

## SUPPORTING STATEMENT

The Federal Communications Commission (Commission) is seeking to obtain OMB approval for a revision to a currently approved collection, with no change in burden estimates. The currently approved collection requires a minor revision to add an additional certification to the FCC Form 175 to implement Section 6004 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6004, 125 Stat. 156, 222-223 (2012) (2012 Spectrum Act).

### **A. Justification:**

1. *Circumstances that make the revised collection necessary.* The Commission seeks emergency processing under the Paperwork Reduction Act (PRA), 5 U.S.C. § 1320.13. The Commission is requesting approval from the Office of Management and Budget (OMB) for this revised information collection by September 25, 2013.

The FCC Form 175 is used by the public to apply to participate in competitive bidding (auctions) for Commission licenses and permits. Statutory authority the currently approved information collection is contained in Sections 154(i) and 309(j)(5) of the Communications Act, as amended, and sections 1.2105, 1.2110, 1.2112 of the Commission's rules, as amended. See 47 U.S.C. §§ 4(i), 309(j)(5), 47 C.F.R. §§ 1.2105, 1.2110, 1.2112.

On February 22, 2012, the President signed the 2012 Spectrum Act, which, among other things, requires the Commission to license certain specified frequency bands using a system of competitive bidding not later than three years after enactment.<sup>1</sup> Section 6004 of the 2012 Spectrum Act, 47 U.S.C § 1404, prohibits a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant from participating in any auction that is required or authorized to be conducted pursuant to the 2012 Spectrum Act. A copy of the statute is attached.

On June 27, 2013, the Commission released a Report and Order (R&O), FCC 13-88, WT Docket No. 12-357, in which it established service rules and competitive bidding procedures for the 1915-1920 MHz and 1995-2000 MHz bands. The R&O also implemented Section 6004 by requiring that a party seeking to participate in any auction conducted pursuant to the 2012 Spectrum Act certify in its application, under penalty of perjury, the applicant and all of the related individuals and entities required to be

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<sup>1</sup> The specified frequency bands are as follows: 1915-1920 MHz, 1995-2000 MHz, 2155-2180 MHz, the 15 megahertz of spectrum identified by NTIA pursuant to 47 U.S.C. § 1451(a)(3), and 15 megahertz of contiguous spectrum to be identified by the Commission. See 47 U.S.C. § 1451(b)(2).

disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant and thus statutorily prohibited from participating in such a Commission auction. The Commission therefore seeks approval for a revision to its currently approved information collection on FCC Form 175 to include this additional certification. The revised collection will enable the Commission to determine whether an applicant's participation in an auction conducted pursuant to the 2012 Spectrum Act is consistent with Section 6004.

Statutory authority for the revised information collection is contained in Section 6004 of the 2012 Spectrum Act, 47 U.S.C. Section 1404.

2. *Use of information.* The Commission's auction rules and related requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants, deter possible abuse of the bidding and licensing process, and enhance the use of competitive bidding to assign Commission licenses and permits in furtherance of the public interest. The information collected on Form 175 is used by the Commission to determine if an applicant is legally, technically, and financially qualified to participate in a Commission auction. Additionally, if an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses information collected on Form 175 to determine whether the applicant is eligible for the status requested. Commission staff reviews the information collected on FCC Form 175 for a particular auction as part of the pre-auction process, prior to the auction being held. Staff determines whether each applicant satisfies the Commission's requirements to participate in the auction and, if an applicant claims status as a particular type of auction participant, whether that applicant is eligible for the status claimed.

The Commission is now revising this information collection to include a certification that will implement the requirement in Section 6004 of the 2012 Spectrum Act, 47 U.S.C. § 1404. The revised collection will enable the Commission to confirm that a potential auction participant meets the criteria set forth in Section 6004 by requiring that applicant to certify on FCC Form 175, under penalty of perjury, that the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction or receiving a grant. The Commission plans to continue to use the Form 175 for all upcoming spectrum auctions, including those required or authorized to be conducted pursuant to the 2012 Spectrum Act, collecting only the information necessary for each particular auction. Thus, the additional certification that is the subject of this revised collection will not be required for all auctions.

