it provides a way for them to give notice that they are initiating or have initiated operations in the 700 MHz Band. Such notice, in turn, triggers a requirement for wireless microphone users to clear the band in advance of the June 12, 2010 deadline.

The point-of-sale disclosure and export labeling requirements also apply to large and small entities alike. The Commission believes whatever burdens small entities may incur in complying with these requirements are warranted by the overall benefit to the public from accomplishing the clearing of the 700 MHz Band for use by public safety entities such as police, fire, and emergency services, as well as by commercial licensees such as wireless broadband providers. These benefits include enhanced public safety; job creation; economic growth; stimulation of new technology in this country; and the shift of spectrum from television broadcasting to other uses such as new wireless services and public safety and homeland security applications.

6. The information collection is essential to the responsible and effective implementation of the Commission's mission, and the avoidance of public harm resulting from a less than successful transition of wireless microphones out of the 700 MHz frequency band. The Commission anticipates that many wireless microphone users currently operating in the 700 MHz Band will have to purchase or lease new equipment

capable of operating in the core TV spectrum. The point-of-sale disclosure requirement will help these consumers make an educated decision as they obtain new microphones, and it will help them operate in the core TV spectrum without causing interference to other services in that spectrum. The labeling requirement for 700 MHz wireless microphones bound for export will help to assure that these microphones do not continue to be used or made available for use in the United States, in contravention of the Commission's efforts to remove them from the band. Finally, it is essential for the early clearing mechanism to be available as soon as possible so that public safety and commercial licensees in the 700 MHz Band can avoid harmful interference from wireless microphone users still operating in the band.

7. There are no special circumstances associated with this collection of information.

8. This is an emergency request. The Commission is requesting a waiver of the 60 day *Federal Register* notice requirement under 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Upon OMB approval the Commission will conduct all the regular OMB processes, including a 60 day comment period, in order to obtain the full three year clearance from them.

9. Respondents will not receive any payments.

10. There is no need for confidentiality.

11. None of the reporting burdens address any private matters or questions of a sensitive nature.

12. There are three (3) parts to this collection: Part A covers the "early clearing mechanism"; Part B covers the disclosure at the point of sale or lease; and Part C covers the labeling requirement for devices bound for export.

a. Part A: Early Clearing Requirement.

We estimate that 100 new public safety or commercial licensees may provide notice to the Commission that they will be initiating operation on specified frequencies in particular market(s) before June 12, 2010. We also estimate that 2000 new public safety or commercial licensees will provide notice to individuals that they will be initiating operation on specified frequencies in particular market(s) before June 12, 2010.

Total Number of Annual Respondents: 2,100.

100 New Public Safety or Commercial Licensees notifying the Commission +
2000 New Public Safety or Commercial Licensees notifying individuals (100 Markets x
20 notifications/market) = 2100 Respondents (New Public Safety or Commercial
Licensees).

Total Annual Burden Hours: 1,050 hrs.

2100 New Public Safety/Commercial Licensees x 1 notification each x .5 hrs/response = 1050 Annual Burden Hours.

Total Annual “In-House” Cost for Part A : \$105,000

We assume that the New Public Safety/Commercial Licensee will provide the notice using staff at \$100 an hour.

2100 New Public Safety/Commercial Licensees x 1 notification each x .5 hrs/response x \$100.00/hr.= \$105,000

b. Part B: Disclosure at the Point of Sale or Lease.

We estimate 5,000 manufacturers, dealers, distributors, and other entities that sell or lease wireless microphone equipment will label or display disclosures for twenty-five (25) pieces each of wireless microphone equipment that operate in the 700 MHz Band that are displayed on the sales floor or via direct mail, in a catalog, online or other electronic means. We estimate this activity will require 0.25 hours for each piece of wireless equipment that operates in the 700 MHz Band that is displayed.

Total Number of Annual Respondents: 5,000

5,000 Manufacturers, Dealers, Distributors, and Other Entities.

Total Number of Annual Responses: 125,000

5,000 manufacturers, dealers, distributors, and other entities that sell or lease wireless microphone equipment x 1 label/disclosure requirement each x 25 pieces each of wireless microphone equipment that operate in the 700 MHz Band = 125,000 Annual Responses

Total Annual Burden Hours: 31,250 hrs.

5,000 manufacturers, dealers, distributors, and other entities that sell or lease wireless microphone equipment x 1 label/disclosure requirement each x 25 pieces each of wireless microphone equipment that operate in the 700 MHz Band x 0.25 hrs./piece of equipment = 31,250 hrs.

Total Annual “In-House” Cost for Part B: \$312,500

We assume that the retailer will provide the disclosure labeling using staff at \$10 an hour.

5,000 manufacturers, dealers, distributors, and other entities that sell or lease wireless microphone equipment x 1 label/disclosure requirement each x 25 pieces each of wireless microphone equipment that operate in the 700 MHz Band x 0.25 hrs./piece of equipment x \$10.00/hr.= \$312,500

c. Part C: Labeling Requirement.

