

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

The Federal Communications Commission (Commission) requests an extension from the Office of Management and Budget (OMB) for a currently approved information collection on FCC Form 177 under OMB Control Number 3060-1213.

A. Justification:

1. *Circumstances that make this collection necessary.* The FCC Form 177 is used by the public to apply to participate in the reverse auction component of an incentive auction, including the reverse auction component of the Commission's broadcast incentive reverse auction (BIA) to relinquish some or all of its spectrum usage rights in exchange for a portion of the auction's proceeds. The information collected on FCC Form 177 is used by the Commission to determine whether an applicant is legally qualified to participate in the reverse component of an incentive auction.

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 collection are the result of various Commission actions to implement this new and novel approach for use in the BIA.

The BIA has 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 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 component of the BIA.

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

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).

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 auction components of the BIA 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 auction components of the BIA, 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 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 component of the BIA. *See* 47 C.F.R. §§ 1.2204, 73.3700(h)(4)(i), (h)(4)(ii), (h)(6).

The information collection under OMB 3060-1213 addresses requirements to conduct the reverse auction component of an incentive auction, including the reverse auction component of the BIA, pursuant to the rules and information collection requirements adopted by the Commission in the above-described decisions.

In October 2015, the Commission sought approval from OMB under its Paperwork Reduction Act (PRA) emergency processing provisions, 5 U.S.C. § 1320.13, to permit 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 component of an incentive auction, as described below. On November 19, 2015, the Commission received emergency approval from OMB for the information collection on FCC Form 177 under OMB Control Number 3060-1213. On December 1, 2015, the Commission submitted to OMB a no material/non-substantive change request concerning this collection, which was approved by OMB on December 9, 2015. The information collection requirements on FCC Form 177 have not changed since the approval of the no material/non-substantive change request on December 9, 2015. The Commission is requesting continued OMB approval for the information collection requirements on FCC Form 177 that were approved in the Commission's October 2015 emergency submission, as modified by the December 2015 no material/non-substantive change request.

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).

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

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.

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 collected under this information collection is necessary to implement a statutory directive.

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 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 makes 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 a given auction 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 reverse component of a Commission incentive 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 component of an incentive auction, including the reverse component of the BIA, and has complied with the various applicable regulatory and statutory auction requirements for such participation.

7. *Special circumstances.* The 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.* Pursuant to 5 C.F.R. § 1320.8, the Commission published a 60-day notice in the Federal Register on March 30, 2016 (see 81 FR 17708) regarding the extension of the information collection requirements on FCC Form 177. No comments were received in response to this notice.

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 BIA 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. 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.

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.
- b. Frequency of response: One-time. An applicant/respondent will submit an application to participate in the reverse component of a given incentive auction only 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.

- d. Total estimate of annualized in-house cost to respondents for the hour burdens:
\$31,599.
- 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 (\$35.11/hour). Therefore, the in-house cost is as follows:

600 estimated applicants x 1.5 hours per response x \$35.11/hour = \$31,599.

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 costs for 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 \$59.13 (Attorney, GS-14 step 5) = **\$17,739.**

15. *Program changes or adjustment.* The Commission is reporting no change in burden for the collection. Therefore, there are no program changes or adjustments to this collection.

16. *Collections of information whose results will be published.* The information collected on FCC Form 177 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 pursuant to statutory and regulatory provisions. In addition, to the extent necessary, respondents/applicants may request confidential treatment pursuant to section 0.459 of the Commission's rules for information collected on FCC Form 177 that is not already being treated as confidential. See 47 C.F.R. § 0.459.

17. *Display of expiration date for OMB approval of information collection.* The Commission seeks continued approval not to display the OMB expiration date on the FCC Form 177 for this information collection. The Commission will continue to use an edition date on FCC Form 177

in lieu of the OMB expiration date. Continued approval to not display the OMB expiration date on FCC Form 177 will prevent the Commission from having to constantly update the expiration date on the electronic form whenever a revision or three-year extension of this collection is submitted to OMB for review and approval. The Commission will continue to publish the OMB control number and OMB expiration date for the FCC Form 177 in the list of all OMB-approved information collections contained in section 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:

This information collection will not employ statistical methods, and the use of such methods would not reduce the burden or improve accuracy of results.