

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 major modification of facility change, such as a change in the 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 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, including 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.

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 § 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 only 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 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 that the applicant determines relevant. 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.¹¹

In the licensing process for new AM stations, applicants' proposals are subject to a threshold determination under Section 307(b) and may, in certain cases, qualify for a dispositive preference relative to the other mutually exclusive station proposals in the group. In such cases, the applicant proposing the community receiving the dispositive Section 307(b) preference continues to the next stage of the licensing process, and thus may receive an authorization by virtue of the Section 307(b) determination, rather than through competitive bidding.

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.

Revised Information Collection Requirements:

Tribal Priority. On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking ("*First R&O*") in MB Docket No. 09-52, FCC 10-24. The *First R&O* adopted 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 *First R&O*, 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. As adopted in the *First R&O*, 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 area within the proposed station's daytime principal community contour is over that Tribe's 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.

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

¹¹ 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.

On March 3, 2011, the Commission adopted a Second Report and Order (“*Second R&O*”), First Order on Reconsideration, and Second Further Notice of Proposed Rule Making in MB Docket No. 09-52, FCC 11-28.¹² The *First Order on Reconsideration* modifies the initially adopted Tribal Priority coverage requirement, by creating an alternate coverage standard under criterion (2), enabling Tribes to qualify for the Tribal Priority even when their tribal lands are too small or irregularly shaped to comprise 50 percent of a station’s signal. In such circumstances, Tribes may claim the priority (i) if the proposed principal community contour encompasses 50 percent or more of that Tribe’s tribal lands, but does not cover more than 50 percent of the tribal lands of a non-applicant Tribe; (ii) serves at least 2,000 people living on tribal lands, and (iii) the total population on tribal lands residing within the station’s service contour constitutes at least 50 percent of the total covered population, with provision for waivers as necessary to effectuate the goals of the Tribal Priority. This modification will now enable Tribes with small or irregularly shaped lands to qualify for the Tribal Priority. **(This information collection is being revised to accommodate the new universe of applicants that will now qualify and apply for the Tribal Priority. Therefore, these proposed revisions need OMB review and approval).**

Section 307(b) Proposals. In addition, the *Second R&O* adjusts the procedures and policies for evaluating Section 307(b) showings and determining Section 307(b) preferences in the radio licensing processes. The *Second R&O* adopts specific modifications to the manner in which the Commission awards preferences to applicants under the provisions of Section 307(b) of the Act.¹³ For example, the Commission establishes a new rebuttable “Urbanized Area service” presumption, by which an AM new station proponent seeking to locate at a community that is in an Urbanized Area, or would place a daytime principal community signal over 50 percent or more of an Urbanized Area, or that could be modified to provide such coverage, will be presumed to be a proposal to serve the Urbanized Area rather than the proposed community of license, and therefore would not receive a dispositive preference under Section 307(b). This presumption can be overcome only by a compelling showing of the designated community’s independence from the Urbanized Area, its specific need for a local radio outlet, and the proposed station’s ability to provide that outlet. The Commission will also support a greater emphasis on proposals for service to underserved areas, that is, populations receiving five or fewer radio services.

When analyzing applications under Section 307(b), the Commission uses four priorities.¹⁴ The first two, provision of first and second fulltime aural reception service, are rarely used, as most populated sections of the country receive at least two radio services. Most applicants claim to provide either first local transmission service under Priority (3), or make a showing under “other public interest matters,” Priority (4). The modifications to the Commission’s allotment and assignment policies adopted in the *Second R&O* generally de-emphasize additional service at communities located in or near Urbanized Areas, service to already well-served areas, and simple population differences. The new policies include a rebuttable “Urbanized Area service presumption” under

¹² The Office of Management and Budget (OMB) approved the information collection requirements contained in FCC 10-24 on June 4, 2010. The Commission is now seeking OMB approval of the information collection requirements contained in FCC 11-28.

¹³ Section 307(b) provides that the Commission shall, in considering modifications of licenses, “make such distribution of license, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same.”

¹⁴ See Revision of FM Assignment Policies and Procedures, Second Report and Order, 90 F.C.C.2d 88, 91-93 (1982). The four priorities are: (1) First fulltime aural (reception) service; (2) Second fulltime aural service; (3) First local (transmission) service; and (4) Other public interest matters. Priorities (2) and (3) are considered co-equal.

Priority (3), whereby an application to locate or relocate a station as the first local transmission service at a community located within an Urbanized Area, that would place a daytime principal community signal over 50 percent or more of an Urbanized Area, or that could be modified to provide such coverage, will be presumed to be a proposal to serve the Urbanized Area rather than the proposed community. In the case of an AM station, the determination of whether a proposed facility “could be modified” to cover 50 percent or more of an Urbanized Area will be made based on the applicant’s certification in its Section 307(b) showing that there could be no rule-compliant minor modifications to the proposal, based on the antenna configuration or site, and spectrum availability as of the filing date, that could cause the station to place a principal community contour over 50 percent or more of an Urbanized Area. To the extent the applicant wishes to rebut the Urbanized Area service presumption, the Section 307(b) showing must include a compelling showing (a) that the proposed community is truly independent from the Urbanized Area; (b) of the community’s specific need for an outlet of local expression separate from the Urbanized Area; and (c) the ability of the proposed station to provide that outlet.

