

## SUPPORTING STATEMENT

### A. Justification:

1. On August 4, 1998, the FCC released a *Report and Order* (R&O), In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, in GC Docket No. 96-55. The R&O adopted and solicited public comment on information collections in connection with the handling of the submission of confidential information to the Commission.

The attached *Report and Order* contains two information collections:

- a. In the R&O, the Commission adopted a Model Protective Order (MPO) that can be used, when it is appropriate, to grant limited access to information that the Commission determines should not be routinely available for public inspection:

- (1) The MPO requires that any “third” party(s) granted access to the confidential materials:

- (i) must keep a written record of all copies made of the confidential materials, and

- (ii) must provide this record to the submitter of the confidential materials upon request.<sup>1</sup>

- (2) This approach was adopted to facilitate the use of confidential materials under an MPO, instead of restricting access to the materials.

- b. The Commission amended 47 CFR § 0.459(b) to set forth the type of information that should be included when a party submits information to the Commission for which it seeks confidential treatment.<sup>2</sup> This listing of the types of information to be submitted was adopted to provide guidance to the public for confidentiality requests.

The statutory authorities for this collection of information are 5 U.S.C. 552(b)(4), 18 U.S.C. 1905, and 47 U.S.C. 154(i).

2. The copy log requirement under the MPO is used to help assure the party submitting the confidential materials that there is limited access to the materials by third parties.

The Commission uses the information provided under amended 47 CFR § 0.459(b) to determine whether a request for confidential treatment should be granted.

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<sup>1</sup>*Report and Order* at ¶27.

<sup>2</sup>*Report and Order* at ¶13.

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3. The means of compliance is at the discretion of the carrier; the Commission does not prohibit the use of improved technology where appropriate.
4. There is no duplication of information.
5. Small entities that enter into an MPO, or submit a request for confidentiality, are subject to the information collections contained in the R&O. However, the burdens associated with the information collections are minimal for any entity subject to them.
6. Without the copy log for MPOs, the submitter of confidential information would not be assured that there is limited distribution of sensitive information to third party requesters. Without the guidelines for submissions requesting confidential treatment of materials, the Commission would not have the information it requires to make an informed decision concerning such requests.
7. Respondents participating frequently in proceedings in which MPOs are adopted, or respondents submitting materials with requests for confidential treatment, may be required to comply with these information collections more than once a quarter. However:
  - (a) the information collection requirements are designed to protect the confidentiality of sensitive commercial information and trade secrets, and
  - (b) the frequency of the information collection depends solely on the frequency parties seek to invoke confidentiality for the materials submitted to the Commission.
8. The Commission published a notice in the *Federal Register* on May 10, 2011 (76 R 27053). No comments were submitted to the Commission following publication of the FRN.
9. The Commission does not anticipate providing any payment or gift to respondents.
10. The information collections described herein are designed:
  - (a) to protect the confidentiality of information submitted to the Commission, or
  - (b) to assist the Commission in determining whether confidential treatment is appropriate.
11. This information collection involves matters dealing with trade secrets or other matters of priority information. The information collection does not involve any questions of a sensitive nature, *i.e.*, sexual behavior and attitudes, religious beliefs, *etc.*
12. The Commission estimates that the respondent pool may be determined as follows:
  - (a) Approximately 600 entities will request that the Commission issue an MPO for confidential documents/materials that they submit to the FCC, and

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- (b) Approximately 3 third party entities will request access to these confidential documents/materials under the MPO rules. Such access makes these third parties subject to the recordkeeping requirements—maintaining a log.

600 submitting entities requesting confidential treatment under the MPO rules

- (c) Of these 600 submitters, the Commission makes the following estimates:

approximately 65% or 390 of the respondents are business and other “for profit” entities;

approximately 15% or 90 of the respondents are not-for-profit institutions;

approximately 5% or 60 of the respondents are Federal agencies; and

approximately 5% or 60 of the respondents are state, local, and tribal governments.

600 MPOs x 3 third party entities/MPO rules = 1,800 third parties

- (d) Of these 1,800 third party requesters, the Commission makes the following estimates:

approximately 65% or 1,170 of the respondents are business and other “for profit” entities;

approximately 15% or 270 of the respondents are not-for-profit institutions;

approximately 5% or 180 of the respondents are Federal agencies; and

approximately 5% or 180 of the respondents are state, local, and tribal governments.

