

Title: Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340; 47 CFR Section 73.3700

SUPPORTING STATEMENT

A. Justification:

1. **FCC Form 340** is used by licensees and permittees to apply for authority to construct a new noncommercial educational (“NCE”)¹ FM and DTV broadcast station (including a DTS facility²), or to make changes in the existing facilities of such a station. FCC Form 340 is only used if the station will operate on a channel that is reserved exclusively for NCE use,³ or in the situation where applications for NCE stations on non-reserved channels⁴ are mutually exclusive⁵ only with one another.

Form 340’s Newspaper Notice (third party disclosure) requirement; 47 CFR § 73.3580. Form 340 also contains a third party disclosure requirement, pursuant to Section 73.3580. This rule requires a party applying for a new broadcast station, or making a major change to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public notice must be completed within 30 days of tendering the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. In addition, a copy of this notice must be placed in the station’s public inspection file along with the application, pursuant to Section 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060-0214, which covers Section 73.3527.

Revised Information Collection Requirements:

On October 2, 2012, the Commission released the Notice of Proposed Rulemaking, *Expanding the*

¹ These stations are licensed to nonprofit educational organizations for use in the advancement of educational programs.

² DTV stations may apply to use distributed transmission system (“DTS”) technology to serve their viewers. See 47 CFR § 73.626. DTS technology employs multiple synchronized transmitters spread around a station’s service area, rather than the current single-transmitter approach. Each transmitter would broadcast the station’s DTV signal on the same channel, similar to analog TV booster stations but more efficiently. Due to the synchronization of the transmitted signals, DTV receivers should be able to treat the multiple signals as reflections or “ghosts” and use “adaptive equalizer” circuitry to cancel or combine them to produce a single signal.

³ Reserved channels include FM channels 200 to 220 (see 47 CFR § 73.501), as well as any FM and DTV channels appearing with an asterisk in their respective table of allotments (see FM Table at 47 CFR § 73.202 and Post-transition DTV Table at 47 CFR § 73.622(i)).

⁴ Non-reserved channels are channels that are not reserved exclusively for NCE use and for which commercial entities could be eligible to operate full-power stations. Non-reserved channels include FM channels 221 and above appearing without an asterisk in the FM Table of Allotments (47 CFR § 73.202), and DTV channels appearing without an asterisk in the DTV Table of Allotments (47 CFR § 73.622(i)).

⁵ Mutually exclusive applications are those that either cause or receive prohibited contour overlap with other window-filed applications, thus preventing grant of more than one application.

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Economic and Innovative Opportunities of Spectrum Through Incentive Auctions, Docket No. 12-268, FCC 12-118 (“IA NPRM”). The IA NPRM contains rules and policies for the incentive auction mandated by Congress in the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156 (2012). Following the completion of the incentive auction process, all repacked⁶ full power noncommercial educational stations will need to file FCC Form 340 for their new channel facility. **This new requirement is provided in 47 C.F.R. § 73.3700.**

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 collected by FCC Form 340 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. In the case of mutually exclusive qualified applicants, the information will be used to determine which proposal would best serve the public interest.
3. **Consideration Given to Information Technology:** The Commission requires applicants to file these forms 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 to determine eligibility for the Tribal Priority and resolving competing applications by applicants claiming the priority, and to deter possible abuses of the processes. Therefore, the information collection does not have a significant economic impact on a substantial number of small entities/businesses.
6. **Less Frequent Data Collection:** The frequency for filing is determined by the respondents, as necessary.
7. **Information Collection Circumstances:** This collection of information is consistent with the guidelines in 5 CFR § 1320.5(d)(2).
8. **Comments Received from the Public:** Opportunity for public comment on this information collection requirement contained in this supporting statement has been published in a notice in the Federal Register at 77 FR 69934, on November 21, 2012. To date, no comments have been received from the public.

⁶ Repacking occurs when stations that are assigned a new operating channel following completion of the incentive auction process.

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- 9. **Payment or Gift:** No payment or gift is provided to the 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. These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

We estimate that a total of 1,615 Form 340 construction permit applications will be filed by NCE full-power FM and DTV stations with the Commission annually.⁷ We assume that each respondent station licensee/permittee will contract with a consulting engineer to complete the engineering section of the application and will also contract with an attorney to complete the legal section of the application, review and file the FCC Form 340. We estimate that the respondent will spend approximately 2-6 hours consulting and reviewing the application with the outside engineering and legal consultants, depending upon the application type (*e.g.*, New & Major, Tribal New & Major, Minor, DTS). We estimate that the respondent will have an average salary of \$100,000/year (\$48.08/hour).

