

**SUPPORTING STATEMENT****A. Justification:**

1. FCC Form 301 is used to apply for authority to construct a new commercial AM, FM, or TV broadcast station and to make changes to existing facilities of such a station. It may be used to request a change of a station's community of license by AM and non-reserved band FM permittees and licensees. In addition, FM licensees or permittees may request, by filing an application on FCC Form 301, upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channels. All applicants using this one-step process must demonstrate that a suitable site exists that would comply with allotment standards with respect to minimum distance separation and principal community coverage and that would be suitable for tower construction. For applicants to seek a community of license change through this one-step process, the proposed facility must be mutually exclusive with the applicant's existing facility, and the new facility must comply with the Commission's standards with respect to minimum distance separation and principal community coverage. Applicants availing themselves of this procedure must also attach to FCC Form 301 an exhibit demonstrating that the proposed community of license change comports with the fair, efficient, and equitable distribution of radio service, pursuant to Section 307(b) of the Communications Act of 1934, as amended (the "Act").

Similarly, to receive authorization for commencement of Digital Television ("DTV") operations, commercial broadcast licensees must file FCC Form 301 for a construction permit. The application may be filed anytime after receiving the initial DTV allotment and before mid-point in the applicant's construction period. The Commission will consider the application as a minor change in facilities. Applicants will not have to provide full legal or financial qualification information.

This collection also includes the third party disclosure requirement of 47 CFR § 73.3580. This rule requires applicants to provide local public notice, in a newspaper of general circulation published in a community in which a station is located, of requests for new or major changes in facilities and for changes of a station's community of license by AM and non-reserved band FM permittees and licensees. The notice must be completed within 30 days of tendering the application and must be published at least twice a week for two consecutive weeks in a three-week period. A copy of the notice and the application must be placed in the station's public inspection file, pursuant to Section 73.3527.<sup>1</sup>

**Revised Information Collections Requirements:**

On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking in MB Docket No. 09-52, FCC 10-24.<sup>2</sup> 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. The *Second R&O* adopts modifications to the manner in which the Commission awards preferences to applicants under the provisions of Section 307(b) of the Act.<sup>3</sup> For Section 307(b) purposes, licensees and permittees seeking to change community of license must demonstrate that the facility at the new community represents a preferential arrangement of allotments (FM) or assignments (AM) over the current facility. Applications that are submitted to change an existing radio facility's community of license must include an Exhibit containing information demonstrating that the

<sup>1</sup> The recordkeeping information collection requirement is contained in OMB Control Number 3060-0214, which covers Section 73.3527.

<sup>2</sup> 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.

<sup>3</sup> 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."

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proposed change of community of license will result in a preferential arrangement of allotments or assignments under Section 307(b).

Consistent with actions taken by the Commission in the *Second R&O*, the Instructions to the Form 301 have been revised to incorporate the information that must be included in the Exhibit, which is responsive to the “Community of License Change – Section 307(b)” question in the Form 301.<sup>4</sup> The Form 301 itself has not been revised, nor have any questions been added to the Form 301. Rather, the Instructions for the Form 301 have been revised to assist applicants with completing the mandatory, responsive Exhibit.

When analyzing applications under Section 307(b), the Commission uses four priorities.<sup>5</sup> 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 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 the Exhibit 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. In the case of an FM station, the determination of whether a proposed facility “could be modified” to cover 50 percent or more of an Urbanized Area will be based on an applicant’s certification in the Exhibit that there are no existing towers in the area to which, at the time of filing, the applicant’s antenna could be relocated pursuant to a minor modification application to serve 50 percent or more of an Urbanized Area.<sup>6</sup> To the extent the applicant wishes to rebut the Urbanized Area service presumption, the Exhibit 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

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<sup>4</sup> For AM station applicants, the Community of License Change – Section 307(b) question is in Section III-A (AM Engineering), Item 12 of the Form 301. For FM station applicants, the Community of License Change – Section 307(b) question is in Section III-B (FM Engineering), Item 18 of the Form 301.

<sup>5</sup> 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.

<sup>6</sup> Specifically, an FM applicant would need to certify that there could be no rule-compliant minor modification on the proposed channel to provide a principal community signal over 50 percent or more of an Urbanized Area, in addition to covering the proposed community of license. In doing so, FM applicants will be required to consider all existing registered towers in the Commission’s Antenna Structure Registration database, in addition to any unregistered towers currently used by licensed radio stations. Furthermore, we expect all applicants to consider widely-used techniques, such as directional antennas and contour protection, when certifying that the proposal could not be modified to provide a principal community signal over the community of license and 50 percent or more of an Urbanized Area.

