

SUPPORTING STATEMENT

A. Justification:

1. **FCC Form 340** is used by licensees and permittees to apply for authority to construct a new noncommercial educational (“NCE”)¹ FM and DTV broadcast station (including a DTS facility²), or to make changes in the existing facilities of such a station. FCC Form 340 is only used if the station will operate on a channel that is reserved exclusively for NCE use,³ or in the situation where applications for NCE stations on non-reserved channels⁴ are mutually exclusive⁵ only with one another.

Form 340’s Newspaper Notice (third party disclosure) requirement; 47 CFR § 73.3580. Form 340 also contains a third party disclosure requirement, pursuant to Section 73.3580. This rule requires a party applying for a new broadcast station, or making a major change to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public notice must be completed within 30 days of tendering the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. In addition, a copy of this notice must be placed in the station’s public inspection file along with the application, pursuant to Section 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060-0214, which covers Section 73.3527.

Revised Information Collection Requirements Which Require OMB Approval:

This submission contains the changes to FCC Form 340 that are necessary to accommodate the “Tribal Priority” under 47 U.S.C. § 307(b). This revision adds a new requirement to this collection, but note that this is not a mandatory requirement, and only federally recognized Native American Tribes and Alaska

¹ These stations are licensed to nonprofit educational organizations for use in the advancement of educational programs.

² DTV stations may apply to use distributed transmission system (“DTS”) technology to serve their viewers. See 47 CFR § 73.626. DTS technology employs multiple synchronized transmitters spread around a station’s service area, rather than the current single-transmitter approach. Each transmitter would broadcast the station’s DTV signal on the same channel, similar to analog TV booster stations but more efficiently. Due to the synchronization of the transmitted signals, DTV receivers should be able to treat the multiple signals as reflections or “ghosts” and use “adaptive equalizer” circuitry to cancel or combine them to produce a single signal.

³ Reserved channels include FM channels 200 to 220 (see 47 CFR § 73.501), as well as any FM and DTV channels appearing with an asterisk in their respective table of allotments (see FM Table at 47 CFR § 73.202 and Post-transition DTV Table at 47 CFR 73.622(i)).

⁴ Non-reserved channels are channels that are not reserved exclusively for NCE use and for which commercial entities could be eligible to operate full-power stations. Non-reserved channels include FM channels 221 and above appearing without an asterisk in the FM Table of Allotments (47 CFR § 73.202), and DTV channels appearing without an asterisk in the DTV Table of Allotments (47 CFR 73.622(i)).

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.

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Native Villages (“Tribes”), tribal consortia, or entities owned or controlled by Tribes will be impacted by the new requirement.

On April 7, 2009, the Commission adopted a Notice of Proposed Rule Making in the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment, and Assignment Policies, MB Docket No. 09-52, FCC 09-30, 24 FCC Rcd 5239 (2009).⁶ On January 28, 2010, the Commission adopted a First Report and Order in the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment, and Assignment Policies, MB Docket No. 09-52, FCC 10-24 (released February 3, 2010). In the First Report and Order, the Commission adopted the Tribal Priority proposed in the Notice of Proposed Rule Making, with some modifications. Under the Tribal Priority, a Section 307(b) priority will apply to an applicant meeting all of the following criteria: (1) the applicant is either a federally recognized Tribe or tribal consortium, or an entity 51 percent or more owned or controlled by a Tribe or Tribes (with the Tribes or entities occupying tribal lands that are covered by at least 50 percent of the daytime principal community contour of the proposed facility); (2) at least 50 percent of the daytime principal community contour of the proposed facilities covers tribal lands,⁷ in addition to meeting all other Commission technical standards; (3) the specified community of license is located on tribal lands; and (4) the applicant proposes the first local tribal-owned noncommercial educational transmission service at the proposed community of license. The proposed Tribal Priority would apply, if at all, before the fair distribution analysis currently used to evaluate noncommercial educational applications. The Tribal Priority does not prevail over an applicant proposing first overall reception service to a significant population.

