

SUPPORTING STATEMENT

A. Justification:

The Commission is requesting a revision to this information collection requirement and is seeking Office of Management and Budget (OMB) approval of certain information collections and third-party disclosures associated with a *2004 Order*¹ as modified by a *2006 Order*,² the *2008 Order*,³ and a *2010 Order*⁴ in the Commission's "BRS/EBS proceeding." By these actions, the Commission continues its efforts to transform rules and policies governing the licensing of the Educational Broadband Service (EBS) and the Broadband Radio Service (BRS) (collectively, the Services) in the 2495-2690 MHz band.⁵

Proposed requirements that revised this IC :

1. The FCC adopted and released a Fourth Memorandum Opinion and Order (*2008 Order*), FCC 08-83, which adopted Section 27.14(o) of the Commission's rules. That rule requires all BRS and EBS licensees to make a showing of "substantial service" no later than May 1, 2011 on a license-by-license basis. This requirement was modified by the Third Report and Order (*2010 Order*), FCC 10-107, to require that licensees issued a new BRS license on or after November 6, 2009, would have four years from the date of initial license grant to provide substantial service. A licensee must demonstrate that it provided service which is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. The Commission is also revising this information collection by removing certain

¹ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 19 FCC Rcd 14165, 14169 ¶ 6 (*2004 Order*).

² Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Memorandum Opinion and Order and Second Report and Order*, WT Docket No. 03-66, 21 FCC Rcd. 5606 (2006) (*2006 Order*).

³ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, WT Docket No. 03-66, WT Docket No. 03-67, WT Docket No. 02-68, IB Docket No. 02-364 and ET Docket No. 00-258 (Released March 20, 2008) (*2008 Order*).

⁴ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Report and Order*, WT Docket No. 03-66, WT Docket No. 03-67, 25 FCC Rcd 7743 (2010) (*2010 Order*).

⁵ The two services in the 2500-2690 MHz band, the Instructional Television Fixed Service (ITFS) and the Multichannel Multipoint Distribution Service (MMDS), and the Multipoint Distribution Service (MDS) in the 2150-2162 MHz band were renamed by the Commission in 2004. The ITFS service became the Educational Broadband Service (EBS) and the MMDS and MDS services became the Broadband Radio Service (BRS). See *2004 Order*, 19 FCC Rcd at 14169 ¶ 5.

provisions relating to the transition of BRS and EBS to a new band plan that were previously approved by OMB in 2008, since the last time this was submitted for approval. Those portions of the process relating to these information requirements is complete. Therefore, the Commission is reporting a decrease adjustment of 4,947 total annual burden hours and a program change increase of +\$36,001 in annual costs (for the new requirement). See items 12 and 15 of this supporting statement.

Statutory authority for this collection is contained in 47 U.S.C. §§ 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 316.

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

2. The information relating to substantial service is used by the Commission staff to satisfy requirements for licensees to demonstrate substantial service at the time of license renewal. Without this information, the Commission would not be able to carry out its statutory responsibilities. The third party disclosure coordination requirements are necessary to ensure that licensees do not cause interference to each other and that licensees who undertake to transition to the new band plan receive reimbursement for eligible costs.

3. The Commission requires electronic filing for the substantial service filings. The remaining information collections are third-party disclosure requirements (see item 12 for descriptions). We estimate that ninety-five percent of the BRS/EBS licensees could possibly submit the filings other than the substantial service filings electronically.

4. The Commission does not impose a similar information collection on respondents and no similar data is available elsewhere.

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. This information collection will not have a significant economic impact on a substantial number of small entities.

6. The requirement to demonstrate substantial service is a one-time filing. The frequency of reporting for the other requirements will be determined by the BRS/EBS licensees.

7. There are no special circumstances that would cause this information collection to be conducted less frequently.

8. The Commission published the 60-day notice in the Federal Register on October 15, 2010 (75 FR 63473). No comments were received on the notice. A reference to the notice is included in this submission to the OMB.

9. Respondents will not receive any payments or gifts.

10. There is no need for confidentiality. Respondents or applicants may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

11. There are no questions of a sensitive nature.

12. The Commission estimates the burden on respondents as follows:

Existing Burden Hours:

The following requirements have been previously approved by OMB. No change is proposed for these requirements. The Commission estimates that there could be 2,500 respondents (10 proponents and 2,490 applicants/licenses) in 2500-2690 MHz Transition bands who will be required to provide supplemental data, either to the Commission or to third parties, that is not currently collected on the FCC Form 601. Approximately 1,500 of the respondents are BRS licensees, from whom we estimate there will be ten proponents, leaving 1,490 BRS licensees. Approximately 1,000 respondents are EBS licensees.

a. **Reimbursement Costs of Transitioning:**

Number of respondents = 25 (proponents or EBS self-transitioning licensees)

Number of responses = 1,490 (third-party disclosures; recordkeeping)

- approx. one proponent or EBS self-transitioning licensee per BTA sends reimbursement claim to all BRS/commercial licensees in the relevant BTA(s)

Number of hours per response: 2.25 hrs. (2 hrs. legal/engineering; 0.25 hr. nontech.)

