

Sections 63.01, 63.03, and 63.04, Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired through Corporate Control

**3060-0989
April 2017**

SUPPORTING STATEMENT

This collection is being submitted to the OMB for approval as a “delegated” extension to an existing collection (no change in the reporting requirements). The annual cost burden has been adjusted to reflect an increase in the filing fee amount.

A. Justification:

1. FCC 02-78, *Report and Order*, adopted and released in March 2002, (*Order*), sets forth the procedures for common carriers requiring authorization under section 214 of the Communications Act of 1934, as amended (*Act*), 47 U.S.C. Sec. 214, to acquire domestic interstate transmission lines through a transfer of control. Under section 214 of the *Act*, carriers must obtain Federal Communications Commission (FCC) approval before constructing, acquiring, or operating an interstate transmission line. Acquisitions involving interstate common carriers therefore require affirmative action by the FCC before the acquisition can occur.

In July 2001, the Commission issued a Public Notice (PN) in an attempt to provide some basic filing requirement guidelines. While the PN informed applicants what information to include in their applications, the PN did not: (1) allow combined filings of domestic and international 214s; (2) provide for pro forma treatment of transactions that do not result in a change in ultimate control of a carrier; (3) provide for notice of transfers in bankruptcy; (4) provide for treatment of asset acquisitions where customers are not losing service as transfers of control rather than discontinuances of service; and (5) provide for 30-day streamlined review of 80-90 percent of transactions. On June 7, 2002, the Commission released a PN announcing that all applications for transfer of control will follow the new procedures in the rules instead of the procedures listed in the July 2001 PN.

In addition to modifying the filing requirements in the July 2001 PN, the *Order* permits parties to file a single domestic section 214 application for all carriers involved in a transaction, rather than separate applications for each carrier. Additionally, this *Order* allows for the filing of joint international and domestic section 214 transfer of control authorizations, provides a streamlined process, clarifies that certain asset acquisitions are to be treated as transfers of control, and deletes obsolete rules. See 47 CFR Sections 63.01, 63.03 and 63.04.

a. Filing Procedures for Domestic Transfer of Control Applications - 47 CFR Sections 63.03-63.04:

According to the *Order* and 47 CFR sections 63.03 and 63.04, domestic section

214 applications involving domestic transfers of control, at a minimum, should specify: (1) the name, address and telephone number of each applicant; (2) the government, state, or territory under the laws of which each corporate or partnership applicant is organized; (3) the name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed; (4) the name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent); (5) certification pursuant to 47 CFR sections 1.2001 through 1.2003 that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988; (6) a description of the transaction; (7) a description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area; (8) a statement as to how the application fits into one or more of the presumptive streamlined categories in section 63.03 or why it is otherwise appropriate for streamlined treatment; (9) identification of all other Commission applications related to the same transaction; (10) a statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure; (11) identification of any separately filed waiver requests being sought in conjunction with the transaction; and (12) a statement showing how grant of the application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets. Where an applicant wishes to file a joint international section 214 transfer of control application and domestic section 214 transfer of control application, the applicant must submit information that satisfies the requirements of 47 CFR section 63.18. In the domestic attachment to the international application, the applicant must submit the information described in 47 CFR section 63.04(a)(6)-(a)(12). See 47 CFR Sections 63.03 and 63.04.

When the Commission, acting through the Wireline Competition Bureau, determines that applicants have submitted a complete application qualifying for streamlined treatment, it shall issue a public notice commencing a 30-day review period for streamlined applications, or other time period for non-streamlined applications, to consider whether the transaction serves the public interest, convenience and necessity. Parties will have 14 days to file any comments on the proposed transaction, and applicants will be given 7 days to respond, or as otherwise specified in the public notice.

b. Pro Forma Transactions - 47 CFR Section 63.03 (d):

Applicants are not required to file post-consummation notices of *pro forma* transactions, except that a post transaction notice must be filed with the Commission within 30 days of a *pro forma* transfer to a bankruptcy trustee or a debtor-in-possession. The notification can be in the form of a letter (in duplicate to the Secretary). The letter or other form of notification must also contain the information listed in sections (a)(1) through (a)(4) in

section 63.04. A single letter may be filed for more than one such transfer of control. See 47 CFR section 63.04.

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 47 U.S.C. §§ 152, 154(i)-(j), 201, 214, and 303(r).

2. The information will be used to ensure that applicants comply with the requirements of 47 U.S.C. § 214.

3. Improving access to electronic filing is an ongoing objective of the Commission. We note that the International Bureau has implemented an on-line filing process for international section 214 transfer applications. Applicants are able to file international section 214 transfer applications on-line through the International Bureau Filing System, and may now also file domestic section 214 applications on-line through the Commission's Electronic Comment Filing System. Applicants may also pay the filing fees for domestic authorizations electronically.

