

SUPPORTING STATEMENT

A. Justification:

1. 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*,¹ which adopted rules for holding an Incentive Auction, as required by the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act).² 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.³ 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.⁴ 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.⁵ 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.⁶ The rules governing these processes are codified at 47 C.F.R. Parts 0, 1, 27, 73 and 74.

The Commission delegated to the Media Bureau the authority to develop a form for use by each full power and Class A broadcast licensee reassigned to a new channel following the Incentive Auction to claim reimbursement from the Fund (FCC Form 2100, Schedule 399, TV Broadcaster Relocation Fund Reimbursement Form).⁷ The Commission also delegated to the Media Bureau the authority to adopt the necessary policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the Fund in order to protect against waste, fraud and

¹ *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, 6820 (2014) ("*Incentive Auction Order*").

² 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).

³ 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.").

⁴ 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").

⁵ 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).

⁶ Spectrum Act §6403(b)(4)(A).

⁷ *Incentive Auction Order*, 29 FCC Rcd 6820, ¶ 619.

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abuse and in the event of bankruptcy.⁸

The following is a summary of each rule section which contains information collection requirements for which the Commission seeks approval from the Office of Management and Budget (OMB):

- (a) **Section 73.3700(e)(2)** requires all broadcast television station licensees and multichannel video programming distributors (MVPDs) that are eligible to receive payment of relocation costs to file an estimated cost form providing an estimate of their reasonably incurred relocation costs no later than three months following the release of the Channel Reassignment Public Notice. If a broadcast television station licensee or MVPD seeks reimbursement for new equipment, it must provide a justification as to why it is reasonable under the circumstances to purchase new equipment rather than modify its corresponding current equipment in order to change channels or to continue to carry the signal of a broadcast television station that changes channels. Entities that submit their own cost estimates, as opposed to the predetermined cost estimates provided in the estimated cost form, must submit supporting evidence and certify that the estimate is made in good faith. Entities must also update the form if circumstances change significantly.⁹
- (b) **Section 73.3700(e)(3)** requires all broadcast television station licensees and MVPDs that received an initial allocation from the TV Broadcaster Relocation Fund, upon completing construction or other reimbursable changes, or by a specific deadline prior to the end of the Reimbursement Period to be established by the Media Bureau, whichever is earlier, to provide the Commission with information and documentation, including invoices and receipts, regarding their actual expenses incurred as of a date to be determined by the Media Bureau. If a broadcast television station licensee or MVPD has not yet completed construction or other reimbursable changes by the Final Allocation Deadline, it must provide the Commission with information and documentation regarding any remaining eligible expenses that it expects to reasonably incur.
- (c) **Section 73.3700(e)(4)** requires broadcast television station licensees and MVPDs that have received money from the TV Broadcaster Relocation Fund, after completing all construction or reimbursable changes, to submit final expense documentation containing a list of estimated expenses and actual expenses as of a date to be determined by the Media Bureau. Entities that have finished construction and have submitted all actual expense documentation by the Final Allocation Deadline will not be required to file at the final accounting stage.
- (d) **Section 73.3700(e)(6)** requires broadcast television station licensees and MVPDs that receive payment from the TV Broadcaster Relocation Fund to retain all relevant documents pertaining to construction or other reimbursable changes for a period ending not less than 10 years after the date on which it receives final payment from the TV Broadcaster Relocation Fund and to make available all relevant documentation upon request from the Commission or its contractor.

In addition to the rules adopted in the *Incentive Auction Order*, the Media Bureau released a Public Notice announcing the finalization of FCC Form 2100, Schedule 399 (including a catalog of

⁸ *Id.*

⁹ *Incentive Auction Order*, 29 FCC 6817, ¶610.

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expenses, or list of equipment and services for which broadcasters are likely incur expenses) and explaining the changes made in response to public comment on the Form and to facilitate administration and processing of expense requests. The Public Notice also clarified that entities must submit FCC Form 2100, Schedule 399 each time they request reimbursement from the Fund for an actual expense incurred during the reimbursement period.¹⁰

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

The statutory authority for this collection is contained in 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).

