

SUPPORTING STATEMENT

The Federal Communications Commission (Commission) is seeking to obtain approval from the Office of Management and Budget (OMB) for a revision to a currently approved collection, with no change in burden estimates. The currently approved collection requires a minor revision to require the submission of a signed acknowledgment with the FCC Form 175 to implement new US note 91 in section 2.106 of the Commission's rules, 47 C.F.R. § 2.106, US note 91, and new section 27.1134(f) of the Commission's rules, 47 C.F.R. § 27.1134(f).

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 OMB for this revised information collection no later than twenty six (26) days after it is received at OMB.

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 allocate for commercial use and license certain specified frequency bands using a system of competitive bidding not later than three years after enactment.¹

Revised Information Collection Requirement Which Requires OMB Review and Approval:

On March 31, 2014, the Commission released a Report and Order (R&O), FCC 14-31, GN Docket No. 13-185, 28 FCC Rcd 4610 (2014), in which it established service rules

¹ The specified frequency bands are as follows: 1915-1920 MHz, 1995-2000 MHz, 2155-2180 MHz, the 15 megahertz of spectrum identified by the National Telecommunications and Information Administration (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).

and competitive bidding procedures for the 1695-1710 MHz,² 1755-1780 MHz,³ and 2155-2180 MHz bands. On May 19, 2014, the Commission's Wireless Telecommunications Bureau (WTB) released a Public Notice announcing that an auction to assign licenses in these frequency bands is will begin on November 13, 2014 and soliciting comment on proposed auction procedures for the auction. On July 23, 2014, the WTB released a Public Notice, DA 14-1018, adopting procedures for the auction.

The 1695-1710 MHz and 1755-1780 MHz bands are currently encumbered by Federal users. Licenses in these bands will be assigned by auction to commercial users who will operate on the spectrum on a shared basis with Federal incumbent users. Many Federal systems will, over time, relocate out of the bands, however, a limited number of Federal incumbents will remain indefinitely. The R&O adopted new rules to address commercial operations in these bands in light of the temporary and indefinite sharing by Federal incumbent users and commercial licensees, including a requirement that commercial licensees operate on a co-equal, primary operations with Federal systems within specified geographic zones,⁴ and a requirement that licensees in the 1755-1780 MHz band accept interference from Federal systems as long as such systems remain in the band.⁵

To implement these rules, the Public Notice adopting procedures for the auction included a requirement that an applicant in any auction for licenses in the 1755-1780 MHz band submit with its FCC Form 175 a signed acknowledgement statement related to sharing and potential interference. The Commission therefore seeks approval for a revision to its previously approved collection of information on FCC Form 175 to permit collection of the signed acknowledgement statement. Under the revised collection, an applicant in any auction for licenses in the 1755-1780 MHz band will be required to submit a signed acknowledgement with its FCC Form 175 stating that (1) the applicant acknowledges that under 47 C.F.R. § 27.1134(f) it must accept any interference from incumbent federal operations in 1755-1780 MHz identified in an approved Transition Plan until such time as these operations vacate the 1755-1780 MHz band in accordance with 47 CFR part 301; (2) the applicant acknowledges that under 47 USC § 2.106, US note 91 it must accept harmful interference from certain incumbent federal systems, including federal earth stations at 25 sites; (3) the applicant accepts the risk that this may pose to any base station or associated equipment that it may deploy; any services it may offer; and any of its other business arrangements; (4) the applicant acknowledges that it understands these risks could potentially affect the value of any licenses in 1755-1780 MHz band and that it has considered these risks before submitting any bids for applicable licenses; and (5) this acknowledgement does not supersede the licensee's rights and obligations specified by law, rule, or other Commission action with respect to these frequencies. The revised collection will enable the Commission to confirm that an auction applicant understands

² In February 2013, the NTIA identified the 1695-1710 MHz band in satisfaction of its Spectrum Act obligation.

³ In the R&O, the Commission identified the 1755-1780 MHz band in satisfaction of its Spectrum Act obligation.

⁴ See 47 C.F.R. § 2.106, US notes 88 and 91.

⁵ See 47 C.F.R. §27.1134(f). See also See 47 C.F.R. § 2.106, US note 91.

its specific obligations with respect to Federal incumbent users and systems in seeking to become licensed in the 1755-1780 MHz band.

Authority for the revised information collection is contained in US note 91 in section 2.106 of the Commission's rules, 47 C.F.R. § 2.106, US note 91, and section 27.1134(f) of the Commission's rules, 47 C.F.R. § 27.1134(f).

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 FCC 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 FCC 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 require a signed acknowledgment that will implement US note 91 in section 2.106 of the Commission's rules, 47 C.F.R. § 2.106, US note 91, and new section 27.1134(f) of the Commission's rules, 47 C.F.R. § 27.1134(f). The revised collection will enable the Commission to confirm that a potential auction participant understands its specific obligations with respect to Federal incumbent users and systems in the frequency bands in which it seeks to become licensed by requiring that applicant to submit a signed statement with its FCC Form 175 acknowledging that the applicant's operations in the 1755-1780 MHz band may be subject to interference from Federal systems in certain geographic zones, that the applicant must accept interference from such Federal systems in those zones, and that the applicant has considered these risks before submitting any bids for applicable licenses. 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 signed acknowledgement that is the subject of this revised collection will not be required for all auctions, and will only be used in auctions of licenses in the 1755-1780 MHz band.

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 published a 21-day emergency PRA notice in the Federal Register seeking public comments on the revised information collection (*see* 79 FR 44029 (Jul. 29, 2014)).

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 notices in the Federal Register when seeking regular OMB approval.

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 submit a signed acknowledgement 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 need to submit the signed acknowledgement 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. Therefore, the signing of the acknowledgement will not have an impact on the burden hours.

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.

Total Number of Respondents: 500 applicants.

Total Number of Annual Responses: 500 FCC Form 175 applications.

In-House Cost: The Commission expects that FCC Form 175 will typically be prepared by the respondent using existing in-house staff (e.g., paralegal or other legal staff

member) at a rate equivalent to the hourly rate of a GS-11, Step 5 government staff member (\$34.26/hour). Therefore, the in-house cost is as follows:

500 annual responses x 1.5 hours per response x \$34.26/hour = \$25,695.

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 need to submit a signed acknowledgement 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 \$57.70 (Attorney, GS-14/5) = **\$14,425.00.**

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 need to submit a signed acknowledgement 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. Therefore, there are no program changes or adjustments to this collection.

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.*
There are exceptions to the certification statement.

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.