

SUPPORTING STATEMENT

Construction requirements; Interim reports -- Sections 27.14(g)-(l)

A. Justification:

1. On July 31, 2007, the Commission adopted a Second Report and Order, in WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket No. 06-169, PS Docket No. 06-229, WT Docket No. 96-86, WT Docket No. 07-166, FCC No. 07-132 (2007 Report and Order), which established rules governing wireless licenses in the 700 MHz spectrum. The 700 MHz spectrum was made available for wireless services, including public safety and commercial services, as a result of the digital television (“DTV”) transition. Title III of the Deficit Reduction Act of 2005 (“DRA”), Pub. L. 109-171, 120 Stat. 4 (2006), (titled the Digital Television Transition and Public Safety Act of 2005 [“DTV Act”]), accelerated the DTV transition completion date to February 17, 2009.

In light of the change to the DTV transition, as well as developments in commercial wireless communications and evolving needs of the public safety community, the Commission re-examined its 700 MHz rules and combined the following three interrelated proceedings: 1) The 700 MHz Commercial Services proceeding, 71 FR 48506 (2006), 2) the 700 MHz Guard Bands proceeding, 71 FR 57455, and 3) the 700 MHz Public Safety proceeding, 72 FR 1201 (2007); 71 FR 17786 (2006), which yielded in April 2007 both a Report and Order and Further Notice of Proposed Rulemaking (the 700 MHz Report and Order, 72 FR 27688 (2007), and 700 MHz Further NPRM, 72 FR 24238 (2007), respectively. (See FCC 07-72.)

Among the many actions taken in the 2007 Report and Order, the Commission: adopted a mix of geographic license area sizes for the commercial services, including Cellular Market Areas (CMAs), Economic Areas (EAs), and Regional Economic Areas (REAGs); eliminated rules that permit comparative hearings for license renewal, and clarified the requirements and procedures of the license renewal process; shifted the license termination date from January 15, 2015 to February 17, 2019, thus granting licensees an initial license term not-to-exceed ten years after the end of the DTV transition; adopted a power spectral density model to provide greater operational flexibility to licensees operating at wider bandwidths; continued to allow a 50 kW effective radiated power level for base station operations for auctioned licenses and unpaired spectrum in the lower 700 MHz band (TV Channels 52-59); modified power limits for upper 700 MHz band (TV Channels 60-69), and; permitted 700 MHz licensees to meet radiated power limits on an average, rather than peak, basis.

Further, in order to promote access to spectrum and the provision of service, the 2007 Report and Order adopted revised performance requirements for certain 700 MHz

licensees, including the use of interim and end-of-term benchmarks. The 2007 Report and Order also imposed interim reporting requirements on licensees to provide the Commission with information concerning the status of licensees' efforts to meet performance requirements and the manner in which their spectrum is being utilized.

On February 20, 2009, the Commission adopted a Second Report and Order and Notice of Proposed Rulemaking in MB Docket No. 09-17, MB Docket No. 07-148, MB Docket No. 07-91, MB Docket No. 08-255, WT Docket No. 06-150, WT Docket No. 06-169, PS Docket No. 06-229, WT Docket No. 96-86, FCC 09-11, to implement the DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009), which extended the DTV transition deadline from February 17, 2009, to June 12, 2009. Steps taken by the Commission to conform with the DTV Delay Act included the extension of applicable 700 MHz construction benchmarks and reporting requirements by a period of 116 days.

Information Collection Requirements

a. **700 MHz Construction Notification - 47 C.F.R. § 27.14(k)**. 47 C.F.R. § 27.14(k) requires certain 700 MHz licensees to demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the expiration of the relevant benchmark, in accordance with the provisions set forth in 47 C.F.R. § 1.946(d). In the construction notification, a licensee must certify and demonstrate that it has met the applicable performance requirement as set forth below. Construction notifications must describe the areas for which the licensees are providing service, using electronic coverage maps, supporting technical documentation and other information as the Wireless Telecommunications Bureau may prescribe by Public Notice.

