

**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 ("*First R&O*") in MB Docket No. 09-52, FCC 10-24.<sup>2</sup> To enhance the ability of federally recognized Native American Tribes to provide vital radio services to their citizens on Tribal lands, in the *First R&O* the Commission established a Tribal Priority for use in its radio licensing procedures. 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. On December 28, 2011, the Commission adopted a Third Report and Order in MB Docket No. 09-52, FCC 11-190 ("*Third R&O*"). In the *Third R&O* the Commission further refined the use of the Tribal Priority in the commercial FM context, specifically adopting a "threshold qualifications" approach to commercial FM application processing.<sup>3</sup>

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<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, and approved the information collection requirements in FCC 11-28 on July 5, 2011. The Commission is now seeking OMB approval of the information collection requirements contained in FCC 11-190.

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In the commercial FM context, the Tribal Priority is applied at the allotment stage of the licensing process. A Tribe or Tribal entity initiates the process by petitioning that a new Tribal Allotment be added to the FM Table of Allotments using the Tribal Priority. A petitioner seeking to add a Tribal Allotment to the FM Table of Allotments, like all other FM allotment proponents, must file FCC Form 301 when submitting its Petition for Rule Making. Under the new “threshold qualification” procedures adopted in the *Third R&O*, once a Tribal Allotment has been successfully added to the FM Table of Allotments using the Tribal Priority through an FM allocations rulemaking, the Commission will announce by Public Notice a Threshold Qualifications Window (“TQ Window”). During the TQ Window, any Tribe or Tribal entity that could qualify to add that particular Tribal Allotment may file an FCC Form 301 application for that Tribal Allotment. Such an applicant must demonstrate that it meets all of the eligibility criteria for the Tribal Priority, just as the original Tribal Allotment proponent did at the allotment stage.<sup>4</sup> If it wishes its previously filed Form 301 application to be considered at this stage, then during the TQ Window the original Tribal Allotment proponent must submit notice to process its pending Form 301 application immediately.

If only one acceptable application is filed during the TQ Window, whether by the original Tribal allotment proponent submitting notification to process its previously filed Form 301, or by another qualified applicant, that application will be promptly processed and the Tribal Allotment will not be auctioned. In the event that two or more acceptable applications are filed during the TQ Window, the Commission will announce a limited period in which the parties may negotiate a settlement or *bona fide* merger, as a way of resolving the mutual exclusivity between their applications. If a settlement or merger is reached, the parties must notify the Commission and the staff will process the surviving application pursuant to the settlement or merger. If a settlement cannot be reached among the mutually exclusive applicants, the Tribal Allotment will be auctioned during the next scheduled FM auction. At that time, only the applicants whose applications were accepted for filing during the TQ Window, as well as the original Tribal Allotment proponent, will be permitted to bid on that particular Tribal Allotment. This closed group of mutually exclusive TQ Window applicants must comply with applicable established auction procedures.

In the event that no qualifying party applies during the TQ Window, and the original Tribal allotment proponent requests that its pending Form 301 application not be immediately processed, the Tribal Allotment will be placed in a queue to be auctioned in the normal course for vacant FM allotments. When the Tribal Allotment is offered at auction for the first time, only applicants meeting the “threshold qualifications” may specify that particular Tribal Allotment on FCC Form 175, Application to Participate in an FCC Auction

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<sup>3</sup> The “threshold qualifications” approach derives from Section 309(j)(6)(E) of the Act, which states that “Nothing in this subsection, or in the use of competitive bidding, shall ... be construed to relieve the Commission of the obligation in the public interest to use ... threshold qualifications . . . in order to avoid mutual exclusivity in application and licensing proceedings.”