2. The Media Bureau will use the information provided by broadcast licensees and MVPDs (collectively, “eligible entities”) on FCC Form 2100, Schedule 399 (the Reimbursement Form) for several purposes. First, the Media Bureau will use information submitted on the Reimbursement Form to obtain eligible entities’ estimated costs related to transitioning stations to new channels. This will allow the Media Bureau to make an allocation for each eligible entity against which the entity will draw down as it incurs expenses. Second, eligible entities will submit the Reimbursement Form multiple times throughout the reimbursement period as they submit actual cost documentation (such as receipts and invoices) for expenses incurred. The Media Bureau will review submitted documentation and approve reimbursement payment. Finally, at the end of the project, eligible entities will use the Reimbursement Form to submit a final accounting of their costs, which the Media Bureau will use to true-up payments, as appropriate.
3. Form 2100, Schedule 399 will be filed electronically in the Media Bureau’s Licensing and Management System (LMS). LMS is the successor system to the Commission’s CDBS system, which was the system used for submitting all broadcast-related FCC Forms.
4. No other agency imposes similar information collections on the respondents. There is no similar data available from any other source.
5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the information collection burden for all respondents, including small businesses. For example, the Commission considered and rejected requiring all broadcast licensees to provide a preliminary estimate of their relocation costs, regardless of whether they are reassigned to a new channel. The Commission declined to ask all broadcasters to estimate their individual relocation costs because it concluded that such estimates generally cannot be made accurately until post-auction channel assignments have been made.¹¹ Rather than requiring all broadcasters to submit cost estimates based on speculative channel assignments, Form 2100, Schedule 399 requires only those broadcast licensees actually reassigned to a new channel following the incentive auction to estimate the costs associated with relocating to their new channel assignment. Where possible, Form 2100, Schedule 399 provides multiple options from which the filer need only check the appropriate box.

¹⁰ *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, DA 15-1238, Public Notice (MB 2015) (*Reimbursement Form Finalized PN*).

¹¹ *Incentive Auction Order* at 6817, ¶611, n. 1725.

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6. Form 2100, Schedule 399 will collect key data from eligible entities throughout the reimbursement period. This information collection is necessary for the Commission to carry out the goals of and to comply with the Spectrum Act. Without the information collected in Form 2100, Schedule 399, the Commission could not reimburse broadcasters and MVPDs for the costs they incur in relocating to new channels after the incentive auction. Specifically, if the Commission did not collect invoices and other supporting documentation, it could not accurately pay the expenses that relocated broadcasters and MVPDs that incur expenses related to the channel reassignment are entitled pursuant to the Spectrum Act. The data collected will allow the Commission to comply with its statutory obligations both to reimburse costs reasonably incurred under section 6403(b)(4)(A) and to provide entities with the funds to implement their relocation changes within the statutory three-year reimbursement period under section 6403(b)(4)(D) of the Spectrum Act (codified at 47 U.S.C. § 1452). In addition, collecting cost documentation will preserve the financial integrity of the Fund by reducing the likelihood of waste, fraud, and abuse.
7. The collections are not being conducted in any manner inconsistent with 5 C.F.R. Part 1320.
8. On September 25, 2014, the Media Bureau released a Public Notice seeking public comment on a draft of the form (79 FR 61045). The Bureau received three responses. The majority of the comments were suggestions that the Commission include additional, specific reimbursable expenses to the catalog of costs embedded in the Reimbursement Form. In response, we have added some of these to the final version, and determined that others can be submitted by using the “other” subcategories of expenses on Form 2100, Schedule 399.¹² The Commission published a 60-day public comment period in the Federal Register (80 FR 69660) on November 10, 2015 seeking comments from the public on the information collection requirements that are contained in this supporting statement. No comments were received from the public.
9. No payment or gift will be provided to respondents in connection with this collection of information.
10. Some assurances of confidentiality are being provided to the respondents. Invoices, receipts, contracts and other cost documentation submitted along with the form will be kept confidential in order to protect the identification of vendors and the terms of private contracts between parties. The name of the vendor providing the services or equipment and its Employer Identification Number (EIN) or Taxpayer Identification Number (TIN), if provided by the vendor, will not be visible to the public viewing on-line information. Parties filing Form 2100, Schedule 399 may also seek confidential treatment of other information they provide pursuant to the Commission’s existing confidentiality rules.¹³
11. There are no questions of a sensitive nature with respect to the information collected.
12. FCC Form 2100, Schedule 399 will be used for several purposes. As such, we evaluate the burden by type of submission. There will also be two types of recipients, broadcasters and MVPDs. We estimate the number of broadcaster respondents to be **1,300**.¹⁴ We estimate the number of MVPD

¹² See *Reimbursement Form Finalized PN*.

