

SUPPORTING STATEMENT

A. Justification:

1. When Congress granted auction authority¹ in the Balanced Budget Act for commercial broadcast² and secondary broadcast services³, it did not eliminate or revise 47 U.S.C. Section 307(b) of the Communications Act. Section 307(b) requires that the Commission effect a fair, efficient, and equitable distribution of radio stations throughout the United States.

Section 307(b) information was previously collected in the framework of comparative hearing proceedings⁴ when mutually exclusive AM applications⁵ proposing to serve different communities were filed, or when non-mutually exclusive AM applications⁶ proposed a change in community of license. Since the comparative hearing process was discontinued as a result of the implementation of competitive bidding,⁷ the Commission must now collect the Section 307(b) information and undertake a Section 307(b) analysis in the context of the auction proceedings.⁸ For example, for mutually exclusive AM applications proposing to serve different communities, the process is performed prior to conducting the auction.

In order to evaluate Section 307(b) considerations, the Commission requires the submission of supplemental information subsequent to the AM auction filing window application⁹ (FCC Form 175 and technical information) submission. Section 307(b) information is not collected in the initial auction filing window application because Section 307(b) considerations are not pertinent to all window filed applications – Section 307(b) is relevant only when the mutually exclusive AM application group consists of applications to serve different communities of license, or when a non-mutually exclusive AM application proposes a major modification of facilities, seeking a community of license change.

Specifically, where the mutually exclusive group consists of proposals to serve different communities of license, each applicant within the group must submit an amendment containing supplemental information such

¹ The Balanced Budget Act of 1997 expanded the Commission’s auction authority under Section 309(j) of the Communications Act of 1934, 47 USC Section 309(j), by adding provisions governing auctions for broadcast services.

² Commercial broadcast service auctions include FM radio, AM radio and television.

³ Commercial secondary broadcast service auctions include low power television (LPTV) and FM and television translators.

⁴ Prior to the Balanced Budget Act, the Commission traditionally resolved competing applications for commercial broadcast stations by comparative hearing proceedings.

⁵ 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.

⁶ Non-mutually exclusive applications are either those where only one applicant applied in the filing window, or those where the application is not adversely impacted by other applications filed in the window.

⁷ The terms “competitive bidding” and “auctions” are used interchangeably.

⁸ The Commission’s authority to award spectrum licenses through auctions is set forth in Section 309(j) of the Communications Act. The Commission’s general competitive bidding rules are set forth in Part 1, Subpart Q of the Commission’s rules.

⁹ Applications to participate in an auction are filed during Commission-designated filing windows.

as the following: (1) the area and population within the proposed 2 mV/m and 0.5 mV/m contours;¹⁰ (2) the number of stations licensed to the proposed community of license; (3) the number of stations providing protected service to the proposed community of license; (4) the population (according to the latest Census data) of the proposed community of license; (5) a description of the civic, cultural, religious, social or commercial attributes of the proposed community of license; and (6) any other information determined relevant.

Further, on January 28, 2010, the Commission adopted a *First Report and Order and Further Notice of Proposed Rulemaking* (the “*Order*”) in MB Docket No. 09-52, FCC 10-24. The *Order* adopts changes to certain procedures associated with the award of broadcast radio construction permits by competitive bidding, including modifications to the manner in which it awards preferences to applicants under the provisions of Section 307(b). In the *Order*, the Commission added a new Section 307(b) priority that would apply only to Native American and Alaska Native Tribes, tribal consortia, and majority tribal-owned entities proposing to serve tribal lands. The priority is only available when all of the following conditions are met: (1) the applicant is either a federally recognized Tribe or tribal consortium, or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes; (2) at least 50 percent of the daytime principal community contour of the proposed facilities will cover tribal lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on tribal lands; and (4) in the commercial AM service, the applicant must propose first or second aural reception service or first local commercial tribal-owned transmission service to the proposed community of license, which must be located on tribal lands. Applicants claiming Section 307(b) preferences using these factors will submit information to substantiate their claims. The Commission will dismiss, without further processing, the previously filed AM auction filing window application and technical proposal of any applicant that fails to file an amendment addressing the Section 307(b) criteria, where required. Mutually exclusive AM applicants may not use this as an opportunity to change the technical proposal specified in the AM auction filing window application. The Section 307(b) amendment must be based on the technical proposal as specified in the AM auction filing window application. **(This information collection is being revised to accommodate those applicants qualifying for the new tribal priority. Therefore, these proposed revisions need OMB review and approval).**

Non-mutually exclusive applicants proposing a change in community of license must provide Section 307(b) information, demonstrating the merits of locating the station in the new community, as opposed to the former community of license.

In addition, certain mutually exclusive application groups containing major modification applications are permitted to resolve their mutual exclusivities through settlement agreements. These agreements must comply with 47 CFR Section 73.3525, Agreements for Removing Application Conflicts (approved under OMB 3060-0213). To facilitate processing, eligible applicants who intend to settle should promptly notify the Commission in writing that a pre-auction settlement is forthcoming.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

¹⁰ The 2mV/m and 0.5mV/m contours are daytime predicted service contours used to evaluate AM applications.

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Statutory authority for this collection of information is contained in Sections 154(i), 307(b) and 309 of the Communications Act of 1934, as amended.

