

**Application to Participate in a Reverse Incentive Auction,
FCC Form 177**

SUPPORTING STATEMENT

New Collection Titled: Application to Participate in a Reverse Incentive Auction, FCC Form 177. This new request is being submitted to obtain Office of Management and Budget (OMB) approval for new information collection requirements as a result of a series of Federal Communications Commission (Commission) decisions, as explained below.

A. Justification:

1. *Circumstances that make these collections 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 new information collection no later than nineteen (19) days after it is received at OMB.

Under this information collection, the Commission will collect information that will be used to determine whether an applicant is legally qualified to participate in a reverse incentive auction. To aid in collecting this information, the Commission has created FCC Form 177, which the public will use to participate in reverse incentive auctions, including the Commission's upcoming broadcast incentive reverse auction to relinquish some or all of its spectrum usage rights in exchange for a portion of the incentive auction proceeds.

On February 22, 2012, the President signed the Spectrum Act, which, among other things, authorized the Commission to conduct incentive auctions, and directed that the Commission use this innovative tool for an incentive auction of broadcast television spectrum to help meet the Nation's growing spectrum needs.¹

The information collection requirements reported under this new collection are the result of various Commission actions to implement this new and novel approach for use in the Commission's broadcast incentive auction (BIA).

The BIA will have three main components: (1) a "reverse auction" in which broadcast television licensees will submit bids to voluntarily relinquish their spectrum usage rights in exchange for defined shares of proceeds from the "forward auction"; (2) a "repacking" of the broadcast television bands; and (3) a "forward auction" of initial licenses for flexible use of the newly available spectrum.²

On June 2, 2014, the Commission released a Report and Order, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, FCC 14-50, 29 FCC Rcd 6567 (2014) (*Incentive Auction R&O*), in which it adopted general

¹ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) (Spectrum Act), codified at 47 U.S.C. §§ 309(j)(8)(G), 1452.

² See *id.* § 6403(a), (b) and (c), codified at 47 U.S.C. § 1452(a), (b), (c). See also *id.* § 6001(16) and (30) (defining "forward auction" and "reverse auction," respectively).

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rules to govern the BIA, including various application disclosure and certification requirements that must be made by broadcast television licensees to establish their eligibility to participate in the reverse auction.

On June 12, 2015, the Commission released a First Order on Reconsideration and Notice of Proposed Rulemaking, FCC 15-67, 30 FCC Rcd 6668 (2015) (modified by Erratum released July 7, 2015), in which it modified certain rules and information collection requirements adopted in the *Incentive Auction R&O* for the reverse auction with respect to channel sharing agreements.

On December 17, 2014, the Commission released a Public Notice, FCC 14-191, 29 FCC Rcd 15750 (2014), in which it sought comment on the detailed procedures to be used to conduct the BIA consistent with the rules and policies adopted in the *Incentive Auction R&O*. On August 11, 2015, the Commission released a Public Notice, FCC 15-78, 30 FCC Rcd 8975 (2015), in which it adopted procedures for bidding in the reverse and forward auctions and additional information collection requirements for both auctions and announced that the auction was scheduled to begin on March 29, 2016.

On October 15, 2015, the Commission's Wireless Telecommunications Bureau released a Public Notice, DA 15-1183, in which it adopted the procedures for applying to participate in the reverse and forward auctions, including some additional information collection requirements for both auctions, and announced the deadlines for filing applications to participate in the reverse and forward auctions. The filing window for reverse auction applications is scheduled to open on December 1, 2015 and close on December 18, 2015.

This new information collection addresses requirements to conduct the reverse auction pursuant to the rules and information collection requirements adopted by the Commission in the above-described decisions.

Statutory authority for this information collection is contained in sections 154(i) and 309(j)(5) of the Communications Act, as amended, 47 U.S.C. §§ 4(i) and 309(j)(5).

New information collection requirements for this collection:**Application to Participate in a Reverse Incentive Auction (FCC Form 177)**

The Commission is seeking approval for the collection on FCC Form 177 of the disclosures and certifications that must be made by broadcast television licensees to establish their eligibility to participate in the reverse auction.