¹³ See 47 C.F.R. § 0.459.

¹⁴ We estimate 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. The actual number of stations that will be reassigned to a new channel depends on factors that 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

respondents to be 600.

a. Cost Estimate Submissions

Broadcasters. The Commission estimates that all of the respondents will require both internal and outside assistance to fulfill the reporting requirement. The estimated average burden on each applicant/licensee is six (6) hours. The respondents will use in-house staff to complete the form, which requires approximately two (2) hours and will use in-house station engineers to complete the technical questions and consult with outside engineers, which requires approximately four (4) hours.

Number of Annual Respondents: 1,300 Broadcast Licensees

Number of Annual Responses: 1,300 FCC Form 2100, Schedule 399 Cost Estimate Submissions

Annual Burden Hours:

1,300 applications x 4 hours to complete in-house engineering review = 5,200 hours

1,300 applications x 2 hours to complete non-engineering portion of the form = 2,600 hours

Annual Broadcaster Burden Hours: 7,800

hours

The respondents' estimated salary are \$100,000/year (\$48.08/hour). The station engineers' salary are estimated at \$60,000/year (\$30.00/hour).

Annual "In-house cost":

1,300 applications x 4 hours to complete in-house engineering review x \$30.00/hour = \$156,000

1,300 applications x 2 hours to complete non-engineering portion x \$48.08/hour = \$125,008

Annual Broadcaster "In House" Cost: \$281,008

MVPDs: The Commission estimates that all of the respondents will require both in-house and outside assistance to fulfill the reporting requirement. The estimated average burden on each applicant/licensee is four (4) hours. The respondents will use in-house staff to complete the form, which requires approximately three (3) hours and will use in-house station engineers to complete the technical questions and consult with outside engineers, which requires approximately one (1) hour.

Number of Annual Respondents: 600 MVPDs

repurposed and how many stations need to be assigned to new channels. Solely for purposes of preparing the estimated data collection burden, we have used the upper end of this range. We also 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 to broadcasters and MVPDs.

Number of Annual Responses: 600 FCC Form 2100, Schedule 399 Cost Estimate Submissions

Annual Burden Hours:

600 applications x 3 hours to complete in-house engineering review = 1,800 hours
600 applications x 1 hour to complete non-engineering portion of the form = 600 hours
Annual MVPD Burden Hours: 2,400 hours

The respondents' estimated salary are \$100,000/year (\$48.08/hour). The station engineers' salary are estimated at \$60,000/year (\$30.00/hour).

Annual "In-house cost":

600 applications x 3 hours to complete in-house engineering review x \$30.00/hour = \$54,000
600 applications x 1 hour to complete non-engineering portion x \$48.08/hour = \$28,848
Annual MVPD "In House" Cost: \$82,848

Total (Broadcaster and MVPD) Annual Burden Hours: 7,800 + 2,400 = 10,200
Total (Broadcaster and MVPD) Annual "In-House" Cost: \$281,008 + \$82,848 = \$363,856

b. Actual Cost Documentation Submission

Broadcasters: The Commission estimates that all of the respondents will fulfill the reporting requirement without any outside assistance. We estimate it will take one (1) hour to log in, complete the relevant lines on the form and upload the supporting documentation necessary to complete a filing and keep records of the documentation. We further estimate that each respondent will make an average of ten filings of their actual cost documentation annually. Therefore, the burden on respondents is as follows:

1,300 (respondents) x 1 hour/response = **1,300 hours.**

We estimate that this information collection will be required ten times each year for broadcasters. Therefore, the total annual burden hours equal **13,000 hours** (1,300 respondents x 1 hour/response x 10 times/year).

