

**Title: FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule E (Former FCC Form 301-CA); 47 CFR Sections 73.3700(b)(1)(i)-(v) and (vii),(b)(2)(i) and (ii); 47 CFR Section 74.793(d)**

## SUPPORTING STATEMENT

### A. Justification:

1. FCC Form 2100, Schedule E (formerly FCC Form 301-CA)<sup>1</sup> is to be used in all cases by a Class A television station licensees<sup>2</sup> seeking to make changes in the authorized facilities of such station. FCC Form 2100, Schedule E requires applicants to certify compliance with certain statutory and regulatory requirements. Detailed instructions on the FCC Form 2100, Schedule E provide additional information regarding Commission rules and policies. FCC Form 2100, Schedule E is presented primarily in a "Yes/No" certification format. However, it contains appropriate places for submitting explanations and exhibits where necessary or appropriate. Each certification constitutes a material representation.<sup>3</sup> Applicants may only mark the "Yes" certification when they are certain that the response is correct. A "No" response is required if the applicant is requesting a waiver of a pertinent rule and/or policy, or where the applicant is uncertain that the application fully satisfies the pertinent rule and/or policy. FCC Form 2100, Schedule E filings made to implement post-auction channel changes will be considered minor change applications.

Class A applications for a major change are subject to third party disclosure requirement of Section 73.3580 which requires local public notice in a newspaper of general circulation of the filing of all applications for major changes in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.<sup>4</sup>

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<sup>1</sup> The Commission implemented a new on-line (electronic) licensing system called "Licensing and Management System" in which all FCC broadcast licensing forms, including former FCC Form 301-CA, was combined into a single common form - FCC Form 2100. FCC Form 301-CA is encompassed by the "Licensing and Management System" and the new common form - FCC Form 2100. General questions, which were formally asked in all licensing applications, will compose the body of FCC Form 2100. The questions pertinent only to FCC Form 301-CA applicants will now be contained in Schedule E of FCC Form 2100. OMB approved this non-substantive change to rename FCC Form 301-CA as part of FCC Form 2100 and the electronic "Licensing and Management" system. The former FCC Form 301-CA no longer exists, but is renamed as FCC Form 2100, Schedule E and its contents are fully contained within FCC Form 2100 and the "Licensing and Management" system.

<sup>2</sup> Class A television stations are low power television licensees which, during the 90-day period ending November 28, 1999, operated their stations in a manner consistent with the programming and operational standards set forth in the Community Broadcasters Protection Act of 1999, and thus, were accorded primary status as Class A television licensees. See 47 C.F.R. Section 73.6001(a).

<sup>3</sup> A "material representation" has been defined as one "relating to matter which is so substantial or important as to influence the party to whom it is made." See In the Matter of Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission, 18 F.C.C.R. 4016 (2003), citing the Matter of Mark E. Wagner, 744 N.E. 2d 418, 421 (Ind. 2001).

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**47 CFR Section 74.793(d)** requires that digital low power and TV translator stations shall be required to submit information as to vertical radiation patterns as part of their applications (FCC Forms 346<sup>5</sup> and 301-CA) for new or modified construction permits.

Revised Information Collection Requirements:

This submission is being made to the Office of Management (OMB) for the approval of information collection requirements contained in the Commission's *Incentive Auction Order*,<sup>6</sup> the *Channel Sharing Order on Reconsideration*,<sup>7</sup> and the *ISIX Methodology Order*,<sup>8</sup> which adopted rules for holding an Incentive Auction, as required by the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act).<sup>9</sup> The Spectrum Act directs the Commission to hold a "reverse auction" in which broadcasters can voluntarily return some or all of their broadcast spectrum usage rights in exchange for incentive payments.<sup>10</sup> The Spectrum Act also requires the Commission to reorganize the broadcast television band, which will be accomplished by repacking stations, or moving broadcast stations to different channels.<sup>11</sup> The Spectrum Act directs the Commission to hold a forward auction of the ultra-high frequency (UHF) spectrum obtained as a result of the reverse auction and channel repacking.<sup>12</sup> This UHF spectrum will be auctioned as flexible-use licenses suitable for providing mobile broadband service. The Spectrum Act establishes a TV Broadcaster Relocation Fund (Fund) to reimburse reassigned broadcasters and multichannel video programming distributors (MVPDs) that incur expenses associated with continuing to carry relocated stations, for their reasonable expenses resulting from the post-auction channel reassignment.<sup>13</sup>

<sup>4</sup> See OMB control number 3060-0214 for the burden associated with the recordkeeping requirement for the newspaper notices and application pursuant to Section 73.3527.