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population comparisons. Such population comparisons are typically made under Priority (4), other public interest matters. To this end, in the Exhibit applicants must provide a description of all populations gaining or losing third, fourth, or fifth reception service, and the percentage of the population in the station's current protected contour that will lose third, fourth, or fifth reception service, if any. The Commission will also require applicants to not only set forth the populations gaining and losing service under the proposal, but also the numbers of services those populations will receive if the application is granted, and an explanation as to how the proposal provides a preferential arrangement of allotments or assignments and advances the revised Section 307(b) policies.<sup>7</sup> 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.

**This information collection is being revised to accommodate the Section 307(b) exhibits submitted under the revised policies contained in FCC 11-28. This revision regarding FCC Form 301 needs 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), 303 and 308 of the Communications Act of 1934, as amended.

2. **Agency Use of Information:** The data 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.

3. **Consideration Given to Information Technology:** The Commission requires applicants to file FCC Form 301 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 amendments to determine the community having the greater need and to deter possible abuses of the processes. Therefore, this information collection will not have a significant economic impact on small entities/businesses.

6. **Less Frequent Data Collection:** The frequency for filing the DTV station application will vary depending on the market. For all other uses of FCC Form 301, the frequency of filing is determined by the

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<sup>7</sup> The Commission specifically stated that these modified allotment and assignment procedures will apply to any applications to change community of license that are pending as of the release date of the *Second R&O*, March 3, 2011. Therefore, an applicant with a pending community of license change application must file an amendment demonstrating how the proposal represents a preferential arrangement of allotments or assignments under the policy modifications adopted in the *Second R&O*. For example, an applicant claiming Priority (3) would have to file the above-referenced "could be modified" certification, if appropriate, or a showing to rebut the Urbanized Area service presumption, if applicable. Similarly, an applicant claiming Priority (4) will have to make a showing as to the populations gaining or losing service under the proposed community of license change, as well as the numbers of services those populations will receive if the application is granted, and an explanation as to how the proposal advances the revised Section 307(b) priorities set out in the *Second R&O*. See *Second R&O*, FCC 11-28, at 22-23 ¶ 39. Such amendments must be filed once the information collection requirements are approved by OMB and the effective date for the requirements is announced by the Commission.

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respondents. However, no new or modified AM, FM, TV, or DTV facilities can be obtained or modified without using FCC Form 301.

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

8. **Public Comment Period:** Opportunity for public comment on this information collection requirement has been published in the *Federal Register* (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 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:

<u>Services</u>	<u>Number of Applicants</u>
AM New & Major	476
AM Minor Change With AM Multiple Ownership Showings	250
AM Community of License Minor Change Applications	285
	66 <sup>8</sup>
FM New & Major	298
FM Minor Change With FM Multiple Ownership Showings	1,200
FM Community of License Minor Change Applications	274
	145 <sup>9</sup>
TV Minor Change	200
DTV With TV Multiple	1,220

<sup>8</sup> This figure includes both an estimate as to the number of annual respondents (50), as well as the number of pending AM Form 301 applications to change community of license as of the release date of the *Second R&O*, March 3, 2011 (16).

<sup>9</sup> This figure includes both an estimate as to the number of annual respondents (80), as well as the number of pending FM Form 301 applications to change community of license as of the release date of the *Second R&O*, March 3, 2011 (65).

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Ownership Showings 30  
 DTS 100  
**Total Number of Respondents: 4,544 Licensees/Permittees**

<u>Number of Services</u>	<u>Respondent's Applications</u>	<u>Annual Hrly. Burden</u>	<u>Burden Hours</u>
AM New & Major	476	4.25 hours	2,023 hours
AM Minor Change With AM Multiple Ownership Showings	250	3.25 hours	812.50 hours
AM Community of License Minor Change Applications	285	6.25 hours	1,781.25 hours
	66	6.0 hours	396 hours
FM New & Major	298	4 hours	1,192 hours
FM Minor Change With FM Multiple Ownership Showings	1,200	3 hours	3,600 hours
FM Community of License Minor Change Applications	274	6 hours	1,644 hours
	145	5.50 hours	797.50 hours
TV Minor Change	200	3 hours	600 hours
DTV With TV Multiple Ownership Showings	1,220	3 hours	3,660 hours
	30	5 hours	15 hours
DTS <sup>10</sup>	100	3 hours	300 hours
Newspaper Requirements	3,436	1 hour	3,436 hours
<b>Totals:</b>	<b>7,980</b> <b>(responses)</b>		<b>20,257.25 hours</b> <b>(20,257 hrs. rounded)</b>

**Total Number of Responses: 7,980 FCC Form 301 Filings and Newspaper Notices**

**Total Annual Burden Hours: 20,257 hours**

We assume that the respondent would consult with an outside attorney and a consulting engineer to complete an FCC Form 301. The time spent in consultation with these attorneys and consulting engineer will vary depending upon the application type.