3. *Technological collection techniques.* Pursuant to the Commission's rules, an auction participant is required to complete and submit its FCC Form 175 electronically through the FCC Auction System. The Commission developed a centralized electronic system for collecting the information to reduce both public and agency administrative burden.

4. *Efforts to identify duplication.* There will be no duplicative information collected. The information sought is unique to each respondent and is not already available because the Commission does not impose a separate similar information collection on the respondents. Thus, there is no similar data available under another information collection. Moreover, the information proposed to be collected under the revised collection implements a new statutory requirement.

5. *Impact on small entities.* In conformance with the Paperwork Reduction Act of 1995, the Commission has made an effort to minimize the burden on all respondents regardless of size by limiting the information collected on Form 175 to that which is necessary to evaluate and process the application, deter possible abuses of the processes, and confirm applicants' compliance with various applicable regulatory and statutory spectrum auction requirements. In addition, the Commission has made available tutorials and related information to assist respondents, including small entities, in understanding what information should be submitted on FCC Form 175.

Decisions regarding whether to submit an application to participate in a given auction rest exclusively with the respondents. Thus, the frequency of filing is determined by the respondent. Filing information to support an applicant's qualification as a designated entity and eligibility for small business bidding credits, either generally or with respect to specific licenses, is also determined by the respondent/applicant. Small business ownership and gross revenues information/calculations must be updated when changes occur, and the need to make filings to reflect such changes are generally determined by the respondent/applicant.

6. *Consequences if information is not collected.* The Commission's auction program could not function in its current form without the collection of information on FCC Form 175. Licensing access to the public spectrum resource and recovery for the public of a portion of the value of the public spectrum resource depends in large part on the information collected on FCC Form 175. Without the information collected on FCC Form 175, the Commission would not be able to determine if an applicant is legally, technically, and financially qualified to participate in a Commission auction and has complied with the various applicable regulatory and statutory spectrum auction requirements.

7. *Special circumstances.* FCC Form 175 as currently approved does not have any of the characteristics that would have required separate justification under 5 C.F.R. § 1320.5(d) (2), and the proposed revision to FCC Form 175 does not change the characteristics such that a separate justification is now required.

8. *Federal Register notice; efforts to consult with persons outside the Commission.* Emergency approval is being sought for this revised information collection, and the Commission seeks a waiver of the 60-day notice requirement in 5 C.F.R. § 1320.8(d) due to the emergency nature of this request. However, the Commission has prepared and will publish a 30-day notice announcing the submission of this emergency request.

The Commission will follow all of the regular OMB clearance processes and procedures for the revised information collection upon approval of its emergency request, and will publish the necessary notice(s) in the Federal Register when seeking regular OMB approval.

Pursuant to 5 CFR § 1320.11, the Commission solicited comment on the proposed revised information collection in a Notice of Proposed Rulemaking (NPRM) adopted in December 2012 (*see* FCC 12-152, paragraphs 104 and 117 and Appendix B paragraphs 7-8). A summary of the NPRM was published in the Federal Register on January 8, 2013. *See* 78 Fed. Reg. 1166 (Jan. 8, 2013). No PRA or other comments were received regarding the proposed revised collection in response to the NPRM or the Federal Register notice. Pursuant to 5 CFR § 1320.11, the Commission invited comment on the revised information collection in the recently released R&O (*see* FCC 13-88, paragraphs 264-265). A summary of the R&O was published in the Federal Register on August 16, 2013. *See* 78 Fed. Reg. 50214 (Aug. 16, 2013). As of the date of submission of this emergency request to the OMB, no PRA comments concerning the revised collection have been received by the Commission in response to the R&O.

9. *Payments or gifts to respondents.* Respondents will not receive any payments or gifts.

10. *Assurances of confidentiality.* Information collected on FCC Form 175 is made available for public inspection, and the Commission is not requesting that respondents submit confidential information to the Commission as part of the pre-auction application process. However, to the extent that a respondent seeks to have certain information collected on FCC Form 175 withheld from public inspection, the respondent may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules. *See* 47 C.F.R. § 0.459.