<sup>5</sup> See OMB control number 3060-0016 for the associated burden for FCC Form 346 as it relates to Section 74.793(d).

<sup>6</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket 12-268, Report and Order, FCC 14-50, 29 FCC Rcd 6567 (2014) ("*Incentive Auction R&O*").

<sup>7</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, First Order on Reconsideration and Notice of Proposed Rulemaking, GN Docket 12-268, MB Docket No. 15-137, FCC 15-67 (rel, June 12, 2015) ("*Channel Sharing Order*").

<sup>8</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Report and Order and Further Notice of Proposed Rulemaking, GN Docket No. 12-268; ET Docket Nos. 13-26 and 14-14, 29 FCC Rcd 13071 (2014) ("*ISIX Methodology Order*").

<sup>9</sup> Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act).

<sup>10</sup> Spectrum Act § 6403(a)(1) (mandating "a reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights in order to make spectrum available for assignment through a system of competitive bidding under subparagraph (G) of section 309(j)(8) of the Communications Act of 1934, as added by section 6402.").

<sup>11</sup> Spectrum Act §6403(b)(1) (requiring the FCC to "make such reassignments of television channels as the Commission considers appropriate" and "reallocate such portions of such spectrum as the Commission determines are available").

<sup>12</sup> Spectrum Act §6403(c)(1)(A) (requiring the FCC to conduct a "forward auction" to assign licenses for the use of spectrum reallocated from broadcast television as part of the incentive auction).

<sup>13</sup> Spectrum Act §6403(b)(4)(A).

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**47 C.F.R. section 73.3700(b)(1)(i)** requires Licensees of reassigned stations, UHF-to-VHF stations, and High-VHF-to-Low-VHF stations to file a minor change application for a construction permit for the channel specified in the Channel Reassignment Public Notice using FCC Form 2100 Schedule A (for a full power station) or E (for a Class A station) within three months of the release date of the Channel Reassignment Public Notice. Licensees that are unable to meet this filing deadline may request a waiver of the deadline no later than 30 days prior to the deadline.

**47 C.F.R. section 73.3700(b)(1)(ii)** permits licensees of stations reassigned to a new channel within their existing band to propose transmission facilities in their construction permit applications that will extend their coverage contours, as defined by the technical parameters specified in the Channel Reassignment Public Notice, if such facilities: (A) are necessary to achieve the coverage contour specified in the Channel Reassignment Public Notice or to address loss of coverage area resulting from the new channel assignment; (B) will not extend a full power television station's noise limited contour or a Class A television station's protected contour by more than one percent in any direction; and (C) will not cause new interference, other than a rounding tolerance of 0.5 percent, to any other broadcast television station.

**47 C.F.R. section 73.3700(b)(1)(iii)** permits licensees of UHF-to-VHF stations or High-VHF-to-Low-VHF stations to propose transmission facilities in their construction permit application that will extend their coverage contour, as defined by the technical parameters specified in the Channel Reassignment Public Notice, if the proposed facility will not cause new interference, other than a rounding tolerance of 0.5 percent, to any other broadcast television station.

**47 C.F.R. section 73.3700(b)(1)(iv)(A)** permits licensees of reassigned stations, UHF-to-VHF stations, or High-VHF-to-Low-VHF stations that, for reasons beyond their control, are unable to construct facilities that meet the technical parameters specified in the Channel Reassignment Public Notice, or the permissible contour coverage variance from those technical parameters specified in paragraph (b)(1)(ii) or (iii) of this section, to request a waiver of the construction permit application deadline specified in paragraph (b)(1)(i) no later than 30 days prior to the deadline. If the waiver request is granted, the licensee will be afforded an opportunity to submit an application for a construction permit pursuant to paragraph (b)(2)(i) or (ii) of this section in a priority filing window to be announced by the Media Bureau by public notice.