47 C.F.R. § 27.14(g). 700 MHz licensees holding EA authorizations for Block A in the 698-704/728-734 MHz bands ("Block A"), CMA authorizations for Block B in the 704-710/734-740 MHz bands ("Block B"), and EA authorizations for Block E in the 722-728 MHz band ("Block E"), where the results of the first auction in which licenses for such authorizations were offered satisfy the reserve price for the applicable block, must file construction notifications with the Commission within 15 days after:

- 1) **June 12, 2013, or the fourth anniversary of initial license grant if the initial authorization in a market is granted after June 12, 2009.** In the construction notification, licensees must certify and demonstrate that they are providing signal coverage and offering service over at least 35 percent of the geographic area of each of their license authorizations.
- 2) **The end of the applicable license term.** In the construction notification, licensees must certify and demonstrate that they are providing such service over at least 70 percent of the geographic area of each of these authorizations.

47 C.F.R. § 27.14(h). 700 MHz licensees holding REAG authorizations for Block C in the 746-757/776-787 MHz bands (“Block C”), as well as 700 MHz licensees holding REAG authorizations for Block C2 in the 752-757/782-787 MHz bands (C2), must file construction notifications with the Commission within 15 days after:

- 1) **June 12, 2013, or the fourth anniversary of initial license grant if the initial authorization in a market is granted after June 12, 2009.** In the construction notification, licensees must certify and demonstrate that they are providing signal coverage and offering service over at least 40 percent of the population in each EA comprising the REAG license area.
- 2) **The end of the applicable license term.** In the construction notification, licensees must certify and demonstrate that they are providing such service over at least 75 percent of the population of each of these EAs.

47 C.F.R. § 27.14(i). 700 MHz licensees holding EA authorizations for Block A, CMA authorizations for Block B, and EA authorizations for Block E where the results of the first auction in which licenses for such authorizations in Blocks A, B, and E were offered did not satisfy the reserve price for the applicable block, as well as EA authorizations for Block C1 in the 746-752/776-782 MHz bands (“Block C1”) must file construction notifications with the Commission within 15 days after:

- 1) **June 12, 2013, or the fourth anniversary of initial license grant if the initial authorization in a market is granted after June 12, 2009.** In the construction notification, licensees must certify and demonstrate that they are providing signal coverage and offering service over at least 40 percent of the population in each license area.
- 2) **The end of the applicable license term.** In the construction notification, licensees must certify and demonstrate that they are providing such service over at least 75 percent of the population of the areas.

47 C.F.R. § 27.14(j). 47 C.F.R. § 27.14(j) provides that, in the event that a licensee's authority to operate in an area terminates automatically for failure to comply with the applicable construction requirements identified in 47 C.F.R. § 27.14(g), (h), or (i), the unserved area will become available for relicensing to third parties. A 700 MHz licensee holding an authorization granted pursuant to the unserved area licensing procedures set forth in 47 C.F.R. § 27.14(j) must file a construction notification with the Commission within 15 days after **the one-year anniversary of initial license grant.** In the construction notification, a licensee must certify and demonstrate that it is providing signal coverage and offering service over 100 percent of the geographic area of the new license area.

b. 700 MHz Interim Reporting Requirement - 47 C.F.R. 27.14(l). Pursuant to 47 C.F.R. § 27.14(l), 700 MHz licensees with authorizations in the spectrum blocks identified above (Blocks A, B, E, C, C1 and C2), excluding any licensee that obtained its license pursuant to the procedures set forth in 47 C.F.R. § 27.14(j), must file interim reports with the Commission that provide the Commission, at a minimum, with information concerning the status of their efforts to meet the performance requirements applicable to their authorizations in such spectrum blocks and the manner in which that spectrum is being utilized.

Required Information. Licensees must identify the date the license term commenced, and provide a description of the steps the licensee has taken toward meeting its construction obligations in a timely manner, including the technology or technologies and service(s) being provided, as well as the areas within their license areas in which those services are available.