The Commission estimates that 600 broadcast television licensees may submit applications to participate in the reverse auction. The number of applicants will vary, dependent on the number of broadcasters interested in relinquishing their spectrum usage rights in exchange for defined shares of the proceeds of the forward auction.

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The rules governing competitive bidding for the reverse auction component of the BIA are contained in sections 1.2200-1.2209 of the Commission's rules, 47 C.F.R. §§ 1.2200-1.2209. Sections 1.2204 and 73.3700(h)(4)(i), (ii), and (h)(6) of the Commission's rules contain the requirements for applying to participate in the reverse auction. See 47 C.F.R. §§ 1.2204, 73.3700(h)(4)(i), (h)(4)(ii), (h)(6). The following are the collection requirements that are required when applying to participate in the reverse auction:

- a. *Applicant Information.* The applicant must provide:
 1. the name and address of the applicant;
 2. the applicant's legal classification;
 3. a responsible party for the applicant;
 4. a contact party for the applicant; and
 5. the identities of up to three individuals authorized to make a bid on behalf of the applicant.

- b. *Station Selection Information.* The applicant must provide the following information for each broadcast station for which it wishes to become qualified to submit bids in the reverse auction:
 1. select one or more stations from the pre-filled list of stations available to the applicant;³
 2. whether the station is non-commercial educational (if applicable) and, if so, whether the station operates on a reserved or non-reserved channel;
 3. whether the station is subject to a non-final revocation order;
 4. whether the station is expired or has been cancelled and is now subject to a non-final license cancellation order;
 5. whether the license is subject to a non-final downgrade order (if applicable); and
 6. the relinquishment options the applicant would like to have the option to bid on in the reverse auction.

- c. *Channel Sharing Agreements and Channel Sharing Certifications.* The applicant must indicate:
 1. whether it has a present intent to enter into a channel sharing agreement after the BIA; and
 2. whether it has entered into one or more executed channel sharing agreements for a given station.

³ The pre-filled list is generated based on the FCC Registration Number (FRN) entered by the applicant when initiating its application form.

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If the applicant has entered into one or more executed channel sharing agreements for a given station, the applicant must, for each executed agreement:

1. provide the licensee name and facility ID for each licensee with which it has such an agreement;
2. submit as an attachment to its application an unredacted copy of the executed channel sharing agreement; and
3. certify that:
 - (a) the channel sharing agreement is consistent with all Commission rules and policies, and that the applicant accepts any risk that the implementation of the channel sharing agreement may not be feasible for any reason, including any conflict with requirements for operation on the shared channel;
 - (b) the applicant's operation from the shared channel facilities will not result in a change to its Designated Market Area;
 - (c) the proposed channel sharing arrangement will not violate the multiple ownership rules, set forth in 47 C.F.R. § 73.3555, based on the facts at the time the application is submitted; and
 - (d) the applicant can meet the community of license coverage requirement set forth in 47 C.F.R. § 73.625(a) from the shared channel facilities or, if not, that the new community of license for its shared channel facilities either meets the same or a higher allotment priority as its current community; or if no community meets the same or higher allotment priority, provides the next highest priority.
4. submit as an attachment to its application, with respect to each Channel Sharer, a document containing the following certifications from that channel sharer (based on the facility type involved):

For Class A Stations:

- (a) name, call sign and facility ID of the Channel Sharer;
- (b) name, call sign, and facility ID of each Channel Sharee; and
- (c) a certification under penalty of perjury, on behalf of the Channel Sharer, that:
 - (1) the Channel Sharer is and will remain in compliance with the ongoing statutory eligibility requirements to remain a Class A station;
 - (2) the channel sharing agreement is consistent with all Commission rules and policies, and that the Channel Sharer accepts any risk that the implementation of the channel sharing agreement may not be feasible for any reason, including any conflict with requirements for operation on the shared channel;

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- (3) the proposed channel sharing arrangement will not violate the multiple ownership rules, set forth in 47 C.F.R. § 73.3555, based on the facts at the time the application is submitted; and
- (4) the channel sharing agreement submitted by the Channel Sharee reverse auction applicant(s) is a true, correct, and complete copy of the channel sharing agreement between the parties.

