

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

November 10, 2015

Mr. Alexander Hunt
Chief, Information Policy Branch
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
Washington, D. C. 20503

Dear Mr. Hunt:

The Federal Communications Commission (Commission) requests Office of Management and Budget (OMB) approval to submit the revised information collection described herein under the “emergency processing” provisions of the Paperwork Reduction Act (PRA) of 1995 (5 C.F.R. § 1320.13). The Commission is requesting clearance for a revision to a currently approved information collection to implement new collection requirements resulting from the Commission’s adoption of new and modified rules prohibiting certain communications for full power and Class A television broadcast licensees and for applicants seeking to participate in the forward auction component of the broadcast incentive auction (BIA), and requiring such covered parties to file a report with the Commission within a specified period if they make or receive a prohibited communication. We respectfully request OMB approval for this revised information collection no later than 26 days after it is received at OMB.

Section 1.2105(c)(1) of the Commission’s rules prohibits auction applicants from cooperating or collaborating with respect to, discussing or disclosing to each other in any manner the substance of their bids or bidding strategies from the short-form application filing deadline to the post-auction down payment deadline.¹ On September 27, 2001, the Commission released a Report and Order amending section 1.2105(c) to require auction applicants that make or receive a communication of bids or bidding strategies prohibited under section 1.2105(c)(1) to report such a communication to the Commission in writing immediately, but in no case later than five business days after the communication occurs.²

¹ The Commission recently updated this rule to provide that “all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider [of communications services] that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other’s, or any other applicants’ bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline[.]” *Updating Part 1 Competitive Bidding Rules; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission’s Rules and/or for Interim Conditional Waiver; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, and Third Report and Order, 30 FCC Rcd 7493, 7577, para. 199 (2015).

² See *Amendment of Part 1 of the Commission’s Rules—Competitive Bidding Procedures*, Seventh Report and Order, WT Docket No. 97-81, FCC 01-270, 16 FCC Rcd 17546 (2001). OMB issued a Notice of Action approving the initial information collection required under section 1.2105 on October 17, 2001.

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.³

On June 2, 2014, the Commission released the *Incentive Auction R&O*, in which it adopted general rules to govern the reverse and forward components of the BIA.⁴ The rules include new requirements for parties that might participate in the reverse auction, similar to those in section 1.2105(c) that have long applied to applicants in most prior Commission auctions, prohibiting certain communications and requiring a covered party that makes or receives a prohibited communication to file a report of such a communication with the Commission, along with procedures for reporting potentially prohibited communications. Subject to certain exceptions, section 1.2205(b) of the Commission's rules provides that, beginning on the deadline for submitting applications to participate in the reverse auction and until the results of the incentive auction are announced by public notice, all full power and Class A broadcast television licensees are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any other full power or Class A broadcast television licensee or to any forward auction applicant.⁵ Section 1.2205(c) requires any party that makes or receives a communication prohibited by section 1.2205(b) to report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.⁶ Section 1.2205(d) provides the procedures for filing any reports required under section 1.2205(c).⁷

The Commission also adopted a corresponding rule in the *Incentive Auction R&O* for forward auction applicants prohibiting certain communications in the context of the BIA, in addition to the Commission's existing prohibited communications rules that have long applied to applicants in most prior Commission auctions under section 1.2105(c)(1) and that will apply to forward auction applicants in the BIA. Subject to certain exceptions, the Commission's rules provide that, beginning on the deadline for submitting applications to participate in the forward auction and until the results of the incentive auction have been announced by public notice, all forward auction applicants are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any full power or Class A broadcast television licensee. In connection with adopting the new rule section, the Commission amended its rules to require forward auction applicants that make or receive a communication that is prohibited under the new rule to file a report of such a communication with the Commission.⁸

³ 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.

⁴ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, GN Docket No. 12-268, FCC 14-50, 29 FCC Rcd 6567 (2014) (*Incentive Auction R&O*). The broadcast incentive auction (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. See Spectrum Act § 6403(a), (b) and (c) (codified at 47 U.S.C. § 1452(a), (b), (c)); see also Spectrum Act § 6001(16) and (30) (defining "forward auction" and "reverse auction," respectively).

⁵ See 47 C.F.R. § 1.2205(b).

⁶ See *id.* § 1.2205(c).

⁷ See *id.* § 1.2205(d).

⁸ See *id.* § 1.2105(c)(6). As a result of amendments to various other provisions in section 1.2105(c) adopted in the *Part 1 R&O* discussed below, the rule prohibiting certain communications for forward auction applicants that will apply specifically in the context of the BIA has been redesignated as section 1.2105(c)(6) from section 1.2105(c)(8).