The Commission estimates that it will take the respondent one hour to fulfill the newspaper notice requirement.

We estimate that the respondent would have an average salary of \$100,000/year (\$48.08/hour)

	<b>Number of</b>	<b>Respondent's</b>	<b>Hrly. Wage</b>	<b>Annual In-</b>
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<sup>10</sup> DTS technologies are covered under 47 CFR § 73.626, which authorizes the use of distributed transmission system ("DTS") technologies in the digital television ("DTV") service and also authorized changes to FCC Form 301 that are necessary to accommodate applications for a DTS facility.

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<u>Services</u>	<u>Applications</u>	<u>Hrly. Burden</u>	<u>of Respondent</u>	<u>House Cost</u>
AM New & Major	476	4.25 hours	\$48.08	\$97,265.84
AM Minor Change	250	3.25 hours	\$48.08	\$39,065.00
AM Ownership Showings	285	6.25 hours	\$48.08	\$85,642.50
AM Community of License Change	66	6.0 hours	\$48.08	\$19,039.68
FM New & Major	298	4 hours	\$48.08	\$57,311.36
FM Minor Change	1,200	3 hours	\$48.08	\$173,088.00
FM Ownership Showings	274	6 hours	\$48.08	\$79,043.52
FM Community of License Change	145	5.50 hours	\$48.08	\$38,343.80
TV Minor Change	200	3 hours	\$48.08	\$28,848.00
DTV	1,220	3 hours	\$48.08	\$175,972.80
TV Multiple Ownership Showings	30	5 hours	\$48.08	\$7,212.00
DTS	100	3 hours	\$48.08	\$14,424.00
Newspaper Notices	3,436	1 hour	\$48.08	\$165,202.88
<b>Total Annual "In House" Cost:</b>				<b>\$980,459.38</b>

These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

13. **Cost to Respondents:** We assume that the applicant would use an attorney (\$300/hour) and a consulting engineer (\$250/hour) to complete the FCC Form 301.

An AM, FM, or TV applicant must give local public notice of the filing of its 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. The cost of this publication is estimated to be \$113.25.

<u>Services</u>	<u>Hrly. Wage of Consultant</u>	<u>Consultant's Hrly. Burden</u>	<u>Number of Applications</u>	<u>Annual Cost Burden</u>
<b>AM:</b>				
New & Major	\$300	7 hours	476	\$ 999,600
	\$250	89.25 hours	476	\$10,620,750
Minor Change	\$300	2 hours	250	\$ 150,000
	\$250	88.25 hours	250	\$5,515,625
Multiple Ownership Showings	\$300	18 hours	285	\$1,539,000
	\$250	92.25 hours	285	\$6,572,813
Community of License Change	\$300	12 hours	66	\$ 237,600
	\$250	100 hours	66	\$1,650,000

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**FM:**

New & Major	\$300	7 hours	298	\$ 625,800
	\$250	71 hours	298	\$5,289,500
Minor Change	\$300	2 hours	1,200	\$ 720,000
	\$250	69 hours	1,200	\$20,700,000
Multiple Ownership Showings	\$300	28 hours	274	\$ 2,301,600
	\$250	73 hours	274	\$ 5,000,500
Community of License Change	\$300	6 hours	145	\$ 261,000
	\$250	94 hours	145	\$ 3,407,500

**TV:**

Minor Change	\$300	2 hours	200	\$ 120,000
	\$250	45 hours	200	\$2,250,000

**DTV:**

	\$300	2 hours	1,220	\$ 732,000
	\$250	34 hours	1,220	\$10,370,000
Multiple Ownership Showings	\$300	13 hours	30	\$ 117,000
	\$250	48 hours	30	\$ 360,000