Deadlines. Licensees are required to file their first interim report with the Commission **no later than June 12, 2011 and no sooner than 30 days prior to this date.** Licensees that meet their interim construction benchmarks must file a second interim report with the Commission **no later than June 12, 2016, and no sooner than 30 days prior to this date.** Licensees that do not meet their interim construction benchmarks must file their second interim report **no later than on June 12, 2015, and no sooner than 30 days prior to this date.**

Statutory authority for this information collection is 47 U.S.C. 154, 301, 302(a), 303, 309, 332, 336, and 337 unless otherwise noted.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

2. The information acquired through the filing of interim reports is used by the Commission to determine the progress made by licensees to meet specific performance requirements, and the manner in which their spectrum is being utilized. The Commission will also use the information to evaluate whether further assessment of the rules or other actions are necessary in the event spectrum is being stockpiled or warehoused, or if it is otherwise not being made available despite existing demand. Further, the information filed by licensees in support of their construction notifications will be used to determine whether licensees have complied with the Commission's performance benchmarks.
3. The Commission's Wireless Telecommunications Bureau conducts an analysis to ensure that improved information technology may be used to reduce the burden on the public. This analysis considers the possibility of obtaining and/or computer-generating the required data from existing data bases in the Commission or other Federal Agencies.
4. This agency does not impose a similar information collection on the respondents. There is no similar data available.

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. The Commission has limited the information requirements to those absolutely necessary.
6. If the information required were not made available the Commission would not be able to determine whether spectrum is being used intensively. Less frequent collection of the information would inhibit the Commission's ability to ensure that licensees provide service to the majority of consumers in their license areas in a timely manner and to promote the provision of innovative services to the public.
7. There are no special circumstances which would require collections to be conducted in a manner inconsistent with the guidelines in 5 C.F.R. 1320.6.
8. The Commission initiated a 60-day public comment period, thereby giving the public an appropriate amount of time in which to comment on this information collection as required by 5 C.F.R. § 1320.8, via publication of the Notice in the Federal Register on July 7, 2011 (76 FR 39875). No comments were received as a result of the Notice. A copy of the Federal Register Notice is included in this submission to the OMB.
9. Respondents will not receive any payments.
10. There is no need for confidentiality with this collection of information.
11. This does not address any private matters of a sensitive nature.
12. **The annual burden hours for the 1,105 licenses subject to this information collection are as follows:**

a. Construction Notification. According to the Commission's Universal Licensing System (ULS) database, there are approximately 1,105 700 MHz geographic area licensees who, pursuant to section 27.14(k), must submit a notification demonstrating compliance with the construction benchmarks set out in sections 27.14(g), (h), and (i). Of that number, 1,103 licenses have interim construction deadlines in 2013, while the remaining two have interim construction deadlines in 2015. All 1,105 licenses have final deadlines at the end of their license term: currently, licensees holding 1,103 licenses must complete their final performance requirements by 2019, and licensees holding the remaining two licenses must meet their final construction benchmarks in 2021. However, to the extent that a licensee subject to the requirements of sections 27.14(g), (h), and (i) does not satisfy its interim construction benchmark, that licensee's license term is accelerated by two years. In such cases, the filings demonstrating compliance with the final construction benchmark are due 2017 and 2019, respectively. The Commission estimates that, at most, 1,103 licenses will have deadlines subject to the construction notification requirement in any given year.

Unreserved area licenses subject to construction benchmarks specified in section 27.14(j) are available only after a geographic area license terminates. Therefore, the frequency of construction notification filings regarding these licenses is dependent on whether unreserved areas become available, and whether entities seek authorization for such licenses. There are currently no licensees subject to the construction deadline set out in section 27.14(j).

The Commission estimates that it will take approximately 15 hours per license for engineers to prepare the requisite maps and other documents. The Commission anticipates that of the 1,103 licenses, those holding approximately 70 percent (772) of the licenses, will employ in-house engineering resources, and those holding 30 percent (331) licenses, will contract out for engineering staff. Further, we estimate that each of the 1,105 licenses will require a consultant attorney to prepare, review, and submit filings for each submission. See question #13 for the cost that respondents will pay the contract engineers and attorneys to fulfill the notification requirements on their behalf.

$$772 \text{ licenses} \times 15 \text{ hours (in-house engineers)} = 11,580 \text{ hours}$$

Total Notification Burden to Respondents (per benchmark) = 11,580 hours.

b. 700 MHz Interim Reports. The Commission anticipates that each licensee, in order to provide documentation regarding its network deployment and service offerings as required pursuant to section 27.14(l), will employ an in-house engineer to examine records and collect required data associated with the licensee's operations. The Commission estimates that engineering personnel will require up to 5 hours to complete these tasks.