For Full Power Stations:

- (a) name, call sign and facility ID of the Channel Sharer;
- (b) name, call sign, and facility ID of each Channel Sharee; and
- (c) a certification under penalty of perjury, on behalf of the Channel Sharer, that:
 - (1) the channel sharing agreement is consistent with all Commission rules and policies, and that the Channel Sharer accepts any risk that the implementation of the channel sharing agreement may not be feasible for any reason, including any conflict with requirements for operation on the shared channel;
 - (2) the proposed channel sharing arrangement will not violate the multiple ownership rules, set forth in 47 C.F.R. § 73.3555, based on the facts at the time the application is submitted; and
 - (3) the channel sharing agreement submitted by the Channel Sharee reverse auction applicant(s) is a true, correct, and complete copy of the channel sharing agreement between the parties.
- d. *Station Specific Certifications.* The applicant must make certain station specific certifications based on the facility type and its responses to the relinquishment options and other questions on the Station Selection pages of its application. The applicant must make each of the following station specific certifications under penalty of perjury, as applicable:
 - 1. If the station is a Class A Station, that, pursuant to 47 C.F.R. § 1.2204(c)(3)(iii), the applicant is and will remain in compliance with the ongoing statutory eligibility requirements to remain a Class A station.
 - 2. If the applicant selected any of the proceedings or orders on the Station Selection page, that, pursuant to 47 C.F.R. § 1.2204(c)(3)(vi), the applicant agrees with the Commission's announced procedures to withhold all of any incentive payment for the station pending the final outcome of the proceeding or order.
 - 3. If the applicant selected 'Off-Air' as a bid option and the applicant will control another broadcast station, that, pursuant to 47 C.F.R. § 1.2204(c)(4), the applicant will remain subject to any license renewal, as well as any enforcement action, pending at the time of the auction application deadline against the station offered.
 - 4. If the applicant selected 'Off-Air' as a bid option and will not control another broadcast station, that, pursuant to 47 C.F.R. § 1.2204(c)(4), the applicant agrees

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- (1) that pursuant to the Commission's announced procedures for resolving such matters in connection with this auction, the Commission may withhold a portion of the share of auction proceeds for the station, if any, pending final determination of any FCC liabilities with respect to the station and such portion may be applied towards the satisfaction of such liabilities; and (2) to remain subject to the Commission's jurisdiction and authority to impose enforcement or other FCC liabilities with respect to the station, notwithstanding the surrender of its license for the station.
5. If the station is not a Class A Station and if the applicant did not select any of the proceedings or orders on the Station Information page and did not select 'Off-Air' as a bid option, that there are no station-specific certifications for the station selected required in 47 C.F.R. § 1.2204(c)(3)(iii), (c)(3)(vi), or (c)(4).
- e. *Ownership Information.* The applicant must provide the ownership information required by section 1.2112(a) of the Commission's rules, 47 C.F.R. §1.2112(a).
- f. *FCC-Regulated Business Information.* The applicant may, at its option, provide information in its application concerning any FCC-regulated businesses of the applicant and/or any individuals or entities with an ownership interest in the applicant that have been disclosed in its application pursuant to section 1.2112(a) of the Commission's rules, 47 C.F.R. §1.2112(a).
- g. *General Application Attachments.* The applicant may need to submit an attachment related to its indirect ownership. An applicant may also need to submit other attachments as applicable (e.g., if it is requesting a waiver; to provide additional information or explanation that cannot be entered directly in an FCC Form 177 response field).
- h. *General Certifications Applicable to All Applicants.* All applicants are required to certify that:
1. the applicant and all of the person(s) disclosed under paragraph (c)(1) of 47 C.F.R. § 1.2204 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. For the purposes of this certification, the term "person" means an individual, partnership, association, joint-stock company, trust, or corporation, and the term "reasons of national security" means matters relating to the national defense and foreign relations of the United States.
 2. the applicant agrees that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the bids it submits in the reverse auction.
 3. the applicant agrees that the bids it submits in the reverse auction are irrevocable, binding offers by the applicant.

