

November 2012

*New collection titled:* Application by a Broadcast Licensee to Participate in a Broadcast Spectrum Incentive Auction , FCC Form 177 and Section 1.22002

## SUPPORTING STATEMENT

### A. **Justification:**

1. The Commission is seeking OMB approval for a new collection to collect information from broadcast licensees that choose to participate in the Commission's broadcast spectrum incentive auction. On February 22, 2012, Congress authorized the Commission to conduct incentive auctions, and directed that the Commission conduct an incentive auction of broadcast spectrum. *See* Pub. L. No. 112-96, sections 6402 and 6403, Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), Section 6004. The Commission recently adopted a Notice of Proposed Rulemaking (NPRM) to implement this mandate.

In the Notice of Proposed Rulemaking, FCC 12-118, GN Docket No. 12-268, adopted on September 28, 2012, the Commission proposed in part adopting new rules regarding applications by broadcast licensees to participate in the incentive auction of broadcast spectrum. The Commission will create a new form, FCC Form 177, for broadcast licensees to complete to participate in the broadcast spectrum incentive auction.

Statutory authority for this collection is contained in: Sections 154(i) and 309(j)(5) of the Communications Act, as amended, section 1.2112 and proposed sections 1.22000, 1.22004 of the Commission's rules, as amended. *See* 47 U.S.C. §§ 4(i), 309(j)(5), 47 C.F.R. § 1.2112 and proposed sections 1.22000 and 1.22004.

2. The Commission will use the information to determine whether applicants are legally, technically, and financially qualified to participate as broadcast licensees in the broadcast spectrum incentive auction. That auction will determine the incentive payments that a broadcast licensee may receive in exchange for relinquishing some or all of its spectrum usage rights pursuant to a broadcast license. The Commission's auction, including the collection of information to determine applicants' qualifications to participate pursuant to Commission rules and requirements, will be designed to limit the competitive bidding to qualified applicants; to deter possible abuse of the bidding process; and to enhance the use of competitive bidding to make spectrum rights available in furtherance of the public interest.

Commission staff will review the information collected prior to the auction being held. Staff determines whether each applicant satisfies Commission requirements to participate in the auction and whether applicants claiming status as a particular type of auction participant are eligible for the status claimed.

3. The Commission proposes to require that auction participants submit the information collected electronically. Depending on each applicant's circumstances, a particular applicant may need to submit certain information demonstrating qualifications pursuant under particular rules.

4. This agency does not impose a similar information collection on the respondents. In light of the need to assess the information as of the time of the auction, 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 requirement to that which is necessary for evaluating and processing the application and to deter possible abuses of the processes.

6. The Commission could not conduct the broadcast spectrum incentive auction without the collection of information to determine the qualifications of broadcast licensee applicants. The public interest in effective use of the public spectrum resource depends in part on the collection of information.

7. The information collection does not have any of the characteristics requiring separate justification by 5 C.F.R. § 1320.5(d)(2). Congress has mandated the Commission to "take all reasonable steps necessary to protect the confidentiality of Commission-held data of a licensee participating in the reverse auction [portion of the broadcast spectrum incentive auction], including withholding the identity of such licensee until [specified conditions are satisfied]." Spectrum Act, Section 6403(a)(3). As part of the Notice of Proposed Rulemaking, the Commission has proposed adopting a rule complying with this mandate and sought comment. See Notice of Proposed Rulemaking, proposed section 1.22006.

8. Pursuant to 5 CFR 1320.11, the FCC soliciting public comments on the proposed information collection requirements as part of the Notice of Proposed Rulemaking (NPRM). The NPRM was published on November 21, 2012 (77 FR 69934). At the time of submission to OMB, no PRA comments have been received.

9. Respondents will not receive any payments or gifts in exchange for submitting the information collected.

10. Information collected may be made available for public inspection. Congress has mandated the Commission to "take all reasonable steps necessary to protect the confidentiality of Commission-held data of a licensee participating in the reverse auction [portion of the broadcast spectrum incentive auction], including withholding the identity of such licensee until [specified conditions are satisfied]." Spectrum Act, Section 6403(a)(3) (attached). As part of the Notice of Proposed Rulemaking, the Commission has proposed adopting a rule complying with this mandate and sought comment. See Notice of Proposed Rulemaking, proposed section 1.22006. In addition, an applicant

may request confidential treatment of information collected pursuant to 47 C.F.R. § 0.459 of the FCC's rules.

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

12. Pursuant to the Commission's proposals regarding the type of broadcast licensees that may be eligible to participate in the broadcast spectrum incentive auction, up to 2254 broadcast licensees may be eligible to participate. Participation is a voluntary decision by each broadcast licensee. Given the unprecedented nature of the broadcast spectrum incentive auction, the Commission cannot estimate the level of interest broadcast licensees may have in voluntary participation. Accordingly, for present purposes, the Commission will base its estimates on the total number of parties that would be eligible to participate. The Commission currently anticipates conducting only one broadcast spectrum incentive auction and, accordingly, the estimates are based on one application by each eligible party.

The Commission estimates that it will require up to three hours for applicants to report the information requested.

Total estimated annual hour burden: estimated 2,254 responses x 3 hours per response = 6762 total estimated annual burden hours.

**TOTAL ANNUAL BURDEN = 6,762 HOURS.**

13. There should be no cost burden to the respondents. Applicants should not incur capital and start-up costs or operation and maintenance of purchase of services in connection with responding to the information collection. The information collected in should be collected and maintained as part of the customary and usual business or private practice of the applicant.

**TOTAL CAPITAL AND START-UP COSTS or OPERATION AND MAINTENANCE (O&M) :\$0**

14. The Commission estimates that on average staff review of the information collected, including time spent by staff attorneys, will take two hours per application, including time to identify any deficiencies in an initial application, review resubmitted applications as necessary, and identify the nature of any legal issues requiring policy review.

Total Estimated Annual Cost to the Federal Government: 2,254 applications x 2 hours x \$57.13 (Attorney, GS-14/5) = \$257,542.04

**TOTAL ANNUAL COST TO THE GOVERNMENT: \$257,542.04**

15. This is a new collection reporting a program change increase of 6,762 hours.

16. The collection will not be published, though portions of the applications may be available for public inspection.
17. The Commission seeks OMB approval to not display the OMB expiration date on FCC Form 177. This request will prevent the Commission from having to change the expiration date whenever a revision or three-year extension is requested. The Commission has published a list of OMB-approved collections which include the title, OMB Control Number and OMB expiration date in 47 CFR 0.408 of the Commission's rules. See 47 C.F.R. § 0.408.

18. There are no exceptions to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

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

No statistical methods are employed.