11. *Questions of a sensitive nature.* Neither the currently approved nor the revised information collection asks questions of a sensitive nature.

12. *Estimate of the time burden of the revised collection on respondents.* Auctions occur on an irregular schedule. The Commission estimates that up to 500 respondents/applicants may submit a FCC Form 175 each year, depending on the number and nature of the auctions in any given year. The Commission estimates that up to 350 of those potential respondents/applicants would be required to respond to the new certification under the revised collection. Respondents/applicants determine whether to apply to participate in a Commission auction and, therefore, applicants determine the frequency of filing.

The Commission estimates that it will require up to 90 minutes for respondents/applicants to report the information requested on FCC Form 175 under the currently approved collection. The Commission estimates that the additional certification under the revised collection will not measurably increase the estimated average amount of time to complete FCC Form 175 across the range of respondents/applicants.

Total estimated annual hour burden: estimated 500 annual responses x 1.5 hours per response = 750 total estimated annual burden hours.

**TOTAL ANNUAL BURDEN = 750 HOURS.**

13. *Estimate of the cost burden of the revised collection on respondents.* There is no cost burden to the respondents. Respondents should not incur capital and start-up costs or operation and maintenance of purchase of services in connection with responding to the information collection on FCC Form 175. The information collected on FCC Form 175 should be collected and maintained as part of the customary and usual business or private practice of the respondent.

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

14. *Estimate of the cost burden of the revised collection on the Commission.* The Commission estimates that on average staff review of the information collected on FCC Form 175, including time spent by staff attorneys, will take 30 minutes 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. The Commission estimates that the additional certification under the revised collection will not measurably increase amount of time for staff to review the application.

Total Estimated Annual Cost to the Federal Government: 500 applications x 0.50 hours x \$45.99 (Attorney, GS-14/5) = \$11,497.50.

TOTAL ANNUAL COST TO THE GOVERNMENT: \$11,497.50. (A REDUCTION OF \$2,785.00 as compared to the currently approved collection).

15. *Program changes or adjustments from the revised collection.* The Commission is reporting no change in burden for the revised collection. The Commission estimates that the additional certification under the revised collection will not measurably increase the estimated average amount of time for respondents to complete FCC Form 175 across the range of applicants or for Commission staff to review the applications.

16. *Collections of information whose results will be published.* Neither the currently approved information collection nor the revised collection will be published for statistical use. The information collected in FCC Form 175 is made available for public inspection, and the Commission is not requesting that respondents submit confidential information to the Commission as part of the pre-auction application process. However, respondents/applicants may request confidential treatment of information collected on FCC Form 175 pursuant to section 0.459 of the Commission's rules. See 47 C.F.R. § 0.459.

17. *Display of expiration date for OMB approval of information collection.* The Commission has approval under the currently approved information collection to not

display the OMB expiration date on FCC Form 175. The Commission seeks continued approval to not display the OMB expiration date on FCC Form 175 for the revised collection. The Commission will continue to use an edition date on FCC Form 175 in lieu of the OMB expiration date. Continued approval to not display the OMB expiration date on FCC Form 175 will prevent the Commission from having to constantly update the OMB expiration date on the electronic FCC Form 175 whenever a revision or three-year extension is requested. The Commission will continue to publish the OMB control number and OMB expiration date for FCC Form 175 in section 0.408 of the Commission's rules. See 47 C.F.R. § 0.408.

18. *Exceptions to certification statement for Paperwork Reduction Act submissions (Item 19 on OMB Form 83-I).* There are exceptions to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I for this revised information collection. The Commission is seeking a waiver of the 60-day notice requirement under 5 C.F.R. § 1320.8(d). Due to the emergency nature of this request, the Commission did not publish a 60-day notice. However, the Commission did publish a 30-day notice in the Federal Register soliciting public comment on the emergency approval request (see 78 FR 52767).

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

Neither the currently approved information collection nor the revised collection employ statistical methods, and the use of such methods would not reduce the burden or improve accuracy of results.