<sup>4</sup> As set forth in paragraph 9 of the *Third R&O*, to qualify for the Tribal Priority, and thus qualify to have added the Tribal Allotment, an applicant (a) must be a Tribe, a consortium of Tribes, or an entity at least 51 percent owned or controlled by a Tribe or Tribes, at least a portion of whose Tribal Lands lie within the principal community contour of the facility proposed in the Tribal Allotment (although the 51 or greater percent Tribal control threshold need not consist of a single Tribe, the qualifying entity must be 51 percent or more owned or controlled by Tribes at least a portion of whose Tribal Lands lie within the proposed station’s principal community contour); (b) (1) at least 50 percent of the area within the proposed station’s principal community contour must cover that Tribe’s Tribal Lands, or (2) the proposed station’s principal community contour must (i) encompass 50 percent or more of that Tribe’s Tribal Lands, (ii) serve at least 2,000 people living on Tribal Lands, (iii) the total population on Tribal Lands residing within the proposed station’s service contour must constitute at least 50 percent of the total covered population (and, in the case of either (b)(1) or (b)(2), the proposed station’s principal community contour must not cover more than 50 percent of the Tribal Lands of a Tribe that is not a party to the application); (c) the proposed community of license must be located on Tribal Lands; and (d) the proposed station must constitute first or second aural (reception) service, or first local Tribal-owned commercial transmission service at the proposed community of license.

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(OMB Control No. 3060-0600). Should no qualifying party apply to bid or qualify to bid on a Tribal Allotment in the first auction in which it is offered, then the Tribal allotment will be offered in a subsequent auction and any applicant, whether or not a Tribal entity, may apply for the Tribal Allotment.

Consistent with actions taken by the Commission in the *Third R&O*, Form 301 has been revised to accommodate applicants applying in a TQ Window for a Tribal Allotment. As noted above, an applicant applying in the TQ Window, who was not the original proponent of the Tribal Allotment at the rulemaking stage, must demonstrate that it would have qualified in all respects to add the particular Tribal Allotment for which it is applying. Form 301 contains a new question in Section II – Legal titled “Tribal Priority – Threshold Qualifications.” An applicant answering “yes” to the question must provide an Exhibit demonstrating that it meets all of the Tribal Priority eligibility criteria. The Instructions for the Form 301 have been revised to assist applicants with completing the responsive Exhibit.

In addition, Form 301 contains a new option under Section I – General Information – Application Purpose, titled “New Station with Petition for Rulemaking to Amend FM Table of Allotments using Tribal Priority.” A petitioner seeking to add a Tribal Allotment to the FM Table of Allotments must file Form 301 when submitting its Petition for Rule Making. This new Application Purpose field will assist the staff in quickly identifying Form 301 applications filed in connection with a petition to add a Tribal Allotment and initiating the “threshold qualification” procedures.

This information collection is being revised to accommodate applicants applying in a Threshold Qualifications Window for a Tribal Allotment that had been added to the FM Table of Allotments using the Tribal Priority under the new “threshold qualifications” procedures adopted in the *Third R&O*.

**These revisions to FCC Form 301 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), 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 applications filed in a TQ Window 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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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* (77 FR 1486) on January 10, 2012. 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	250
With AM Multiple	
Ownership Showings	285
AM Community of License Minor Change	
Applications	66
FM New & Major	298
FM New with P4RM to Amend FM Table	
Using Tribal Priority <sup>5</sup>	20
FM New filed in TQ Window	40
FM Minor Change	1,200
With FM Multiple	
Ownership Showings	274
FM Community of License Minor Change	
Applications	145
TV Minor Change	200
DTV	1,220
With TV Multiple	
Ownership Showings	30
DTS	<u>100</u>
<b>Total Number of Respondents:</b>	<b>4,604 Licensees/Permittees</b>

<u>Number of Services</u>	<u>Respondent's Applications</u>	<u>Annual Hrly. Burden</u>	<u>Burden Hours</u>
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<sup>5</sup> A petitioner seeking to add a Tribal Allotment to the FM Table of Allotments must file FCC Form 301 when submitting its Petition for Rule Making ("P4RM").

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AM New & Major	476	4.25 hours	2,023 hours
AM Minor Change	250	3.25 hours	812.50 hours
With AM Multiple			
Ownership Showings	285	6.25 hours	1,781.25 hours
AM Community of License			
Minor Change Applications	66	6 hours	396 hours
FM New & Major	298	4 hours	1,192 hours
FM New with P4RM to Amend			
FM Table Using Tribal Priority	20	4 hours	80 hours
FM New filed in TQ Window	40	4 hours	160 hours
FM Minor Change	1,200	3 hours	3,600 hours
With FM Multiple			
Ownership Showings	274	6 hours	1,644 hours
FM Community of License			
Minor Change Applications	145	5.50 hours	797.50 hours
TV Minor Change	200	3 hours	600 hours
DTV	1,220	3 hours	3,660 hours
With TV Multiple Ownership			
Showings	30	5 hours	15 hours
DTS <sup>6</sup>	100	3 hours	300 hours
Newspaper Requirements	<u>3,436</u>	1 hour	<u>3,436 hours</u>
<b>Totals:</b>	<b>8,040</b>		<b>20,497.25 hours</b>
	<b>(responses)</b>		<b>(20,497 hrs. rounded)</b>