On July 20, 2015, the Commission released a Report and Order in which it updated many of its Part 1 competitive bidding rules.⁹ Of relevance to the information collection at issue here, the Commission amended the prohibited communications rule in section 1.2105(c)(1) of its rules that has long applied to applicants in most prior Commission auctions, and which will be applicable to forward auction applicants in the BIA, to provide that, “all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider [of communications services] that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other’s, or any other applicants’ bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline[.]”¹⁰ The Commission made no changes in the *Part 1 R&O* to the scope or substance of the reporting requirement. However, as a result of amendments to various other provisions in section 1.2105(c) adopted in the *Part 1 R&O*, the prohibited communications reporting requirement has been redesignated as section 1.2105(c)(4) from section 1.2105(c)(6).¹¹

The Commission seeks emergency approval for a revision to its previously approved collection of information under OMB Control Number 3060-0995 to permit the collection of reports concerning prohibited communications required by new sections 1.2205(c) and 1.2205(d), redesignated section 1.2105(c)(4), and new and redesignated section 1.2105(c)(6), of the Commission’s rules.

The Commission’s rules prohibiting certain communications in Commission auctions are intended to reinforce existing antitrust laws, facilitate detection of collusive conduct, and deter anticompetitive behavior, without being so strict as to discourage pro-competitive arrangements between auction participants. They also help assure participants that the auction process will be fair and objective, and not subject to collusion. The information collected through the Commission’s existing reporting requirement under section 1.2105(c) allows the Commission to enforce the prohibition on forward auction applicants by making clear the responsibility of parties who receive information that potentially violates the rules to promptly report to the Commission, thereby enhancing the competitiveness and fairness of its spectrum auctions. The revised information collection under redesignated section 1.2105(c)(4), new and redesignated section 1.2105(c)(6), and new sections 1.2205(c) and 1.2205(d) will likewise help the Commission enforce the prohibition on reverse and forward auction applicants, further assuring incentive auction participants that the auction process will be fair and competitive. The prohibited communication reporting required of covered parties with respect to the forward and reverse auctions will enable the

The redesignation of the section reference for this rule will become effective on November 17, 2015 (*see* 80 Fed. Reg. 56764 (Sept. 18, 2015)).

⁹ *See Updating Part 1 Competitive Bidding Rules; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission’s Rules and/or for Interim Conditional Waiver; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, and Third Report and Order, 30 FCC Rcd 7493 (2015), modified by Erratum, DA 15-959 (rel. Aug. 25, 2015) (*Part 1 R&O*).

¹⁰ *Id.* at 7577, para. 199 (as modified by Erratum); 47 C.F.R. § 1.2105(c)(1). The changes to this rule adopted by the Commission will become effective on November 17, 2015 (*see* 80 Fed. Reg. 56764 (Sept. 18, 2015)).

¹¹ As discussed above, section 1.2105(c)(6)(as redesignated) contains provisions applicable to communications between forward auction applicants and full power or Class A broadcast licensees with respect to the bids or bidding strategies of BIA applicants.

Commission to ensure that no bidder gains an unfair advantage over other bidders in its auctions and thus enhances the competitiveness and fairness of Commission's auctions.

As noted above, Congress has directed that the Commission use its incentive auction authority to conduct the BIA. To comply with directive, the Commission has scheduled the BIA to begin on March 29, 2016. The Commission's established pre-auction process for evaluating applications and identifying qualified bidders requires a substantial amount of review by Commission staff. Due the novel and complex nature of the BIA, in order conduct the BIA according to the announced schedule, the Commission will need to receive applications to participate in the auction at least three months prior to the start of the auction. Given the timing for the auction, reverse auction applicants must submit their applications to participate in the auction no later than December 18, 2015. Under the Commission's rules, the start of the prohibited communications period, including the reporting requirements, for all full power and Class A broadcast television licensees begins with the deadline for filing applications to participate in the reverse auction. Because the expected date on which the prohibition on certain communications for such covered parties will begin is fewer than two months away, emergency approval is required.

If the Commission were to wait 120 days to formally notify the public and potential interested parties of its intent to collect this information, the Commission's ability to begin collecting reports of any prohibited communications at the start of the prohibited communications period would be substantially delayed, and would in turn substantially delay both the start of the reverse auction and the Commission's ability to meet its statutory directive to conduct the BIA. Further, due to the emergency nature of this request, the Commission is requesting a waiver of the requirement to publish a 60-day notice in the Federal Register. However, on November 10, 2015, the Commission published a 21-day notice in the Federal Register concerning the new information collection under the emergency processing procedures to give the public an opportunity to comment on this emergency submission. The Commission will conduct all the necessary regular submission requirements under the PRA after approval of this emergency request.

The Commission's staff is ready to work with your PRA Desk Officer to immediately provide any additional information needed to ensure OMB's approval of this emergency request for this new information collection no later than 26 days after it is received at OMB. Please have your PRA Desk Officer contact Cathy Williams at (202) 418-2918 or cathy.williams@fcc.gov, if there are any questions or if you require additional information.

Sincerely,



Mindy J. Ginsburg
Deputy Managing Director
Office of Managing Director
Federal Communications Commission