We also estimate that a total of 396 full power noncommercial educational television stations will file FCC Form 340 following the incentive auction and repacking process. We estimate that 10% of these applications (or 40 applications) will be made by the station licensee without outside consultation and will require six (6) hours preparation, while 90% of these applications (or 356 applications) will be contracted out to outside attorneys and will require one (1) hour of consultation with these outside parties.

Newspaper Notices (47 CFR § 73.3580):

Section 73.3580 newspaper notices are required upon submission of construction permit applications for New & Major Changes. We estimate that it will take the respondent approximately one hour to fulfill the newspaper notice requirement. We estimate that the respondent will have an average salary of \$100,000/year (\$48.08/hour).

Type	# of Respondents	# of Responses	Burden Hours of Respondents	Annual Burden Hours	Hourly Salary of Respondent ⁸	Annual In-House Cost
<u>NCE Full-Power FM and DTV</u>						

⁷ We note that this estimate includes the filing of amendments to these applications.

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Type	# of Respondents	# of Responses	Burden Hours of Respondents	Annual Burden Hours	Hourly Salary of Respondents	Annual In-House Cost
FM NCE New & Major	1,000	1,000	4 hrs. consultation	4,000 hrs	\$48.08	\$192,320.00
FM NCE New & Major (Tribal Applicant)	175 ⁹	175	6 hrs. consultation	1,050 hrs	\$48.08	\$50,484.00
FM NCE Minor	300	300	2 hrs. consultation	600 hrs	\$48.08	\$28,848.00
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DTV NCE New & Major	30	30	4 hrs. consultation	120 hrs	\$48.08	\$5,769.60
DTV NCE Minor	100	100	2 hrs. consultation	200 hrs	\$48.08	\$9,616.00
DTS	10	10	3 hrs. consultation	30 hrs	\$48.08	\$1,442.40
Post Incentive Auction License Application filed by station	40	40	6 hrs.	240 hrs	\$48.08	\$11,539.20
Post Incentive Auction License Application filed by outside attorney/engineering after consultation with station	356	356	1 hr consultation	356 hrs	\$48.08	\$17,116.48
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Subtotal	2,011	2,011		6,596 hrs		\$345,791.36
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Newspaper Notices (Third Party Disclosure) Requirement; 47 CFR § 73.3580						
Newspaper Notices with FM NCE New & Major applications (Form 340)	1,120	1,120	1 hr.	1,120 hrs	\$48.08	\$53,849.60
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Newspaper Notices	30	30	1 hr.	30 hrs	\$48.08	\$1,442.40

⁸ The Commission estimates that the average hourly salary for in-house personnel which includes station manager, engineer and attorney to be \$100,000/year or \$48.08/hour based on the fact that the Commission is unsure who exactly will complete and file the applications for the station.

⁹ This number includes applicants seeking the Tribal Priority based on coverage of Tribal Lands, applicants seeking waiver of the Tribal Lands coverage provisions of the Tribal Priority, and amendments to such applications.

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Type	# of Respondents	# of Responses	Burden Hours of Respondents	Annual Burden Hours	Hourly Salary of Respondents	Annual In-House Cost
with DTV NCE New applications (Form 340)						
Newspaper Notices Subtotal	1,150	1,150		1,150 hrs		\$55,292.00
TOTAL	3,161¹⁰	3,161		7,746 hrs		\$401,083.36

13. Annual Cost Burden to Respondents: The annual cost burden to the respondents was calculated as follows:

- We assume that each respondent station will contract with a consulting engineer to complete the engineering section of the application and will also contract with an attorney to complete the legal section of the application, review the application, and file FCC Form 340. We estimate that the time by outside engineering and legal consultants spent to complete, review and file the form will vary, depending upon the application and service type. We estimate that the consulting engineer will have an rate of \$250/hour and the outside attorney will charge approximately \$300/hour.
- Newspaper Notice Publication Fee: An FM or DTV applicant must give local public notice of the filing of its Form 340 construction permit 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, for a total of four (4) publications. The cost of this publication is estimated to be \$113.25/publication.
- Filing Fee: There is no filing fee for the Form 340, which is only filed by NCE stations.

Type	Number of Forms	Consultant's Burden	Total Annual Burden Hours	Consultant's Hourly Fee or Application Fee	Cost Burden

¹⁰ This estimate is based on the entire universe of respondents for this collection.