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4. the individual submitting the application to participate and providing the certifications is authorized to do so on behalf of the applicant, and if such individual is not an officer, director, board member, or controlling interest holder of the applicant, can provide evidence that such individual has the authority to bind the applicant.
5. the applicant is in compliance with all statutory and regulatory requirements for participation in the reverse auction, including any requirements with respect to the license(s) identified in the application to participate.
6. the applicant acknowledges and agrees that any information provided by the Commission's outside contractors who are advising and assisting the Commission with education and outreach, in connection with the reverse auction is for informational purposes only and that neither the Commission nor any of the Commission's outside contractors makes any representations or warranties with respect to any such information and shall have no liability to the applicant in connection therewith.
7. the applicant: (a) acknowledges its liability to the Commission for any debt owed to the Commission that the applicant incurred before, or that it may incur after, the reverse auction application deadline, including all accrued interest, penalties and costs, and that the debt will continue to accrue interest, penalties and costs until paid; and (b) agrees that the Commission may pay all debt owed by the applicant to the Commission from the applicant's share of auction proceeds.
8. the applicant agrees that if an appeal of, or request for waiver or compromise of, any debt owed by the applicant to the Commission is pending at the conclusion of the incentive auction, the Commission may withhold so much of the applicant's share of the auction proceeds as is necessary to pay the debt in full, including accrued interest, penalties and costs, until issuance of a final non-appealable decision regarding the debt or waiver or compromise request, and may then pay the debt from the applicant's withheld share.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

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 177 will be used by the Commission to determine if an applicant is legally qualified to participate in the reverse component of the BIA. Commission staff will review the information collected on FCC Form 177 for the reverse component of the BIA as part of the pre-auction process, prior to the start of the reverse auction. Staff will determine whether each applicant satisfies the Commission's requirements to participate in the reverse auction.

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3. *Technological collection techniques.* Pursuant to the Commission's rules, an auction participant is required to complete and submit its FCC Form 177 electronically through the Commission's Auction System. The Commission has developed a centralized electronic system for collecting the information to reduce both public and agency administrative burden.

5. *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 to be collected under this new information collection is necessary to implement a new statutory directive.

6. *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 177 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 auction requirements. In addition, the Commission will be making available tutorials and related information to assist respondents, including small entities, in understanding what information should be submitted on FCC Form 177. The decision about whether to submit an application to participate in the reverse component of the BIA rests exclusively with applicants/respondents. Thus, whether to file an FCC Form 177 application is determined by the applicant/respondent.

6. *Consequences if information is not collected.* The Commission's reverse auction will not be able to occur without the collection of information on FCC Form 177. Without the information collected on FCC Form 177, the Commission will not be able to determine if an applicant is legally qualified to participate in the reverse auction and has complied with the various applicable regulatory and statutory auction requirements for such participation.

7. *Special circumstances.* The new FCC Form 177 does not have any of the characteristics that would require separate justification under 5 C.F.R. § 1320.5(d)(2).

8. *Federal Register notice; efforts to consult with persons outside the Commission.* Emergency approval is being sought for the above-described information collection requirements, and the Commission seeks waiver of the 60-day notice requirement due to the emergency nature of this request under 5 C.F.R. § 1320.8(d). However, the Commission has published a 14-day emergency PRA notice in the Federal Register announcing submission of this emergency request and seeking public comment on the new information collection (see 80 FR 66900) (Oct. 30, 2015)).

The Commission will conduct all the regular OMB clearance processes and procedures for the new information collection upon approval of the emergency request, and will publish the necessary notices in the *Federal Register* when seeking regular OMB approval.

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9. *Payments or gifts to respondents.* The Commission does not anticipate providing any payment or gifts to respondents.