4. There will be no duplication of information. The information sought is unique to each applicant.

5. The collections have been carefully designed to minimize the burden on all applicants. The Commission believes that the measures adopted in the *Order* will reduce regulatory burdens for small carriers including resellers and small incumbent local exchange carriers. The Commission eased filing burdens by adopting rules that enable carriers to file a single document with the Commission that combines both domestic and international section 214 applications, and aside from cases involving bankruptcy, where a simple notice will be required, the Commission eliminated filing requirements for *pro forma* transactions.

6. The required information will be used to determine compliance with section 214 of the Communications Act of 1934, as amended. Without this information, the Commission would be unable to perform its statutory responsibilities.

7. Filing frequency is not determined by the Commission. Applicants will file applications only when seeking authorization to transfer control of domestic interstate transmission lines. Carriers are subject to the requirements of 47 CFR Section 63.52(a).

8. Pursuant to 5 CFR 1320.8(d), the Commission published a 60 day notice in the Federal Register. See 82 FR 4873, dated January 17, 2017. No comments were received.

9. The FCC does not anticipate providing any payment or gift to respondents.

10. The FCC is not requiring that applicants submit confidential information to the FCC. If applicants submit information which applicants believe is confidential, applicants may request confidential treatment of such information under § 0.459 of the FCC's rules.

11. There are no questions of a sensitive nature with respect to the information collected.

12. The following represents the estimates of hour burden of the collections of information:

a. Filing Procedures for Domestic Transfer of Control Applications (47 CFR Sections 63.03-63.04)

1. **Number of respondents:** 85 respondents will file per year. All telecommunications carriers seeking domestic section 214 approval concerning acquisitions of corporate control are required to comply with sections 63.03 and 63.04 described in paragraph one. The Commission anticipates receiving 85 applications per year.

2. **Frequency of response:** On occasion reporting requirement.

3. **Annual hour burden per respondent:** 10 hours per application. 85 respondents x 10 hours per response = 850 hours. Total annual burden is **850 hours**.

4. **Total estimate of in-house cost to respondents:** \$102,000. \$1,200 per application (\$120 per hour x 10 hours per application) x 85 applications = \$102,000. The \$120 per hour is based on the respondent's in-house staff equivalent of one GS-15, step 5 attorney and one GS-13, step 5 analyst.

5. **Explanation of calculation:** We estimate that preparation time will be approximately 10 hours per application. 10 (hours) x \$120 (per hour) x 85 applications = \$102,000.

b. Pro Forma Transactions (47 CFR Section 63.03).

1. **Number of respondents:** 7 respondents will file per year. The Commission anticipates receiving 7 filings per year.

2. **Frequency of response:** On occasion reporting requirement.

3. **Annual hour burden per respondent:** 1.5 hours per application. 7 respondents x 1.5 hours per response = 10.5 hours. Total annual burden is 10.5 hours (**rounded up to 11 hours**).

4. **Total estimate of in-house cost to respondents for the hour burdens of collection of information:** \$1,260. \$180 per application (\$120 per hour x 1.5 hours per application) x 7 applications = \$1,260.

5. **Explanation of calculation:** We estimate that preparation time will be approximately 1.5 hours per application. 1.5 (hours) x \$120 (per hour) x 7 applications = \$1,260.

Total number of respondents: $85 + 7 = 92$.

Total annual responses: $85 + 7 = 92$

Total annual burden: $850 + 11 = 861$ hours.

Total In-house costs to the respondent: $\$102,000 + \$1,260 = \$103,260$

13. The following represents the FCC's estimate of the annual cost burden to respondent or recordkeepers resulting from the collections of information:

- (i) Total Capital and Start-up Cost: \$0.
- (ii) Total Operation and Maintenance and Purchase of Services Component. Respondents are subject to a filing fee of \$1,155 per application. Thus, 85 applications x \$1,155 = **\$98,175.**

14. The following represents the FCC's estimates of the annual costs to the federal government as a result of the proposed requirements:

Review of Applications and Notices: 5 (staff members to process an application) x \$60 (average grade and hourly salary of staff) x 20 (hours to process the applications) x 85 applications = \$510,000.

15. The Commission notes the following adjustments to this information collection from the previous submission to OMB:

- a) There is an adjustment/decrease in the total annual burden hours from 1,031 to 861 (-170) because the Commission implemented electronic filing for those applications, which made the process faster and more efficient for respondents.
- b) The number of respondents/total annual responses remains the same at 92.
- c) Although there is an adjustment/increase in the application fee from \$1,050 to \$1,155 per application due to the Commission's increase in its filing fees, this adjustment resulted in an increase of +\$11,900 (from \$86,275 to \$98,175). Also, this increase is due to the Commission making a correction to this figure in the overall annual cost since the last submission to OMB.

16. The Commission will post all filings submitted on the Internet.

17. The Commission does not seek approval not to display the expiration date for OMB approval of the information collections.

18. There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

The requirements do not employ statistical methods.