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FM NCE New & Major Engineering Consultant	1,000	67 hrs	67,000 hrs	\$250.00	\$16,750,000.00
FM NCE New & Major Outside Attorney	1,000	5 hrs	5,000 hrs	\$300.00	\$1,500,000.00
FM NCE New & Major Engineering Consultant (Tribal Applicant)	175	70 hrs	12,250 hrs	\$250.00	\$3,062,500.00
FM NCE New & Major Outside Attorney (Tribal Applicant)	175	7 hrs	1,225 hrs	\$250.00	\$306,250.00
Newspaper Notice Publication Fee	1,120	4 publications		\$113.25/fee	\$507,360.00
FM NCE Minor Engineering Consultant	300	67.5 hrs	20,250 hrs	\$250.00	\$5,062,500.00
FM NCE Minor Outside Attorney	300	5 hrs	1,500 hrs	\$300.00	\$450,000.00
DTV NCE New & Major Engineering Consultant	30	34 hrs	1,020 hrs	\$250.00	\$255,000.00
DTV NCE New & Major Outside Attorney	30	5 hrs	150 hrs	\$300.00	\$45,000.00
Newspaper Notice Publication Fee	30	4 publications		\$113.25/fee	\$13,590.00
DTV NCE Minor Engineering Consultant	100	34 hrs	3,400 hrs	\$250.00	\$850,000.00
DTV NCE Minor Outside Attorney	100	5 hrs	500 hrs	\$300.00	\$150,000.00
DTS NCE Engineering Consultant	10	45 hrs	450 hrs	\$250.00	\$112,500.00
DTS NCE Outside Attorney	10	5 hrs	50 hrs	\$300.00	\$15,000.00
Post Incentive Auction License Application Outside Attorney	356	5 hrs	1,780 hrs	\$300.00	\$534,000
Post Incentive Auction	356	5 hrs	1,780 hrs	\$250.00	\$445,000

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License Application Engineering Consultant					
Annual Cost Burden Total					\$30,058,700

14. **Cost to Federal Government:** The total cost to the Federal Government was calculated as follows:

FM New and Major Applications:

Clerical	1.5 hours x \$18.50/hour x 1,000 =	\$ 277,500
Paraprofessional	7.0 hours x \$33.92/hour x 1,000 =	\$ 237,440
Professional	36.9 hours x \$57.13/hour x 1,000 =	<u>\$2,108,097</u>
		\$2,623,037

FM New and Major Applications (Tribal Applicants):

Clerical	1.6 hours x \$18.50/hour x 175 =	\$ 8,288
Paraprofessional	7.5 hours x \$33.92/hour x 175 =	\$ 44,520
Professional	37.5 hours x \$57.13/hour x 175 =	<u>\$374,916</u>
		\$427,724

FM Minor Change:

Clerical	2.0 hours x \$18.50/hour x 300 =	\$ 11,100
Paraprofessional	6 hours x \$33.92/hour x 300 =	\$ 16,056
Professional	25 hours x \$57.13/hour x 300 =	<u>\$428,475</u>
		\$455,631

DTV Applications (New & Major and Minor Change):

Clerical	2 hours x \$18.50/hour x 526 =	\$ 19,462.00
Paraprofessional	6 hours x \$33.92/hour x 526 =	\$107,051.52
Professional	16 hours x \$57.13/hour x 526 =	<u>\$408,806.08</u>
		\$535,319.60

DTS Applications:

Clerical	2 hours x \$18.50/hour x 10 =	\$ 376
Paraprofessional	6 hours x \$33.92/hour x 10 =	\$ 2,035
Professional	20 hours x \$57.13/hour x 10 =	<u>\$ 11,426</u>
		\$ 13,837

TOTAL COST TO THE FEDERAL GOVERNMENT: \$4,055,548.60

The following data was used to calculate the total cost to the Federal Government:

*The Commission will use professional staff at the GS-14, step 5 level (\$57.13/hour), paraprofessional staff

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at the GS-11, step 5 level (\$33.92/hour) and clerical staff at the GS-5, step 5 level (\$18.50/hour) to process these applications.

15. **Reason for Changes in Burden or Cost:** If the proposed requirements contained in FCC 12-118 are adopted in a final rulemaking by the Commission 396 respondents, 396 responses, 596 burden hours and \$979,000 in annual cost will be added to OMB's inventory.

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.