

**Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Fourth Report and Order and Third Order on Reconsideration (“Fourth Report and Order”), MM Docket 99-25, MB Docket No. 07-172, RM-11338; Translator Amendments and Top 50 Market Preclusion Showings**

## SUPPORTING STATEMENT

### A. Justification:

1. On July 12, 2011, the Commission released a *Third Further Notice of Proposed Rule Making* (“*Third Further Notice*”)<sup>1</sup> in this proceeding, seeking comment on the impact of the enactment of the Local Community Radio Act of 2010 (“LCRA”)<sup>2</sup> on the procedures previously adopted to process the approximately 6,500 applications that remain pending from the 2003 Auction No. 83 FM translator window. The *Third Further Notice* tentatively concluded that a market-specific, spectrum availability-based translator application dismissal policy would most faithfully implement Section 5 of the LCRA. To determine low power FM (LPFM) opportunities in major markets, the Bureau undertook a nationwide LPFM spectrum availability analysis. The Bureau studied all top 150 radio markets, plus markets with 4 or more pending translator applications, centering a thirty-minute latitude by thirty-minute longitude grid over the center-city coordinates of each studied market. Each grid consisted of 961 points – 31 points running east/west by 31 points running north/south (“31x31 grid”). The Bureau analyzed each of the 100 FM channels at each grid point to determine whether any channels remained available for future LPFM stations at that location. The Commission proposed to dismiss all pending applications for new FM translators in any market in which the number of available LPFM channels was below a specified LPFM channel floor, and to process all pending applications for new translators in markets in which the number of available LPFM channels met or exceeded the applicable LPFM channel floor. It also proposed a freeze on modification applications in the “process all” markets to preserve LPFM opportunities.

On March 19, 2012, the Commission adopted a *Fourth Report and Order and Third Order on Reconsideration* (“*Fourth Report and Order*”).<sup>3</sup> It adopts the market-based dismissal policy proposed in the *Third Further Notice*, with certain modifications. Among other things, it gives all translator applicants a limited opportunity to amend their proposals. It holds that translator applicants in “process all” (or “spectrum available”) markets may modify their proposals so long as they do not preclude any LPFM channel/point combination identified in the Bureau’s study (“Process All Amendments”). It further holds that translator applicants with proposals in “dismiss all” (or “spectrum limited”) markets will be allowed to modify their proposals to eliminate their preclusive impact on any of the LPFM point/channel combinations that would be available within the grid if all translator window applications in that market were dismissed

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<sup>1</sup> *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 9986 (2011).

<sup>2</sup> Pub. L. No. 111-371, 124 Stat. 4072 (2011).

<sup>3</sup> *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fourth Report and Order and Third Order on Reconsideration, FCC 12-29 (rel. Mar. 19, 2012).

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(“Dismiss All Amendments”) (“Process All Amendments” and “Dismiss All Amendments” are collectively referred to herein as, “Amendments”). In addition, any translator applicant in any top 50 spectrum limited market must demonstrate that its out-of-grid proposal would not preclude the only LPFM station licensing opportunity at that location (“Top 50 Market Preclusion Showing”). Specifically, it needs to demonstrate either that no LPFM station could be licensed at the proposed transmitter site or, if an LPFM station could be licensed at the site, that an additional channel remains available for a future LPFM station at the same site.

The Commission is requesting approval of this information collection from the Office of Management and Budget (OMB).

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 Section 154(i) of the Communications Act of 1934, as amended.

2. The Commission will review the Amendments and Top 50 Market Preclusion Showings to determine whether the applications are acceptable for continued prosecution under the processing policies described above.

3. All amendments must be filed electronically through our Consolidated Data Base System.

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. Therefore, this information collection will not have a significant economic impact on a substantial number of small entities/businesses.

6. The licensing outcomes of Auction No. 83 will be affected if the information collection is not conducted because translator applicants will not have the benefit of amending their applications as described above. While the Commission could choose not to allow these amendments or the Top 50 Market Preclusion Showing, this would deny applicants the opportunity to demonstrate that their applications, as amended, will not impact LPFM spectrum availability. Applications that do not protect LPFM opportunities in the manner described above will be dismissed.