- *Internal annual cost = engineering and legal staff @ \$200/hr. = \$198,666.67*
- *Internal annual cost = nontechnical staff @ \$35/hr. = \$4,345.83*

Total hours for Reimbursement Costs of Transitioning = 3,353 hrs.

ANNUAL BURDEN HOURS for Reimbursement Costs of Training

(3,353 hours / 3 years) = **1,118 hours** (for which the internal annual cost = \$203,012.50)

b. **Provision of Technical Information:**

Number of respondents = 10

Number of responses = 250 (reporting; recordkeeping)

- Requirement is triggered when licensee seeks technical information from adjacent licensee because of potential interference problem.

Hours per response: .50 hours (engineering).

- *Internal annual cost = engineering staff @ \$200/hr. = \$25,000*

ANNUAL BURDEN HOURS for section 27.1221(f):

(375 hours/3 years = **125 hours** (for which the internal annual cost = \$25,000).

New Burden added to this IC:

Section 27.14(o) substantial service filing:

For BRS and EBS, approximately 3,400 unique licenses will have to demonstrate substantial service pursuant to 47 C.F.R. § 27.14(o) on or before May 1, 2011. We estimate approximately 3,400 responses at that time over a 3 year period. We estimate each response will take 2 hours on average. We therefore estimate a total reporting burden of 6,800 hours/3 years = 2,267 hours.

Substantial service costs:

(1) Total capital and start-up cost : \$0

(2) We estimate two-thirds of respondents will use outside consultants (attorneys or engineers charging (\$200/hour) to consult and prepare information.

Annual Costs: \$302,667
\$200/hour x 2,267 x 2 hours/3 years = \$302,667

(3) One-third of respondents will perform the work themselves at an imputable rate of \$40 per hour.

Annual Costs: \$30,267
\$40/hour x 1,133 x 2 hours/3 years = \$30,267

(4) **Total Annual Cost = \$332,934**

Total Annual Cost = \$302,667 + 30,267 = \$332,934

ANNUAL BURDEN HOURS for Substantial Service

= **2,267 hours** (for which the internal annual cost = \$30,267.00)

Elimination of Burdens to this IC:

We are proposing to eliminate the following burdens because they relate to the transition of BRS and EBS licensees to the new band plan:

- 1) the pre-transition data request (47 CFR § 27.1231(e));
- 2) the transition notice (47 CFR § 27.1231(e));
- 3) the Initiation Plan (47 CFR § 27.1231(f)); and
- 4) the Post-transition notification (47 CFR § 27.1235).

The transition process is sufficiently complete such that the burdens mentioned below will no longer apply. The elimination of these burdens will eliminate 7,214 burden hours and reduce internal annual cost by \$1,131,699.58.

Revised Annual Burden Hours:

The revised information collection requirements as stated above (see description of modified/new information in item 1, page 1 of this supporting statement) will add an additional 2 hours per license demonstrating substantial service for each of the 3,400 licenses to the current information collection burden for wireless service providers. This will change the burden to **(8,457 + 2,267 hours = 10,724 hours minus 7,214 hours for the transition requirements that no longer apply = 3,510 total annual burden hours.**

TOTAL PROPOSED REVISED ANNUAL BURDEN HOURS (1,118 + 125 + 2,267 = 3,510

hours (for which the internal annual cost = \$258,279.50)

13. Costs to respondent

TOTAL ANNUAL EXTERNAL COST IS: \$302,667 (see response to Question 12).
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14. Costs to the Federal government are as follows:

Processing Costs for Substantial Service Showings:

The attorneys and engineers will be reviewing substantial showings to ensure that they contain the information required by the rules and determining that the level of service provided meets the substantial service standard.

Attorney GS-14-5 at approximately \$57.13 /hour x 1 hour x 1,133 = \$64,728

Engineer GS-14-5 at approximately \$57.13 /hour x 1 hour x 1,133 = \$64,728

Total government cost: \$64,728 + \$64,728 = \$129,456.

15. The Commission is reporting a decrease of – 4,947 burden hour adjustment and a program change increase of +\$36,001 in annual costs. The program change increase in cost is due to the new requirement described in paragraph one. The adjustment decrease in burden hours is due to the fact that the transition to the new band plan is largely complete and most of the transition-related requirements contained in the collection are no longer necessary.

16. The 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 the certification statement.

B. Collections of Information Employing Statistical Methods:

This information collection does not use any statistical methods.