**Total Number of Respondents:**  $600 + 1,800 = 2,400$  respondents

- (a) The Commission estimates that each submitting entity respondent will make one confidentiality request under the MPO rules:

- (b) 600 submitting entities x 1 confidentiality request/annually = 600 responses

- (c) Of these 600 responses, the Commission makes the following estimates

business and other “for profit” entities make 390 submissions (responses);

not-for-profit institutions make 90 submissions (responses);

Federal agencies make 60 submissions (responses); and

state, local, and tribal governments make 60 submissions (responses).

- (d) The Commission also estimates that each third party must maintain only one log to comply

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with the recordkeeping requirement:

1,800 third parties are subject to recordkeeping (log) requirement = 1,800 responses

- (e) Of these 1,800 third parties responses, the Commission makes the following estimates:

business and other “for profit” entities are responsible for 1,170 3<sup>rd</sup> party responses;

not-for-profit institutions are responsible for 270 3<sup>rd</sup> party responses;

Federal agencies are responsible for 180 3<sup>rd</sup> party responses; and

state, local, and tribal governments are responsible for 180 3<sup>rd</sup> party responses.

**Total Number of Responses Annually:**  $600 + 1,800 = 2,400$  responses

**Frequently of Response: On occasion reporting and recordkeeping requirements**

- (a) Respondents may make a “confidentiality request” pursuant to the MPO rules to limit access to their document submission, which will require approximately 1 hour to prepare the request pursuant to the MPO rules:

$600$  submitters x 1 hour/MPO = 600 hours

- (b) Of these 600 hours, the Commission makes the follow estimates for the composition of this burden estimate:

business and other “for profit” entities require 390 hours for submission responses;

not-for-profit institutions require 90 hours for submission responses;

Federal agencies require 60 hours for submission responses; and

state, local, and tribal governments require 60 hours for submission responses.

- (c) This reporting requirement is performed by “in house” personnel comparable to Federal GS-14/Step 5 pay scale: \$62.60 per hour, to prepare the request for confidentiality:

$600$  MPO staff x 1 hours/confidentiality request/annually x \$62.60/hour = \$37,557.00

- (d) The Commission estimates that for each of the 600 MPOs issued annually, approximately 3 third parties will request access. For access to be granted, each third party must:

- (i) maintain a log to record information on all copies of the confidential materials the third party makes, and

(ii) must provide this record to the submitter of the confidential materials upon request.

(e) The Commission estimates that maintaining the log (recordkeeping function) requires each third party respondent to spend approximately 2 hours annually to comply. Thus:

$600 \text{ MPOs} \times 3 \text{ third parties/recordkeeping} \times 2 \text{ hours/annum} = 3,600 \text{ hours}$

(f) Of these 3,600 hours, the Commission makes the follow estimates for the composition of this 3<sup>rd</sup> party burden estimate:

business and other “for profit” entities require 2,340 hours for 3<sup>rd</sup> party responses;

not-for-profit institutions require 540 hours for 3<sup>rd</sup> party responses;

Federal agencies require 360 hours for 3<sup>rd</sup> party responses; and

state, local, and tribal governments require 360 hours for 3<sup>rd</sup> party responses.

**Total Annual Hourly Burden:** 600 hours + 3,600 hours = **4,200 hours**

(g) The Commission estimates that the third parties will use “in house” staff comparable to those in the Federal GS-9/Step 5 pay scale: \$26.08 per hour, to perform these recordkeeping requirements for the confidential information log. Thus:

$600 \text{ MPOs} \times 3 \text{ third parties} \times 2 \text{ hours/recordkeeping} \times \$30.72/\text{hour} = \$110,576.25$

**Total Annual “In House” Costs:** \$37,557.00 + \$110,576.25 = \$148,133.25

13. (a) Total annualized capital/startup costs: None

(b) Total annual costs (O&M): None

(c) Total annualized cost requested: **None**

14. There will be few if any costs to the Commission because:

(a) the entities seeking confidentiality pursuant to the MPO statute must make the request to the Commission with their submission, and

(b) each third party that requests access to the confidential materials under the MPO restriction must maintain its own access log (recordkeeping function), for which the MSO may request to determine how many copies of its confidential materials were made.

15. There are no program changes. The Commission has made various adjustments based on a reevaluation of the number of respondents, the total annual hourly burden, and the total “in

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house” cost to respondents to comply with these information collection requirements.

16. The Commission does not anticipate publishing any of the information collected pursuant to this order.
17. The Commission does not intend to seek approval not to display the expiration date of the information collection from OMB.
18. There are no other exceptions to the Certification Statement in Item 19 of OMB Form 83-I.

**B. Collections of Information Employing Statistical Methods:**

The Commission does not anticipate that the collection of information will employ any statistical methods.