**47 C.F.R. section 73.3700(b)(1)(iv)(B)** permits the licensee of any broadcast television station that the Commission makes all reasonable efforts to preserve pursuant to Section 6403(b)(2) of the Spectrum Act that is predicted to experience aggregate new interference to population served in excess of one percent as a result of the repacking process to submit an application for a construction permit pursuant to paragraph (b)(2)(i) or (ii) of this section in the priority filing window required by paragraph (b)(1)(iv)(A).

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**47 C.F.R. section 73.3700(b)(1)(v)** states that construction permit applications filed pursuant to paragraph (b)(1)(i) of this section will be afforded expedited processing if the application: (A) does not seek to expand the coverage area, as defined by the technical parameters specified in the Channel Reassignment Public Notice, in any direction; (B) seeks authorization for facilities that are no more than five percent smaller than those specified in the Channel Reassignment Public Notice with respect to predicted population served; and (C) is filed within the three-month deadline specified in paragraph (b)(1)(i) of this section.

**47 C.F.R section 73.3700(b)(1)(vii)** requires channel sharee stations<sup>14</sup> to file a minor change application for a construction permit for the channel on which the channel sharer operates at least sixty (60) days prior to the date by which it must terminate operations on its pre-auction channel pursuant to § 73.3700(c)(4)(i) and (ii) of this rule. The application must include a copy of the executed channel sharing agreement.

**47 C.F.R. section 73.3700(b)(2)(i)** permits the licensee of a reassigned station, a UHF-to-VHF station, or a High-VHF-to-Low-VHF station to file a major change application for a construction permit for an alternate channel on FCC Form 2100 Schedules A (for a full power station) and E (for a Class A station) during a filing window to be announced by the Media Bureau by public notice, provided that: (A) The licensee of a UHF-to-VHF station cannot request an alternate UHF channel; (B) The licensee of a UHF-to-VHF station that specified the high-VHF band or the low-VHF band in its UHF-to-VHF bid cannot request a VHF channel outside of the assigned band; and (C) The licensee of a High-VHF-to-Low-VHF station cannot request an alternate high-VHF channel.

**47 C.F.R section 73.3700(b)(2)(ii)** permits the licensee of a reassigned station, a UHF-to-VHF station, or a High-VHF-to-Low-VHF station to file a minor change application for a construction permit on FCC Form 2100 Schedules A (for a full power station) and E (for a Class A station) during a filing window to be announced by the Media Bureau by public notice, in order to request a change in the technical parameters specified in the Channel Reassignment Public Notice with respect to height above average terrain (HAAT), effective radiated power (ERP), or transmitter location that would be considered a minor change under §§ 73.3572(a)(1),(2) or 74.787(b) of this chapter.

In addition, Form 2100, Schedule E is being revised to accommodate the new channel sharing provisions by making the following changes:

- Adding an answer for the applicant to indicate that Schedule E is being filed to initiate a channel sharing agreement and to list the other sharing station(s).

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<sup>14</sup> A “channel sharee” station is a television station for which a winning channel sharing bid was submitted. A “channel sharer” station is a television station that shares its channel with a channel sharee.

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- Adding a certification for the applicant to certify that Channel Sharing Agreement complies with applicable rule and policies.
- Adding a box for the applicant to file a copy of its Channel Sharing Agreement as an exhibit and add the ability to upload the Agreement.
- Adding a five-question “checklist” showing for post-auction repacked station filing.

Statutory authority for this collection of information is contained in Sections 154(i), 307, 308, 309, and 319 of the Communications Act of 1934, as amended and the Community Broadcasters Protection Act of 1999.

This information collection does not affect individuals, thus there are no Privacy Act impacts.

**2. Agency Use of Information:** FCC staff members use the data to determine whether commercial broadcast station construction permit applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be served by grant of the application.

**3. Consideration Given to Information Technology:** The Commission requires Class A television broadcast station construction permits applicants to file FCC Form 2100, Schedule E electronically through the “Licensing and Management System” and FCC Form 301 electronically.

**4. Effort to Identify Duplication and Use Similar Information:** This agency does not impose a similar information collection on the respondents. There are no similar data available.

**5. Effort to Reduce Small Business Burden:** In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents. The Commission has limited the information requirements to those that are absolutely necessary for evaluating and processing the applications filed in a TQ Window and to deter possible abuses of the processes. Therefore, this information collection will not have a significant economic impact on small entities/businesses.