FCC Form 340⁸ and its instructions are being revised to accommodate those applicants qualifying for the new Tribal Priority. Specifically, we are adding new Questions 1 and 2, which seek information as to the applicant’s eligibility for the Tribal Priority and direct applicants claiming the priority to prepare and attach an exhibit, to Section III. The instructions for Section III have been revised to assist applicants with completing the new questions and preparing the exhibit.

Also, the Commission is removing FCC Form 302-DTV, Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station and FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station from this information collection to allow the Commission to more effectively manage the information collections. FCC Form 302-DTV will have its previous OMB control reinstated (3060-0837) and FCC Form 349 will have its previous OMB control reinstated as well (3060-0405).

The Commission is currently seeking OMB approval for the revisions to FCC Form 340 and the new universe of filers with this submission. Also, the removal of FCC Forms 349 and 302-DTV from this collection needs OMB approval.

⁶ The Commission previously submitted collection 3060-0029 to OMB for approval for the information collection requirements that were contained in this proposed rulemaking.

⁷ The principal community contour is set forth in 47 C.F.R. Sections 73.24(i), 73.315(a), and 73.515.

⁸ See 47 CFR Section 73.7000 which defines the terms “Tribe,” “Tribal Applicant,” “Tribal Coverage,” and “Tribal Lands,” and 47 CFR Section 73.7002(b) spells out the relevant Tribal Priority analysis.

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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), 303 and 308 of the Communications Act of 1934, as amended.

2. **Agency Use of Information:** The data collected by FCC Form 340 is used by FCC staff to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be served by grant of the application. In the case of mutually exclusive qualified applicants, the information will be used to determine which proposal would best serve the public interest.
3. **Consideration Given to Information Technology:** The Commission requires applicants to file these forms electronically.
4. **Effort to Identify Duplication and Use Similar Information:** This agency does not impose a similar information collection on the respondents. There are 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 those that are absolutely necessary for evaluating and processing the applications to determine eligibility for the Tribal Priority and resolving competing applications by applicants claiming the priority, and to deter possible abuses of the processes. Therefore, the information collection does not have a significant economic impact on a substantial number of small entities/businesses.
6. **Less Frequent Data Collection:** The frequency for filing is determined by the respondents, as necessary.
7. **Information Collection Circumstances:** This collection of information is consistent with the guidelines in 5 CFR § 1320.5(d)(2).
8. **Comments Received from the Public:** 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. **Payment or Gift:** No payment or gift is provided to the respondents.
10. **Confidentiality of Information:** There is no need for confidentiality with this information collection.
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 for this information collection. These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

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We estimate that a total of 1,560 Form 340 construction permit applications will be filed by NCE full-power FM and DTV stations with the Commission annually.⁹ We assume that each respondent station licensee/permittee will contract with a consulting engineer to complete the engineering section of the application and will also contract with an attorney to complete the legal section of the application, review and file the FCC Form 340. We estimate that the respondent will spend approximately 2-5 hours consulting and reviewing the application with the outside engineering and legal consultants, depending upon the application type (e.g., New & Major, Tribal New & Major, Minor, DTS). We estimate that the respondent will have an average salary of \$100,000/year (\$48.08/hour).

Newspaper Notices (47 CFR § 73.3580):

Section 73.3580 newspaper notices are required upon submission of construction permit applications for New & Major Changes. We estimate that it will take the respondent approximately one hour to fulfill the newspaper notice requirement. We estimate that the respondent will have an average salary of \$100,000/year (\$48.08/hour).

