

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:

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 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 Procedures, MB Docket No. 09-52, FCC 10-24 (released February 3, 2010).⁶ 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 (released March 3, 2011). 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; (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. The *First Order on Reconsideration* modifies the initially adopted Tribal Priority coverage requirement, by creating an alternative 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 radio station’s signal. In such circumstances, Tribes may claim the priority (i) if the proposed principal community contour of the station 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 enable Tribes with small or irregularly shaped lands to qualify for the Tribal Priority. The *First Order on Reconsideration* also provides that, under criterion (2), even an applicant whose Tribal Lands would be covered by 50 percent or more of the proposed principal community contour (the original coverage standard set forth in the *First Report and Order*) may not claim the credit if the principal community contour would cover more than 50 percent of the Tribal Lands of a non-applicant Tribe.

FCC Form 340⁸ and its instructions have been revised to accommodate those applicants qualifying for the new Tribal Priority. After adoption of the *First Report and Order*, we added 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 were

⁶ 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.

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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also revised to assist applicants with completing the new questions and preparing the exhibit. In the *First Order on Reconsideration*, the Commission added an alternative definition of “Tribal Coverage” to that adopted in the *First Report and Order*. Accordingly, we have modified the instructions for Section III, Question 2, to comport with the new alternative Tribal Coverage definition. The form itself has not been revised, nor have any questions been added to Form 340.

(This information collection is being revised to accommodate the new universe of applicants that will now qualify and apply for the Tribal Priority. This revision regarding FCC Form 340 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 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 76 FR 15977, on March 22, 2011. No comments were received from the public.

9. Payment or Gift: No payment or gift is provided to the respondents.

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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.

We estimate that a total of 1,615 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 2-6 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 Respondent \$ 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 &	175 ¹¹	175	6 hrs.	1,050 hrs	\$48.08	\$50,484.00

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
Major (Tribal Applicant)			consultation			
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	1,615	1,615		6,000 hrs		\$288,480.00
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	2,765	2,765		7,150 hrs		\$343,772.00

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

¹¹ This number includes applicants seeking the Tribal Priority based on coverage of Tribal Lands, applicants seeking waiver of the Tribal Lands coverage provisions of the Tribal Priority, and amendments to such applications.

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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 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)	175	70 hrs	12,250 hrs	\$250.00	\$3,062,500.00
FM NCE New & Major Outside Attorney (Tribal Applicant)	175	7 hrs	1,225 hrs	\$250.00	\$306,250.00
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	30	5 hrs	150 hrs	\$300.00	\$45,000.00

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Attorney Newspaper Notice Publication Fee	30	4 publications		\$113.25/fee	\$13,590.00
DTV NCE Minor Engineering Consultant	100	34 hrs	3,400 hrs	\$250.00	\$850,000.00
DTV NCE Minor Outside Attorney	100	5 hrs	500 hrs	\$300.00	\$150,000.00
DTS NCE Engineering Consultant	10	45 hrs	450 hrs	\$250.00	\$112,500.00
DTS NCE Outside Attorney	10	5 hrs	50 hrs	\$300.00	\$15,000.00
Annual Cost Burden Total					\$29,079,700

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 \$18.50/hour x 1,000 =	\$ 277,500
Paraprofessional	7.0 hours x \$33.92/hour x 1,000 =	\$ 237,440
Professional	36.9 hours x \$57.13/hour x 1,000 =	<u>\$2,108,097</u>
		\$2,623,037

FM New and Major Applications (Tribal Applicants):

Clerical	1.6 hours x \$18.50/hour x 175 =	\$ 8,288
Paraprofessional	7.5 hours x \$33.92/hour x 175 =	\$ 44,520
Professional	37.5 hours x \$57.13/hour x 175 =	<u>\$374,916</u>
		\$427,724

FM Minor Change:

Clerical	2.0 hours x \$18.50/hour x 300 =	\$ 11,100
Paraprofessional	6 hours x \$33.92/hour x 300 =	\$ 16,056
Professional	25 hours x \$57.13/hour x 300 =	<u>\$428,475</u>
		\$455,631

DTV Applications (New & Major and Minor Change):

Clerical	2 hours x \$18.50/hour x 130 =	\$ 4,810
Paraprofessional	6 hours x \$33.92/hour x 130 =	\$ 26,458
Professional	16 hours x \$57.13/hour x 130 =	<u>\$118,830</u>
		\$150,098

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DTS Applications:

Clerical	2 hours x \$18.50/hour x 10 =	\$ 376
Paraprofessional	6 hours x \$33.92/hour x 10 =	\$ 2,035
Professional	20 hours x \$57.13/hour x 10 =	<u>\$ 11,426</u>
		\$ 13,837

TOTAL COST TO THE FEDERAL GOVERNMENT: \$3,670,327

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 (\$57.13/hour), paraprofessional staff at the GS-11, step 5 level (\$33.92/hour) and clerical staff at the GS-5, step 5 level (\$18.50/hour) to process these applications.

15. **Reason for Changes in Burden or Cost:** The Commission had program changes of +55 to the number of respondents, +55 to the annual number of responses, +450 to the annual burden hours and +\$1,184,750 to the annual cost burden. These program changes were a result of the adoption of a *Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making* on March 3, 2011, by the Commission, Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09-52, FCC 11-28, in which the Commission created an alternative standard for "Tribal Coverage," which resulted in revisions to the instructions to FCC Form 340 and adopted a new universe of filers to this information collection.

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.