**Total Number of Responses: 8,040 FCC Form 301 Filings and Newspaper Notices**

**Total Annual Burden Hours: 20,497 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).

<u>Services</u>	<u>Number of Applications</u>	<u>Respondent's Hrly. Burden</u>	<u>Hrly. Wage of Respondent</u>	<u>Annual In-House Cost</u>
AM New & Major	476	4.25 hours	\$48.08	\$97,265.84

<sup>6</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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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 hours	\$48.08	\$19,039.68
FM New & Major	298	4 hours	\$48.08	\$57,311.36
FM New with P4RM to Amend				
FM Table Using Tribal Priority	20	4 hours	\$48.08	\$3,846.40
FM New filed in TQ Window	40	4 hours	\$48.08	\$7,692.80
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>\$991,998.58</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><u>AM:</u></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
FM New with P4RM to Amend FM Table				
Using Tribal Priority	\$300	7 hours	20	\$ 42,000
	\$250	71 hours	20	\$ 355,000
FM New filed in TQ Window	\$300	7 hours	40	\$ 84,000
	\$250	71 hours	40	\$ 710,000
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
<b>TV:</b>				
Minor Change	\$300	2 hours	200	\$ 120,000
	\$250	45 hours	200	\$2,250,000
<b>DTV:</b>				
	\$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
<b>DTS:</b>				
	\$300	1 hour	100	\$ 30,000
	\$250	45 hours	100	<u>\$1,125,000</u>
<b>Total AM/FM TV and DTV:</b>				<b>\$81,886,288</b>

<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	\$3,485	\$1,038,530
FM New with P4RM to Amend			

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FM Table Using Tribal Priority	20	\$3,485	\$ 69,700
FM New filed in TQ Window	40	\$3,485	\$ 139,400
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
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	\$ 83,000
<b>Fee Total:</b>			<b>\$7,334,890</b>

985<sup>7</sup> new/major/community of license change applications x 4 x \$113.25 = **\$446,205** in publication costs

**Annual Cost Burden:** \$991,998.58 + \$81,886,288 + \$7,334,890 + 446,205 = **\$90,659,381.58**  
**(\$90,659,382 rounded)**

**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 = 834<sup>8</sup>

834 applications x \$55.78/hour x 41 hours =	\$1,907,341.30
834 applications x \$55.78/hour x 20 hours =	\$ 930,410.40
834 applications x \$33.12/hour x 1 hour =	\$ 27,622.08
834 applications x \$18.07/hour x 2 hours =	<u>\$ 30,140.76</u>
	<b>\$2,895,514.54</b>

<sup>7</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>8</sup> This number was calculated as follows: 476 AM New & Major Applications + 298 FM New & Major Applications + 60 FM New Tribal-related applications = 834 Applications.



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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

1,619 applications x \$55.78/hour x 1 hour =	\$ 90,307.82
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 =	<u>\$ 58,510.66</u>
	<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 =	<u>\$ 52,403.00</u>
	<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 =	<u>\$ 3,614.00</u>
	<b>\$135,046.00</b>

**Total Cost to the Federal Government:****\$9,146,699.44**

15. **Reason for Changes in Burden or Cost:** The Commission has program changes to the number of respondents of +60, to the annual number of responses of +60, to the annual burden hours of +240 hours and to the cost burden of +\$2,393,099 due to the adoption of information collection requirements contained in the *Third R&O*, FCC 11-190. The increases are due to newly adopted "threshold qualification" procedures and revisions to the Form 301 to accommodate applicants applying in a TQ Window for a Tribal Allotment. An applicant answering "yes" to the new question must provide an Exhibit demonstrating that it meets all of the Tribal Priority eligibility criteria. The Instructions for the Form 301 have been revised to assist applicants with completing the responsive Exhibit.

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The Commission also has adjustments to the annual cost burden of \$150,490 which are due to increases in filing fees for FM New and Major Applications from \$2,980 to \$3,485.

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.