**DTS:**

	\$300	1 hour	100	\$ 30,000
	\$250	45 hours	100	<u>\$1,125,000</u>

**Total AM/FM TV and DTV: \$80,695,288**

<b>Fees:</b>	<b>Number of Applications</b>	<b>Fee Cost</b>	<b>Total Fee Cost</b>
AM New & Major	476	\$3,310	\$1,575,560
AM Minor Change	250	\$ 830	\$ 207,500
AM Multiple Ownership Showings	285	\$3,310	\$ 943,350
AM Community of License Change	66	\$ 830	\$ 54,780
FM New & Major	298	\$2,980	\$ 888,040
FM Minor Change	1,200	\$ 830	\$ 996,000
FM Multiple Ownership Showings	274	\$2,980	\$ 816,520
FM Community of License Change	145	\$ 830	\$ 120,350

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TV Minor Change	200	\$ 830	\$ 166,000
DTV	1,220	\$ 830	\$ 1,012,600
TV Multiple Ownership Showings	30	\$3,720	\$ 111,600
DTS	100	\$ 830	<u>\$ 83,000</u>
		<b>Fee Total:</b>	<b><u>\$6,975,300</u></b>

985<sup>11</sup> new/major/community of license change applications x 4 x \$113.25 = **\$446,205** in publication costs

**Annual Cost Burden:** \$80,695,288 + \$6,975,300 + \$446,205 = **\$88,116,793**

**14. Cost to Federal Government:** The Commission will use legal and engineering 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 level/Step 5 level (\$18.07/hour) to process these applications.

New & Major Change AM/FM/TV Applications = 774<sup>12</sup>

774 applications x \$55.78/hour x 41 hours =	\$1,770,122.50
774 applications x \$55.78/hour x 20 hours =	\$ 863,474.40
774 applications x \$33.12/hour x 1 hour =	\$ 25,634.88
774 applications x \$18.07/hour x 2 hours =	<u>\$ 27,972.36</u>
	<b>\$2,687,204.10</b>

Minor AM Applications = 250  
 AM Multiple Ownership Showings = 285  
 AM Community of License Change Minor Applications = 66

601 applications x \$55.78/hour x 1 hour =	\$ 33,523.78
601 applications x \$55.78/hour x 30 hours =	\$1,005,713.40
(No GS-11 Step-5 paraprofessional review required)	
601 applications x \$18.07/hour x 2 hours =	<u>\$ 21,720.14</u>
	<b>\$1,060,957.32</b>

Minor FM Applications = 1,200  
 FM Multiple Ownership Showings = 274  
 FM Community of License Change Minor Applications = 145

<u>1,619 applications x \$55.78/hour x 1 hour =</u>	\$ 90,307.82
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<sup>11</sup> This number was calculated as follows: 476 AM New & Major Applications + 298 FM New & Major Applications + 66 AM Community of License Change Applications + 145 FM Community of License Change Applications = 985 Applications.

<sup>12</sup> This number was calculated as follows: 476 AM New & Major Applications + 298 FM New & Major Applications = 774 Applications.



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1,619 applications x \$55.78/hour x 20 hours =	\$1,806,156.40
(No GS-11 Step 5 paraprofessional review required)	
1,619 applications x \$18.07/hour x 2 hours =	\$ 58,510.66
	<b>\$1,954,974.88</b>

Minor TV Applications = 200

DTV Applications = 1,220

TV Multiple Ownership Showings = 30

1,450 applications x \$55.78/hour x 1 hour =	\$ 80,881.00
1,450 applications x \$55.78/hour x 20 hours =	\$2,678,778.70
1,450 applications x \$33.12/hour x 6 hours =	\$ 288,144.00
1,450 applications x \$18.07/hour x 2 hours =	\$ 52,403.00
	<b>\$3,100,206.70</b>

DTS Applications = 100

(No GS-14 Step 5 legal review required)

100 applications x \$55.78/hour x 20 hours =	\$111,560.00
100 applications x \$33.12/hour x 6 hours =	\$ 19,872.00
100 applications x \$18.07/hour x 2 hours =	\$ 3,614.00
	<b>\$135,046.00</b>

**Total Cost to the Federal Government: \$8,938,389.00**

15. **Reason for Changes in Burden or Cost:** The Commission has program changes to the number of respondents of +91, to the annual number of responses of +91, to the annual burden hours of +696 hours and to the cost burden of +\$3,020,479 due to the adoption of information collection requirements contained in the *Second R&O*, FCC 11-28. The increases are due to revisions to the Instructions to the Form 301 that incorporate the information that must be included in an Exhibit, which is responsive to the “Community of License Change – Section 307(b)” question in the Form 301. The Instructions for the Form 301 have been revised to assist applicants with completing this mandatory, responsive Exhibit. Section 307(b) information submitted in the responsive Exhibit will track the modifications to the Commission’s allotment and assignment policies adopted in the *Second R&O*.

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.