Number of Respondents: 1,300.

Number of Annual Responses: 13,000.

Annual Burden Hours: 13,000 hours.

We assume that the respondents will use in-house clerical personnel, whose earnings level is equivalent on average to the GS-7/5 level at \$23.38 per hour, to prepare this information and keep records.

Annual "In-house" Burden Cost: 13,000 hours x \$23.38/hour = \$303,940.

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

MVPDs: The Commission estimates that all of the respondents will fulfill the reporting requirement without any outside assistance. We estimate it will take 1 hour to log in, complete the relevant lines on the form and upload the supporting documentation necessary to complete a filing and keep records of the documentation. We further estimate that each respondent will make an average of ten filings of their actual cost documentation annually. Therefore, the burden on respondents is as follows:

600 (respondents) x 1 hour/response = **600 hours**

We estimate that this information collection will be required ten times each year for MVPDs. Therefore, the total burden hours equal **6,000 hours** (600 respondents x 1 hour/response x 10 times/year).

We assume that the respondents will use in-house clerical personnel, whose earnings level is equivalent on average to the GS-7/5 level at \$23.38 per hour, to prepare this information and keep records.”

Annual “In-House” Burden Cost: = 6,000 hours x \$23.38 = \$140,280.

Number of Respondents: 600.

Number of Annual Responses: 6,000.

Annual Burden Hours: 6,000 hours.

Annual “In-house” Burden Cost: \$140,280.

Total (Broadcaster and MVPD) Annual Burden Hours: 13,000 + 6,000 = 19,000

Total (Broadcaster and MVPD) Annual “In-House” Cost: \$303,940 + \$140,280 = \$444,220

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

c. Final Allocation/Accounting Submission

Broadcasters: The Commission estimates the respondents will fulfill the reporting requirement without any outside assistance. We estimate it will take 1 hour to log in, complete the relevant lines on the form and upload the supporting documentation necessary to complete a filing and keep records of the documentation. Each respondent will make one final accounting submission. Therefore, the burden on respondents is as follows:

1,300 (respondents) x 1 hour/response (one time) = **1,300 hours**.

We assume that the respondents will use in-house clerical personnel, whose earnings level is equivalent on average to the GS-7/5 level at \$23.38 per hour, to prepare this information and keep records.

Annual "In-house" Cost: 1,300 hours x \$23.38/ hour = \$30,394.

Number of Respondents: 1,300.

Number of Annual Responses: 1,300.

Annual Burden Hours: 1,300 hours.

Annual "In-House" Burden Cost: \$30,394.

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

MVPDs: The Commission estimates that all the respondents will fulfill the reporting requirement without any outside assistance. We estimate it will take one (1) hour to log in, complete the relevant lines on the form and upload the supporting documentation necessary to complete a filing and keep records of the documentation. Each respondent will make one final accounting submission. Therefore, the burden on respondents is as follows:

600 (respondents) x 1 hour/response (one time) = **600 hours**

We assume that the respondents will use in- house clerical personnel, whose earnings level is equivalent on average to the GS-7/5 level at \$23.38 per hour, to prepare this information and keep records.

Annual "In-house" Cost: 600 hours x \$23.38/hour = \$14,028.

Number of Respondents: 600.

Number of Annual Responses: 600.

Annual Burden Hours: 600 hours.

Annual "In-House" Burden Cost: \$14,028.

Total (Broadcaster and MVPD) Annual Burden Hours: 1,300 + 600 = 1,900

Total (Broadcaster and MVPD) Annual "In-House" Cost: \$30,394 + \$14,028 = \$44,422

Cumulative Totals for the Entire Collection:

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Total Number of Respondents: 1,300 Broadcasters + 600 MVPDs = 1,900 respondents

Total Number of Responses: 1,300 + 600 + 13,000 + 6,000 + 1,300 + 600 + = 22,800 responses