**6. Less Frequent Data Collection:** Each licensee of a Class A that is reassigned to a new channel following the Incentive Auction, those Class A stations that are winning bidders that move from UHF-to-VHF or from High-VHF-to-Low-VHF, and Class A channel sharee stations must file a minor change application for a construction permit using FCC Form 2100 Schedule A. For all other uses of FCC Form 2100, the frequency of filing is determined by the respondents. However, no new or modified TV or DTV facilities can be obtained or modified by a Class A station without using FCC Form 2100, Schedule E.

**7. Information Collection Circumstances:** This collection of information is consistent with the guidelines in 5 CFR 1320.5(d)(2).

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8. **Public Comment Period:** The Commission published a Notice (80 FR 69965) in the *Federal Register* on November 12, 2015, seeking public comment on the information collection requirements contained in this supporting statements. No comments were received from the public.

9. **Payment or Gift:** No payment or gift was provided to respondents.

10. **Confidentiality of Information:** There is some need for confidentiality for this collection of information. When filing a channel sharing agreement with the agency under 47 C.F.R. section 73.3700(b)(1)(vii), applicants may redact confidential or proprietary terms.<sup>15</sup>

11. **Justification for Sensitive Questions:** This form does not address any private matter.

12. The Commission estimates that between 500 and 1,300 broadcast stations could be reassigned to a new channel in their pre-auction band via the repacking process following the Incentive Auction;<sup>16</sup> that an additional 50 to 100 stations that submit winning bids will enter channel sharing agreements (and move to the channel of the station they are sharing with); that 15 to 50 stations that submit winning bids will move from high-VHF to low-VHF channels or from UHF to high-VHF or low-VHF; and that all licensees will comply with all applicable rules. The actual number in each of these categories cannot be known in advance of the auction, including the level of broadcaster participation in the reverse auction, which in turn will impact how much spectrum is repurposed and how many stations need to be assigned new channels. Similarly, the number of Class A stations, as opposed to full-power stations, that are reassigned or submit winning bids to move from high-VHF to low-VHF channels or from UHF to high-VHF or low-VHF cannot be estimated, and, thus, in order not to underestimate the burden in this submission, we will assume half of these stations are Class A stations. Solely for purposes of preparing the estimated data collection burden, we will use the upper end of these ranges. Therefore, we estimate that 725 (one-half of 1,450 potential channel-changing stations) FCC Forms 2100, Schedule E will be filed and processed, and that 500 of these will be filed for minor change applications, while 225 will be filed for major change applications. The estimated average burden on each licensee is a total of 8.25 hours to comply with the information collection requirements for minor change applications and 8.25 for major change applications.

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<sup>15</sup> *Channel Sharing Order* at para. 28, note 88.

<sup>16</sup> We note that this estimate does not take into consideration the results of the optimization process, which will be used to determine the final television channel assignment plan. The Commission has determined that maximizing the number of stations assigned to their pre-auction channels is the first objective of its optimization plan. See *Broadcast Incentive Auction to Begin on March 29, 2016, Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, AU Docket No. 14-252, GN Docket 12-268, WT Docket No. 12-269, MB Docket No. 15-146, FCC 15-78, Public Notice, at para. 274 (rel. Aug. 11, 2015). Accordingly, the number of stations reassigned to new channels may be lower than the estimate contained in this submission. We have erred on the side of caution so as not to underestimate the potential burden.

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**Total Number of Annual Respondents: 725 Station Licensees**

**Total Number of Annual Responses: 725 FCC Form 2100, Schedule E Forms**

**Annual Burden Hours:**

We estimate a total of 8.25 hours to complete the application process. The respondent will require six hours to complete the legal portion of the form and the in-house station engineer will require two hours and fifteen minutes to complete the engineering portion of the form.

500 minor change applications x 6 hours/form for the legal portion of the form =	3,000
500 minor change applications x 2.25 hours/form in-house engineering review =	1,125
225 major change applications x 6 hours/form for the legal portion of the form =	1,350
225 major change applications x 2.25 hours/form in-house engineering review =	+ 506
<b>Total Annual Burden Hours: 5,981 hours</b>	

**Annual “In House” Cost:**

The respondent is estimated to have an average salary of \$100,000/year (\$48.08/hour). A station engineer is estimated to have an average salary of \$60,000 (\$30/hour).