7. This collection of information is consistent with the guidelines in 5 CFR 1320.5(d)(2).

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8. The Commission published a Notice (77 FR 17476) in the *Federal Register* on March 26, 2012, seeking comments for the public on the information collection requirements contained in this collection. No comments were received from the public.

9. No payment or gift was provided to the respondents.

10. There is no need for confidentiality with this collection of information.

11. This collection of information does not address any private matters of a sensitive nature.

12. **(a) Amendments**

We estimate that 400 respondents will file Amendments. It is anticipated that, on average, each respondent will file 3 Amendments. The average burden on respondents for the preparation and filing of an Amendment is estimated to be 2 hours per response.

**Annual Number of respondents: 400**

**Number of responses:** 400 respondents x 3 amendments/respondent = **1,200 responses**

**Annual burden hours:** 1,200 Amendments (responses) x 2 hours/response = **2,400**

**Hours**

**Annual “In-house cost”:** We assume that the respondents will complete and file the Amendments themselves. The respondents have an average salary of \$100,000/year (\$48.08/hour).

1,200 Amendments x 2 /hours/response x \$48.08/hour = **\$ 115,392.00**

**(b) Top 50 Market Preclusion Showings**

We estimate that 100 respondents will each file a Top 50 Market Preclusion Showing. The average burden on respondents for the preparation and filing of a Top 50 Market Preclusion

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Showing is estimated to be 2 hours per response.

**Annual number of respondents: 100**

**Annual number of responses:** 100 respondents x 1 Top 50 Market Preclusion Showing/respondent = **100 responses**

**Annual burden hours:** 100 Top 50 Market Preclusion Showings (responses) x 2 hours/response = **200 Hours**

**Annual “In-house cost”:** We assume that the respondents will complete and file the Amendments themselves. The respondents have an average salary of \$100,000/year (\$48.08/hour).

100 Top 50 Market Preclusion Showings (responses) x 2.0/hours/response x \$48.08/hour = **\$ 9,616.00**

**Total Annual Number of Respondents:** 400 + 100 = **500**

**Total Annual Number of Responses:** 1,200 + 100 = **1,300**

**Total Annual Burden Hours:** 2,400 + 200 = **2,600 hours**

**Total Annual “In-House” Cost:** \$ 115,392.00 + 9,616.00 = **\$125,008.00**

**13. Annual Cost Burden for Amendments and Top 50 Market Preclusion Showings:**

(a) Total annualized capital/startup costs: None

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

(c) Total annualized cost requested: None

**14. Cost to the Federal Government.**

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**(a) Amendments**

The Commission will use engineering staff at the GS-14 level, step 5 (\$57.14/hour) to process the Amendments. The average processing time for these documents is 0.50 hours per document received.

$$0.5 \text{ hours engineer} \times 1,200 \text{ Amendments} \times \$57.14/\text{hour} = \mathbf{\$ 34,284.00}$$

**(b) Top 50 Market Preclusion Showings**

The Commission will use engineering staff at the GS-14 level, step 5 (\$57.14/hour) to process the Top 50 Market Preclusion Showings. The average processing time for these documents is 0.50 hours per document received.

$$0.5 \text{ hours engineer} \times 100 \text{ Top 50 Market Preclusion Showings} \times \$57.14/\text{hour} = \mathbf{\$ 2,857.00}$$

**Total Cost to the Federal Government:** \$34,282.00 + \$ 2,857.00 =  
**\$37,139.00**

15. This is a new information collection. Once the collection is approved by OMB, 500 respondents, 1,300 responses and 2,600 burden hours will be added to OMB’s inventory.

16. The data will not be published.

17. The Commission is not seeking approval not to display the expiration date for OMB approval of the information collection because the collection does not include a form number.

18. There are no exceptions to the Certification Statement.

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

No statistical methods are employed.