Allotment and assignment policy modifications adopted in the *Second R&O* will place greater emphasis on proposals to serve populations receiving five or fewer radio services, and less emphasis on raw population comparisons. Such population comparisons are typically made under Priority (4), other public interest matters. To this end, in the case of applicants for new AM stations making a showing under Priority (4), other public interest matters, an applicant that can demonstrate in the Section 307(b) showing that its proposed station would provide third, fourth, or fifth reception service to at least 25 percent of the population in the proposed primary service area, where the proposed community of license has two or fewer transmission services, may receive a dispositive Section 307(b) preference under Priority (4). An applicant for a new AM station that cannot demonstrate that it would provide the third, fourth, or fifth reception service to the required population at a community with two or fewer transmission services may also, under Priority (4), calculate a “service value index” as set forth in the case of *Greenup, Kentucky and Athens, Ohio*, Report and Order, 2 FCC Rcd 4319 (MMB 1987). If the applicant can demonstrate a 30 percent or greater difference in service value index between its proposal and the next highest ranking proposal, it can receive a dispositive Section 307(b) preference under Priority (4). Except under these circumstances, dispositive Section 307(b) preferences will not be granted under Priority (4) to applicants for new AM stations. (The Commission specifically stated that these modified allotment and assignment procedures will not apply to pending applications for new AM stations and major modifications to AM facilities filed during the 2004 AM Auction 84 filing window.) Finally, under Priority (4), applicants may offer any other information they believe pertinent to a public interest showing and relevant to the Commission’s consideration. Accordingly, applicants’ Section 307(b) submissions will track the revised policies.

(This information collection is being revised to accommodate the Section 307(b) filings submitted under the modified policies contained in FCC 11-28. Therefore, these proposed revisions need OMB review and approval).

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), 307(b) and 309 of the Communications Act of 1934, as amended.

2. **Agency Use of Information.** 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. Consideration Given to Information Technology. 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. Effort to Identify Duplication and Similar Information. No other agency imposes a similar information collection on the respondents. There is 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 that which is absolutely necessary for evaluating and processing the submissions 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. Less Frequent Data Collections. The Commission will issue a public notice informing the public of mutually exclusive applications. This public notice will identify groups needing to file Section 307(b) amendments. Non-mutually exclusive applicants that need to file Section 307(b) information will be appropriately notified.

7. Information Collection Circumstances. This collection of information is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations with persons outside the FCC. 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 76 FR 15977, on March 22, 2011. No comments were received from the public.

9. Payment or Gift. No payment or gift was provided to respondents.

10. Confidentiality of Information. There is no need for confidentiality for this collection of information.

11. Justification for Sensitive Questions. This collection of information does not address any private matters of a sensitive nature.

12. Estimate of Annual Burden and Annual Burden Hour Cost. The following estimates are provided for public burden:

Total Number of Respondents: 210 Mutually Exclusive Applicants

Total Number of Responses:

138 Submissions Under Section 307(b)¹⁵ + 30 Submissions under tribal priority¹⁶ + 42 Notifications of Settlement = **210 responses**

Annual Burden Hours:

138 Submissions under Section 307(b) x 6.0 hours/submission =	828 hours
30 Submissions under tribal priority x 6.0 hours/submission =	180 hours
42 Settlement Notifications x 0.5 hours/notification =	<u>21 hours</u>
TOTAL ANNUAL BURDEN HOURS =	1,029 hours¹⁷

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).

138 Submissions under Section 307(b) x 6.0 hours x \$48.08/hour =	\$39,810.24
30 Submissions under tribal priority x 6.0 hours x \$48.08/hour =	\$ 8,654.40
42 Settlement Notifications x 0.5 hours x \$48.08/hour =	<u>\$ 1,009.68</u>
TOTAL ANNUAL "IN-HOUSE" COSTS =	\$49,474.32

¹⁵ The information collection requirements in FCC 11-28 add an additional 40 responses for applicants that will be presenting Section 307(b) submissions under the modified assignment and allotment policies.

¹⁶ The information collection requirements in FCC 11-28 add an additional 10 responses for Tribal applicants to this information collection, thus taking into account the new universe of applicants that will qualify for the Tribal Priority.

¹⁷ The information collection requirements contained in FCC 11-28 add an additional 654 burden hours to this information collection.

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.

138 Submissions under Section 307(b) x 12.0 hours x \$300/hour =	\$ 496,800
138 Submissions under Section 307(b) submissions x 40.0 hours x \$250/hour =	\$ 1,380,000
30 Submissions under tribal priority x 7.0 hours x \$300/hour =	\$ 63,000
30 Submissions under tribal priority x 24.0 hours x \$250/hour =	\$ 180,000
42 Settlement Notifications x 0.5 hours x \$300/hour =	\$ 6,300
TOTAL ANNUAL COST BURDEN = \$2,126,100¹⁸	

14. Cost to the Federal Government. The Commission will use professionals at the GS-14 step 5 grade level (\$57.13/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 (\$18.50/hour) will also be used to process the settlement notifications. It will staff members appropriately 0.25 hours (15 minutes) per notification.

138 Submissions under Section 307(b) x 6.0 hours x \$57.13/hour =	\$47,303.64
30 Submissions under tribal priority x 5.0 hours x \$57.13/hour =	\$ 8,569.50
42 Settlement Notifications x 0.25 hours x \$18.50/ hour =	\$ 194.25
TOTAL COST TO FEDERAL GOVERNMENT = \$56,067.39	

15. Reasons for Changes in Burden or Cost. On March 3, 2011, the Commission adopted a *Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making* in MB Docket No. 09-52, FCC 11-28. As a result of this action, we have program changes of +50 to the number of respondents, +50 to the annual number of responses, +654 to the annual burden hours and +\$2,054,900 to the annual cost burden for this information collection.

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

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

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

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.

¹⁸ The information collection requirements contained in FCC 11-28 add an additional cost burden of \$2,054,900 to this information collection.

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Title: AM Auction Section 307(b) Submissions

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