500 minor applications x 6 hours/form for the legal portion of the form x \$48.08/hour =	\$144,240
500 minor applications x 2.25 hours/form in-house engineering review x \$30.00/hour =	\$ 33,750
225 major applications x 6 hours/form for the legal portion of the form x \$48.08/hour =	\$ 64,908
225 major applications x 2.25 hours/form in-house engineering review x \$30.00/hour =	\$ 15,188
<b>Total Annual “In House” Cost: \$258,086</b>	

These estimates are based on FCC staff’s knowledge and familiarity with the availability of the data required.

**13. Annual Cost Burden:** We assume that the respondent would use an outside communications attorney and a consulting engineer in the preparation and filing of the FCC Form 2100, Schedule E. The estimated cost is \$300/hour for the attorney and \$250/hour for the consulting engineer. The estimated time to prepare and file the form is 1 hour/application for the attorney and 12 hours/application for the engineer.

In addition, the fees required for submitting an application are \$3,245.00 for a major change in a Class A television station and \$725.00 for a minor change. However, initial minor change

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applications necessitated by post-auction channel changes will be exempt from filing fees but alternate channel or expanded facilities requests are subject to fees.<sup>17</sup>

Class A applicant must give local public notice of the filing of its application for a major change. This notice is published in a local newspaper of general circulation at least twice a week for two consecutive weeks in a three-week period. The cost is estimated at \$113.25/publication. There is no publication requirement for minor change applications.<sup>18</sup>

500 minor change applications x 1 hour x \$300/hour legal consultation =	\$ 150,000
500 minor change applications x 16 hours x \$250/hour engineering consultation =	\$ 2,000,000
225 major change applications x 1 hour x \$300/hour legal consultation =	\$ 67,500
225 major change applications x 16 hours x \$250/hour engineering consultation =	\$ 900,000
	\$ 3,117,500
225 major change applications x \$3,245/application fee =	\$ 730,125
225 major applications x 4 x \$113.25/publication cost =	\$ 101,925
	\$ 832,050

**Total Annual Cost Burden: \$3,949,550**

**14. Cost to the Federal Government:** The Commission will use legal and engineering staff at the GS-11, step 5 level (\$35.11/hour), clerical staff at the GS-5, step 5 level (\$19.15/hour) and paraprofessional staff at the GS-9, step 5 level (\$28.60/hour) to process these applications.

Attorney	3 hrs. x \$35.11/hour x 725 applications	= \$ 76,364
Engineer	11 hrs. x \$35.11/hour x 725 applications	= \$280,002
Clerical	5 hrs. x \$19.15/hour x 725 applications	= \$ 69,419
Paraprofessional	4 hrs. x \$29.02/hour x 725 applications	= \$ 84,158
	<b>Total Cost to Federal Government:</b>	<b>\$509,943</b>

**15. Changes in Burden or Cost:** The Commission has the following program changes/increases to this collection which are due to the information collection requirements adopted in FCC 14-50 and FCC 15-67: 325 additional respondents, 325 additional annual responses, 2,681 additional annual burden hours and \$750,350 to the annual cost burden.

There are no adjustments to this collection.

<sup>17</sup> *Incentive Auction R&O*, 29 FCC Rcd 6790 n. 1547; 6794 n. 1574.

<sup>18</sup> 47 C.F.R. §§ 73.3580, 73.3584.



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16. **Plans for Publication:** The data will not be published.

17. **Display of OMB Approval Date:** An extension of the waiver not to publish the expiration date on the form is requested. This will obviate the need for the Commission to update electronic forms upon the expiration of the clearance. OMB approval of the expiration date of the information collection will be displayed at 47 CFR Section 0.408.

18. **Exceptions to the Certification Statement:** The Commission published a notice in the Federal Register on November 12, 2015 seeking comments on the information collection requirements contained in this collection. In the notice the Commission stated that recordkeeping was a requirement in this collection, however, those recordkeeping requirements are covered under collection 3060-0214 instead of this collection. There are no other exceptions to the Certification Statement.

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

This information collection does not employ any statistical methods.