**Total Annual Burden Hours: 10,200 + 19,000 + 1,900 = hours
31,100**

Total Annual "In-house" Cost: \$363,856 + \$444,220 + \$44,422 = \$852,498.00

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

13. The external cost that respondents incur for the hiring of outside consultants to assist with fulfilling the requirements is as follows:

a. Cost Estimate Submission

Broadcasters: The Commission estimates that all of the respondents (1,300) will require outside assistance to fulfill the reporting requirement. The respondents will consult with an engineer (\$250/hr.) to assess existing equipment and recommend modifications in light of the broadcaster's new channel assignment. We estimate the engineering consultation requires an average of 15 hours. The cost estimate submission will be a one-time filing. Therefore, the external cost is as follows:

1,300 responses x 15 hours/response x \$250/hour (consultant) = **\$4,875,000.**

MVPDs: The Commission estimates that all of the respondents (600) will require outside assistance to fulfill the reporting requirement. The respondents will consult with an engineer (\$250/hr.) to assess existing equipment and recommend modifications in light of broadcasters' new channel assignments. We estimate the engineering consultation requires 5 hours. The cost estimate submission will be a one-time filing. Therefore, the external cost is as follows:

600 responses x 5 hours/response x \$250/hour (consultant) = **\$750,000.**

b. Actual Cost Documentation Submission

Broadcasters: The Commission estimates that none of the respondents will require outside assistance to fulfill the reporting requirement. Therefore, there is no external cost to respondents resulting from this data collection.

MVPDs: The Commission estimates that none of the respondents will require outside assistance to fulfill the reporting requirement. Therefore, there is no external cost to respondents resulting from this data collection.

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c. Final Accounting Submission

Broadcasters: The Commission estimates that none of the respondents will require outside assistance to fulfill the final accounting submission reporting requirement. Therefore, there is no external cost to respondents resulting from this data collection.

MVPDs: The Commission estimates that none of the respondents will require outside assistance to fulfill the reporting requirement. Therefore, there is no external cost to respondents resulting from this data collection.

Total Annual Cost (external): \$4,875,000 + \$750,000 = \$5,625,000

14. Estimates of annualized costs to the Federal government:

The Commission estimates that 1,300 broadcast licensees and 600 MVPDs will file Form 2100, Schedule 399 as follows:

a. Cost Estimate Submission:

The Commission will use contractors (\$166.00/hour)¹⁵ to review these requests. We estimate that it will take one hour to review each cost estimate submission.

1,900 submissions x 1 hour/filing x \$166.00/hour = \$315,400.

b. Actual Cost Submission:

The Commission will use contractors (\$166.00/hour),¹⁶ GS 15/5 (\$69.56) attorneys and engineers to review these requests. We estimate that approximately 80% of the submissions will be reviewed in one-half (.50) hour each by the contractor. The additional 20% will require one hour to review by contractor staff and one hour to review by GS 15/5 attorney or engineer. The Commission estimates that this will require the following time for review per request:

| | |
|--|---------------------------------|
| 15,200 submissions (80% of 19,000) x .50 hours/request x \$166.00/hour = | \$1,261,600 |
| 3,800 submissions (20% of 19,000) x 1 hour/request x \$166.00/hour = | \$ 630,800 |
| 3,800 submissions (20% of 19,000) x 1 hour/request x \$69.56/hour = | <u>\$ 264,328</u> |
| | Total Cost = \$2,156,728 |

c. Final Accounting Submission

The Commission will use contractors (\$166.00/hour) to review these requests. We estimate that it will take one-half (.50) hour for the contractor to review each submission.

¹⁵ This is a weighted average of rates for government contractors covering a range of professional levels, from entry level to management.

¹⁶ *Id.*

1,900 submissions x .5 hour/filing x \$166.00/hour = \$157,700.

Total Cost to Federal Government: \$315,400 + \$2,156,728 + \$157,700 = \$2,629,828

15. The Commission has program changes/increases to this collection. They are as follows: 1,900 respondents, 22,800 responses, 31,100 annual hours and annual cost of \$5,625,000 which are due to the information collection requirements adopted in FCC 14-50.
16. The Commission does not intend to publish the results of these collections of information.
17. The Commission is not seeking approval to not display the expiration date for OMB approval of these collections of information.
18. There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods:

The Commission does not anticipate that the collection of information will employ any statistical methods.