Type	# of Respondents	# of Responses	Burden Hours of Respondents	Annual Burden Hours	Hourly Salary of Respondents ¹⁰	Annual In-House Cost
NCE Full-Power FM and DTV						
FM NCE New & Major	1,000	1,000	4 hrs. consultation	4,000 hrs	\$48.08	\$192,320.00
FM NCE New & Major (Tribal Applicant)	120	120	5 hrs. consultation	600 hrs	\$48.08	\$28,848.00
FM NCE Minor	300	300	2 hrs. consultation	600 hrs	\$48.08	\$28,848.00
DTV NCE New & Major	30	30	4 hrs. consultation	120 hrs	\$48.08	\$5,769.60
DTV NCE Minor	100	100	2 hrs. consultation	200 hrs	\$48.08	\$9,616.00
DTS	10	10	3 hrs. consultation	30 hrs	\$48.08	\$1,442.40
Subtotal	1,560	1,560		5,550 hrs		\$266,844.00

⁹ We note that this estimate includes the filing of amendments to these applications.

¹⁰ The Commission estimates that the average hourly salary for in-house personnel which includes station manager, engineer and attorney to be \$100,000/year or \$48.08/hour based on the fact that the Commission is unsure who exactly will complete and file the applications for the station.

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Type	# of Respondents	# of Responses	Burden Hours of Respondents	Annual Burden Hours	Hourly Salary of Respondents	Annual In-House Cost
Newspaper Notices (Third Party Disclosure) Requirement; 47 CFR § 73.3580						
Newspaper Notices with FM NCE New & Major applications (Form 340)	1,120	1,120	1 hr.	1,120 hrs	\$48.08	\$53,849.60
Newspaper Notices with DTV NCE New applications (Form 340)	30	30	1 hr.	30 hrs	\$48.08	\$1,442.40
Newspaper Notices Subtotal	1,150	1,150		1,150 hrs		\$55,292.00
TOTAL	2,710	2,710		6,700 hrs		\$322,136.00

13. Annual Cost Burden to Respondents: The annual cost burden to the respondents was calculated as follows:

- We assume that each respondent station will contract with a consulting engineer to complete the engineering section of the application and will also contract with an attorney to complete the legal section of the application, review the application, and file FCC Form 340. We estimate that the time by outside engineering and legal consultants spent to complete, review and file the form will vary, depending upon

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the application and service type. We estimate that the consulting engineer will have an rate of \$250/hour and the outside attorney will charge approximately \$300/hour.

- **Newspaper Notice Publication Fee:** An FM or DTV applicant must give local public notice of the filing of its Form 340 construction permit application for a new station or for a major change in facilities. This notice must be published in a local newspaper of general circulation at least twice a week for two consecutive weeks in a three-week period, for a total of four (4) publications. The cost of this publication is estimated to be \$113.25/publication.
- **Filing Fee:** There is no filing fee for the Form 340, which is only filed by NCE stations.

Type	Number of Forms	Consultant's Burden	Total Annual Burden Hours	Consultant's Hourly Fee or Application Fee	Cost Burden
FM NCE New & Major Engineering Consultant	1,000	67 hrs	67,000 hrs	\$250.00	\$16,750,000.00
FM NCE New & Major Outside Attorney	1,000	5 hrs	5,000 hrs	\$300.00	\$1,500,000.00
FM NCE New & Major Engineering Consultant (Tribal Applicant)	120	68 hrs	8,160 hrs	\$250.00	\$2,040,000.00
FM NCE New & Major Outside Attorney (Tribal Applicant)	120	6 hrs	720 hrs	\$250.00	\$144,000.00
Newspaper Notice Publication Fee	1,120	4 publications		\$113.25/fee	\$507,360.00
FM NCE Minor Engineering Consultant	300	67.5 hrs	20,250 hrs	\$250.00	\$5,062,500.00
FM NCE Minor Outside Attorney	300	5 hrs	1,500 hrs	\$300.00	\$450,000.00
DTV NCE New & Major Engineering Consultant	30	34 hrs	1,020 hrs	\$250.00	\$255,000.00
DTV NCE New & Major Outside Attorney	30	5 hrs	150 hrs	\$300.00	\$45,000.00
Newspaper Notice Publication Fee	30	4 publications		\$113.25/fee	\$13,590.00
DTV NCE Minor Engineering	100	34 hrs	3,400 hrs	\$250.00	\$850,000.00