2. The data submitted will be used to determine the community having the greater need for an AM radio service. If the Section 307(b) determination is dispositive, the staff will grant the application proposing to serve the community with the greater need. If no Section 307(b) determination is dispositive, the mutually exclusive applications must be included in an auction. If the Section 307(b) information was not collected, our statutory mandate under Section 307(b) could not be fulfilled.
3. Applicants can use electronic software to develop the information for the Section 307(b) determination such as proposed contour, area and population calculations. However, the information cannot be electronically filed with the Commission at this time.
4. No other agency imposes a similar information 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. The Commission has limited the information requirements to that which is absolutely necessary for evaluating and processing the amendments to determine the community having the greater need and to deter possible abuses of the processes. The information is collected only from applicants to which a Section 307(b) determination is applicable. Therefore, this information collection will not have a significant economic impact on a substantial number of small entities/businesses.
6. The Commission will issue a public notice informing the public of mutually exclusive applications. This public notice will identify groups needing to file 307(b) amendments. Non-mutually exclusive applicants that need to file Section 307(b) information will be appropriately notified.
7. This collection of information is consistent with the guidelines in 5 CFR 1320.5(d)(2).
8. Opportunity for public comment on this information collection requirement contained in this supporting statement has been published in a notice in the Federal Register at 75 FR 6663, on February 10, 2010. No comments were received from the public.
9. No payment or gift was provided to respondents.
10. There is no need for confidentiality for this collection of information.
11. This collection of information does not address any private matters of a sensitive nature.

12. The following estimates are provided for public burden:

Total Number of Respondents: 160 Mutually and Non-Mutually Exclusive Applicants¹¹

Total Number of Responses:

98 Submissions Under Section 307(b) + 20 Submissions under tribal priority + 42 Notifications of Settlement
= **160 responses¹²**

Annual Burden Hours:

98 Submissions under Section 307(b) x 3.0 hours/submission = 294 hours
20 Submissions under tribal priority x 3.0 hours/submission = 60 hours
42 Settlement Notifications x 0.5 hours/notification = 21 hours
TOTAL ANNUAL BURDEN HOURS = 375 hours¹³

Annual In-House Cost: We assume that the average respondent would consult with consulting engineers and/or attorneys in a law firm to complete these submissions. We estimate that an average broadcast licensee has an annual salary of \$100,000 (\$48.08/hour).

98 Submissions under Section 307(b) x 3.0 hours x \$48.08/hour = \$14,135.52
20 Submissions under tribal priority x 3.0 hours x \$48.08/hour = \$ 2,884.80
42 Settlement Notifications x 0.5 hours x \$48.08/hour = \$ 1,009.68
TOTAL ANNUAL "IN-HOUSE" COSTS = \$18,030.00

¹¹ We re-calculated the number of annual respondents and responses based on the time between AM auction filing windows. We received 259 eligible applications in the AM Auction No. 32 window in January-February of 2000, and 1,127 eligible applications in the AM Auction No. 84 window in January-February of 2004, for a total of 1,386 eligible applications. As the earliest date that a new AM filing window would be opened would be early 2010 – ten years after the AM Auction No. 32 window was opened – we divided 1,386 by 10 for an annual estimate of approximately 140 AM applications, adding an estimated 20 per year for tribal applicants. We proportioned the number of applicants presenting 307(b) submissions versus applicants submitting settlements as before (approximately 30 percent settlement, 70 percent 307(b)). Although some applicants will not be mutually exclusive with other applications, and thus not required to submit Section 307(b) information, we assume for purposes of this Statement that all applicants will potentially be mutually exclusive. Therefore, the recalculation reduced the number of respondents by 310 and also the number of responses by 310.

¹² The information collection requirements contained in FCC 10-24 adds an additional 20 responses to this information collection.

¹³ The information collection requirements contained in FCC 10-24 adds an additional 60 burden hours to this information collection. The reduction of -785 hours is due to the Commission re-calculating the number of annual respondents and responses. This re-calculation had an impact of the annual burden hours.

13. **ANNUAL COST BURDEN:** We assume that the average respondent would contract with consulting engineers (\$250/hour) and attorneys in a law firm (\$300/hour) to complete their submissions.

98 Submissions under Section 307(b) x 1.0 hours x \$300/hour =	\$29,400
98 Submissions under Section 307(b) submissions x 1.0 hours x \$250/hour =	\$24,500
20 Submissions under tribal priority x 1.0 hours x \$300/hour =	\$ 6,000
20 Submissions under tribal priority x 1.0 hours x \$250/hour =	\$ 5,000
42 Settlement Notifications x 0.5 hours x \$300/hour =	<u>\$ 6,300</u>
TOTAL ANNUAL COST BURDEN = \$71,200¹⁴	

14. **Cost to the Federal Government:** The Commission will use professionals at the GS-14 step 5 grade level (\$55.78/hour) to process these Section 307(b) submissions, and it will take the staff 5 hours to process each submission. Clerical staff at the GS-5 step 5 grade level (\$18.07/hour) will also be used to process the settlement notifications. It will staff members appropriately 0.25 hours (15 minutes) per notification.

98 Submissions under Section 307(b) x 5.0 hours x \$55.78/hour =	\$27,332.20
20 Submissions under tribal priority x 5.0 hours x \$55.78/hour =	\$ 5,578.00
42 Settlement Notifications x 0.25 hours x \$18.07/ hour =	<u>\$ 189.74</u>
TOTAL COST TO FEDERAL GOVERNMENT = \$33,099.94	

15. On January 28, 2010, the Commission adopted a *First Report and Order and Further Notice of Proposed Rulemaking* (the "Order") in MB Docket No. 09-52, FCC 10-24. As a result of this action, we have program changes of +60 burden hours and +\$11,000 cost burden for this information collection.

There are adjustments of -785 burden hours and -\$72,300 cost burden which are due to the Commission re-evaluating the number of respondents and responses for this information collection since these items were last approved by OMB.

16. The data will not be published.

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

18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.

¹⁴ The information collection requirements contained in FCC 10-24 adds an additional cost burden of \$11,000 to this information collection. The cost burden was also reduced by -\$72,300 due to the Commission recalculating the number of respondents and responses for this information collection since the collection was last approved by OMB.

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