The Commission estimates that entities holding approximately 70 percent of all 1,105 700 MHz licenses (774) will use staff engineers to prepare the requisite *interim reports*, and that 700 MHz licensees holding approximately 30 percent, or 331, of these licenses will contract out the engineering analysis. The Commission anticipates that all licenses will require outside legal staff to review and submit the required report for each license. See question #13 for the cost that respondents will pay the contract engineers and attorneys to fulfill the requirements on their behalf.

$$774 \text{ licenses} \times 5 \text{ hours (in-house engineering)} = 3,870 \text{ hours}$$

Total Reporting Burden To Respondents (per benchmark) = 3,870 hours

TOTAL ANNUAL HOUR BURDEN: (a) 11,580 + (b) 3,870 = 15,450 hours.

“In-House Cost”: The in-house staff is estimated to have an hourly wage \$36/hour. Therefore, the in-house cost is as follows: 15,450 hours x \$36/hour = **\$556,200.**

TOTAL NUMBER OF RESPONDENTS:

a. 1,103 licensees + b. 1,105 licensees = **2,208 respondents.**

TOTAL NUMBER OF RESPONSES:

a. 1,103 licenses x 1 notices per year = 1,103 notices
b. 1,105 licenses x 1 report per year = 1,105 reports
2,208 responses.

13. Provide an estimate of total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

Estimated Cost to the Respondents: The Commission estimates that entities holding approximately 30 percent of the maximum number of 700 MHz licenses subject to this information collection annually, or **331**, will contract out for engineers to prepare the requisite construction notification filings, and that 700 MHz licensees holding approximately 70 percent, or 772, of these licenses will use in-house engineering analysis¹. The Commission anticipates that **all** licenses will require outside legal staff to review and submit the construction notifications. The hourly wage for a staff engineer is \$36/hr. The hourly wage for a contract engineer/attorney is estimated at \$250/\$300 respectively hour.

Further, the Commission estimates that entities holding approximately 70 percent of all 1,105 700 MHz licenses (774)² will use staff engineers to prepare the requisite *interim reports*, and that 700 MHz licensees holding approximately 30 percent, or **331**, of these licenses will contract out the engineering analysis. The Commission anticipates that **all** licenses will require outside legal staff to review and submit the required report for each license.

Accordingly, the Commission estimates that this collection will have the following cost impact:

a. 700 MHz Construction Notifications:

331 licenses x 15 hours (contract engineers) x \$250/hr = \$1,241,250.00
1,103 licenses x 3 hours (contract legal) x \$300/hr = \$992,700.00

¹ See question #12 for the burden for the 772 respondents.

² See question #12 for the burden for the 774 respondents

Notification Cost Burden: \$2,233,950.00

b. 700 MHz Interim Reports:

331 licenses x 5 hours (contract engineers) x \$250/hr = \$413,750.00
1,105 licenses x 2 hours (contract legal) x \$300/hr = \$663,000.00

Reporting Cost Burden: \$1,076,750.00

(a) \$2,233,950 + (b) \$1,076,750 = **\$3,310,700.00**

TOTAL ANNUAL COST BURDEN: \$3,310,700.00

14. Estimated annual cost to the Federal Government:

a. 700 MHz Construction Notifications:

The government review time per response for this submission is estimated at 1 hour for a GS-12, Step 5 reviewer per application.

1,103 applications x 1 hours x 40.66/hr. = \$44,847.98

b. 700 MHz Interim Reports:

The government review time per response for this submission is estimated at 1 hour for a GS-12, Step 5 reviewer per application.

1,105 applications x 1 hour x 40.66/hr. = \$44,929.30

Total Annual Cost to the Federal Government:

(a) \$44,847.98 + (b) \$44,929.30 = **\$89,777.28.**

15. This is a new information collection.

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:

No statistical methods are employed.