We estimate 100 manufactures, sellers, or entities that lease wireless microphone equipment in the U.S. that is destined for non-U.S. markets and that is capable of operating in the 700 MHz Band will label twenty-five (25) pieces each of wireless microphone equipment that operate in the 700 MHz Band in all sales, marketing, and packaging materials, including online materials, related to such devices. We estimate this activity will require 0.25 hours for each piece of wireless equipment that operates in the 700 MHz Band that is labeled.

Total Number of Annual Respondents: 100

100 Manufacturers, Sellers, or Entities That Lease.

Total Number of Annual Responses: 2,500

100 manufactures, sellers, or entities that lease wireless microphone equipment x 1 label each x 25 pieces each of wireless microphone equipment that operate in the 700 MHz Band = **2,500 Annual Responses**

Total Annual Burden Hours: 625 hrs.

100 manufactures, sellers, or entities that lease wireless microphone equipment x 1 label each x 25 pieces each of wireless microphone equipment that operate in the 700 MHz Band x 0.25 hrs./piece of equipment = 625 hrs.

Total Annual “In-House” Cost for Part C: \$6250

We assume that the retailer will provide the disclosure labeling using staff at \$10 an hour.

100 manufactures, sellers, or entities that lease wireless microphone equipment x 1 label/disclosure requirement each x 25 pieces each of wireless microphone equipment that operate in the 700 MHz Band x 0.25 hrs./piece of equipment x \$10.00/hr.= \$6250

Total Number of Annual Respondents for the entire collection: Part A (2,100) + Part B (5,000) + Part C (100) = 7,200

Total Number of Annual Responses for the entire collection: Part A (2100) + Part B (125,000) + Part C (2500) = 129,600

Total Number of Annual Burden Hours for the entire collection: Part A (1050) + Part B (31,250) + Part C (625) = 32,925

Total Annual “In-House” Cost for the entire collection: Part A (\$105,000) + Part B (\$312,500) + Part C (\$6250) = \$423,750

13. Part A: Early Clearing Requirement.

- (a) Total annualized capital/startup costs: None
- (b) Total annual costs (O&M): None
- (c) Total annualized cost requested: None

There will be no annualized costs incurred by the respondents from part A of the collection.

Part B: Disclosure at the Point of Sale or Lease.

- (a) **Total Annualized Capital/Startup Cost: \$1,562,500**

Annual Capital/Startup Cost: 5,000 manufacturers, dealers, distributors, and other entities that sell or lease wireless microphone equipment x 1 label/disclosure requirement each x 1250 pieces of wireless microphone equipment that operate in the 700 MHz Band x \$0.25 /piece of equipment = \$1,562,500

- (b) Total annual costs (O&M): None
- (c) Total annualized cost requested: \$1,562,500

Part C: Labeling Requirement.

- (a) **Total Annualized Capital/Startup Cost: \$62,500**

Annual Capital/Startup Cost: 100 manufactures, sellers, or entities that lease wireless microphone equipment x 1 label/disclosure requirement each x 2500 pieces each of wireless microphone equipment that operate in the 700 MHz Band x \$0.25 /piece of equipment = \$62,500

- (b) Total annual costs (O&M): None
- (c) Total annualized cost requested: \$62,500

Total Number of Annualized Capital/Startup Costs Requested for the entire collection: Part A (\$0) + Part B (\$1,562,500) + Part C (\$62,500) = \$1,625,000

Total Number of Annual Costs (O&M) Requested for the entire collection: Part A (\$0) + Part B (\$0) + Part C (\$0) = \$0

Total Number of Annualized Cost Requested for the entire collection: Part A (\$0) + Part B (\$1,562,500) + Part C (\$62,500) = \$1,625,000

14. Part A: Early Clearing Requirement.

The Commission would likely assign a Program Analyst, GS-11, Step 5, at \$33.92 per hour to review the notice provided to the Commission by the new public safety or commercial licensees stating that they will be initiating operation on specified frequencies in particular market(s). The Program Analyst would then draft a public notice for the Commission to issue. This should take about 3 hours, resulting in a potential cost to the Federal Government of about \$101.76 per year per notice. As noted above, 100 new public safety or commercial licensees may notify the Commission. Therefore, in 2010, the cost to the Federal government would be 100 respondents x 3 hours x \$33.92 = \$10,176.00. Web postings and consumer labeling will not be actively monitored in the absence of consumer complaints.

Part B: Disclosure at the Point of Sale or Lease.

There is no cost to the Federal Government. Disclosures will not be actively monitored in the absence of consumer complaints.

Part C: Labeling Requirement.

There is no cost to the Federal Government. Consumer labeling will not be actively monitored in the absence of consumer complaints.

Total cost to the Federal Government from parts A, B, and C of the collection:

Part A (\$10,176.00) + Part B (\$0.00) + Part C (\$0.00) = \$10,176.00

15. This is a new information collection.

16. The data will not be published for statistical use.

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

18. The Commission is requesting emergency approval of this information collection from OMB. Therefore, there are no exceptions to Item 19 of the Certification Statement. See item 8 of this supporting statement.

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.