10. *Assurance of confidentiality.* The Spectrum Act expressly requires that the Commission take reasonable steps to keep confidential Commission-held data of licensees with respect to their participation in the reverse auction, including their identities. *See* 47 U.S.C. § 1452(a)(3). The Commission's rules further extend confidential treatment with respect to non-winning bids and bidders for two years after the close of the BIA, so that broadcasters may participate in the reverse auction without being compelled to disclose their willingness to relinquish spectrum usage rights for that longer period. *See* 47 C.F.R. § 1.2206(b). Accordingly, certain information collected on FCC Form 177 will be treated as confidential for various periods of time during the course of the BIA. Specifically, during the BIA, the Commission will not disclose the name of the licensee, the channel number, call sign, or facility identification number of its participating station(s), or its network affiliates in connection with the participation of any licensee in the reverse auction. The Commission will also keep confidential any other information that may reasonably be withheld to protect the identity of the licensee as a reverse auction participant, such as information regarding the status of licensees as participants or provisional winners during the auction. To safeguard this confidential information, the Commission will not make public any information relating to applications to participate in the reverse auction until after the BIA concludes. Broadcasters that participate and ultimately receive an incentive payment in exchange for relinquishing spectrum usage rights will have their participation disclosed at the end of the BIA.

11. *Questions of a sensitive nature.* The information collection requirements do not ask questions of a sensitive nature.

12. *Estimates of the hour burden of the collection to respondents.* The following represents the hour burden on the collections of information on FCC Form 177:

- a. Number of estimated applicants/respondents: Approximately 600. Any broadcast television licensee that wishes to establish its eligibility to participate in the reverse auction must submit an application.
- b. Frequency of response: One-time. An applicant/respondent will submit an application to participate in the reverse component of the BIA once.
- c. Total estimated annual burden per respondent: 1.5 hours per applicant/respondent for approximately 600 applicants filing once. Total estimated annual hour burden is calculated as follows:

600 estimated applications x 1.5 hours per response = 900 total estimated annual burden hours.

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d. Total estimate of annualized in-house cost to respondents for the hour burdens:
\$31,140.

e. Explanation of calculation: The Commission estimates that FCC Form 177 will typically be prepared by applicants 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 (\$34.60/hour). Therefore, the in-house cost is as follows:

600 estimated applicants x 1.5 hours per response x \$34.60/hour = \$31,140.

13. *Estimates of the cost burden of the collection to respondents.* There is no external cost to the respondents. Also, 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 177. The information collected on FCC Form 177 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. *Estimates of the cost burden to the Commission.* The Commission estimates that, on average, staff review of the information collected on FCC Form 177, including time spent by staff attorneys, will take on average 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.

Total Estimated Annual Cost to the Federal Government: 600 applications x 0.50 hours x \$58.28 (Attorney, GS-14 step 5) = **\$17,484.**

15. *Program changes or adjustment.* This is a new information collection resulting in a program change increases of 600 respondents, 600 annual responses and 900 total estimated annual burden hours.

16. *Collections of information whose results will be published.* The information collection will not be published for statistical use. As discussed above, certain information collected on FCC Form 177 will be treated as confidential for various periods of time during the course of the BIA. In addition, to the extent necessary, respondents/applicants may request confidential treatment of information collected on FCC Form 177 that is not already being treated as confidential 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 seeks an exemption from the requirement to display the OMB expiration date on the forms related to this new information collection. An exemption of this requirement will prevent the Commission from having to constantly update the expiration date on the electronic and paper

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forms each time this collection is submitted to OMB for review and approval. The Commission will use an edition date on the form in lieu of the OMB expiration date. The Commission publishes a list of all OMB-approved information collections in 47 C.F.R. 0.408 of the Commission's rules, 47 C.F.R. § 0.408.

18. *Exception to certification statement for Paperwork Reduction Act submissions.* There are exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods:

The Commission does not anticipate that this new collection of information will employ statistical methods, and the use of such methods would not reduce the burden or improve accuracy of results.