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Consultant					
DTV NCE Minor	100	5 hrs	500 hrs	\$300.00	\$150,000.00
Outside Attorney					
DTS NCE	10	45 hrs	450 hrs	\$250.00	\$112,500.00
Engineering					
Consultant					
DTS NCE Outside	10	5 hrs	50 hrs	\$300.00	\$15,000.00
Attorney					
Annual Cost Burden Total					\$27,894,950.00

14. **Cost to Federal Government:** The total cost to the Federal Government was calculated as follows:

FM New and Major Applications:

Clerical	1.5 hours x \$18.07/hour x 1,000 =	\$ 27,105.00
Paraprofessional	7.0 hours x \$33.12/hour x 1,000 =	\$ 231,840.00
Professional	36.9 hours x \$55.78/hour x 1,000 =	<u>\$2,058,282.00</u>
		\$2,317,227.00

FM New and Major Applications (Tribal Applicants):

Clerical	1.6 hours x \$18.07/hour x 120 =	\$ 3,469.44
Paraprofessional	7.5 hours x \$33.12/hour x 120 =	\$ 29,808.00
Professional	37.5 hours x \$55.78/hour x 120 =	<u>\$ 251,010.00</u>
		\$ 284,287.44

FM Minor Change:

Clerical	2.0 hours x \$18.07/hour x 300 =	\$ 10,842.00
Paraprofessional	6 hours x \$33.12/hour x 300 =	\$ 59,616.00
Professional	25 hours x \$55.78/hour x 300 =	<u>\$418,350.00</u>
		\$488,808.00

DTV Applications (New & Major and Minor Change):

Clerical	2 hours x \$18.07/hour x 130 =	\$ 4,698.20
Paraprofessional	6 hours x \$33.12/hour x 130 =	\$ 25,833.60
Professional	16 hours x \$55.78/hour x 130 =	<u>\$116,022.40</u>
		\$146,554.20

DTS Applications:

Clerical	2 hours x \$18.07/hour x 10 =	\$ 361.40
Paraprofessional	6 hours x \$33.12/hour x 10 =	\$ 1,987.20
Professional	20 hours x \$55.78/hour x 10 =	<u>\$11,156.00</u>
		\$13,504.60

TOTAL **\$3,250,381.24**

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Total Cost to Federal Government = \$3,250,381.24

The following data was used to calculate the total cost to the Federal Government:

*The Commission will use professional staff at the GS-14, step 5 level (\$55.78/hour), paraprofessional staff at the GS-11, step 5 level (\$33.12/hour) and clerical staff at the GS-5, step 5 level (\$18.07/hour) to process these applications.

15. Reason for Changes in Burden or Cost: The Commission had program changes of +720 to the annual burden hours and +2,238,360 to the annual cost burden. These program changes were a result of the adoption of a *First Report and Order* on January 28, 2010 by the Commission, Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09-52, FCC 10-24, which resulted to revisions to FCC Form 340 and adopted a new universe of filers to this information collection.

Also, the Commission had program changes of -5,100 to the burden hours and -\$4,731,900 to the annual cost burden due to FCC Forms 349 and 302-DTV being removed from this collection and placed under their previously OMB control numbers. There are also adjustments of +\$6,305,113 which are due to increases in the consulting attorney and engineer rates.

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

17. Display of OMB Approval Date: We request extension of the waiver not to publish the expiration date on the form. This will obviate the need for the Commission to update electronic forms upon the expiration of the clearance. OMB approval of the expiration date of the information collection will be displayed at 47 CFR § 0.408.

18. Exceptions to the Certification Statement: There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods

This information collection does not employ any statistical methods.