

SUPPORTING STATEMENT

The Federal Communications Commission (“the Commission”) is requesting that the Office of Management and Budget (OMB) approve a revision to a currently approved information collection under sections 1.2110, 1.2111, and 1.2112 of the Commission’s rules, 47 C.F.R. §§ 1.2110, 1.2111, and 1.2112, to update the collection requirements to make them consistent with the amended definition of “designated entities” adopted by the Commission in its *Updating Part 1 Report and Order*.¹ The Commission is reporting an increase of 10 potential new designated entity respondents/responses under this collection due to the inclusion of eligible rural service providers among the potential respondents from which the Commission may collect information under this collection. Therefore, the total annual burden estimate has increased to 470 hours. While there may be as many as 10 new designated entity respondents/responses under this collection, the estimated time per response is unchanged because the type of information that must be provided by the new designated entity respondents is comparable to that required by designated entities under the currently-approved collection and is expected to take the same estimated amount of time to prepare.

The Commission also requests that the title of this information collection be changed to “Sections 1.2110, 1.2111, 1.2112, Auction and Licensing Disclosures – Ownership and Designated Entity Status” to more accurately reflect the revised information collection.

A. Justification:

1. *Circumstances that make the collection necessary.* The Commission collects information required under the relevant rules in several contexts, including applications to participate in its auctions for spectrum licenses/authorizations, applications by winning bidders and others to obtain licenses/authorizations, and other circumstances related to authorizing the use of radio spectrum.

Beginning first on May 5, 1997, OMB approved under OMB Control No. 3060-0767, the Commission’s collections of information pursuant to sections 1.2110, 1.2111, and 1.2112 of the Commission’s rules, 47 C.F.R. §§ 1.2110, 1.2111, and 1.2112, and their predecessors, regarding ownership and designated entity status of parties involved with Commission licenses. The Commission collects this information in several contexts, including when determining the eligibility of applicants to participate in Commission auctions (including eligibility to claim

¹ 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, FCC 15-80, 30 FCC Rcd 7493 (2015), modified by Erratum, DA 15-959 (rel. Aug. 25, 2015) (*Updating Part 1 Report and Order*).

designated entity benefits), the eligibility of parties to hold a Commission license/authorization (including eligibility for designated entity benefits), the eligibility of parties to whom licenses/authorizations are being assigned or transferred, and the repayment by license/authorization holders of the amount of bidding credits received in Commission auctions to avoid unjust enrichment. Subsequent to OMB's original approval of these collections under OMB Control No. 3060-0767, the Commission sought and received OMB approval of routine collections information pursuant to these rules in applications to participate in Commission auctions under OMB Control No. 3060-0600 (FCC Form 175), in Commission licensing applications under OMB Control No. 3060-0798 (FCC Form 601), and in license/authorization assignment or transfer applications under OMB Control No. 3060-0800 (FCC Form 603).

The Commission's rules require in part that auction applicants, license/authorization applicants, and parties involved in license/authorization assignments or transfers submit ownership and related information, including any joint bidding or other agreements related to the license/authorization. For example, each applicant seeking to participate in an auction for a license/authorization, or applying for a license/authorization, or requesting consent to assign or transfer control of the license/authorization, must disclose fully the real party or parties in interest and must include certain detailed ownership information. Applicants that are winning bidders in a Commission auction are required to submit the terms, conditions and parties to any joint bidding arrangements or other agreements.

In addition, each license/authorization applicant claiming designated entity status must make certain ownership disclosures sufficient to determine eligibility for bidding credits.

Under the Commission's rules, applicants and licensees/authorization holders claiming eligibility for designated entity status are subject to audits and a record-keeping requirement regarding FCC-licensed service concerning such claims of eligibility, to confirm that their representations are, and remain, accurate.

Commission rules also require current and future license/authorization holders that receive (or will receive) bidding credits based on their designated entity status and wish to partition or disaggregate their licenses/authorizations, to make certain disclosures to the Commission. These disclosures are designed to prevent unjust enrichment by the recipient of bidding credits should that party transfer a portion of its license/authorization to an entity not entitled to such bidding credits. 47 C.F.R. § 1.2111(e).

In the *Updating Part 1 Report and Order*, the Commission updated many of its Part 1 competitive bidding rules. Among other things, the Commission amended its definition of "designated entities" to include "eligible rural service providers," and established a new designated entity benefit/bidding credit for eligible rural service providers. This revision updates the currently approved collection requirements under OMB Control No. 3060-0767 to include "eligible rural service providers" as a new pool of potential respondents from which the information collected under this collection can be obtained.

Statutory authorization for this collection of information is contained in 47 U.S.C. §§ 154(i) and 309(j).

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

2. *Use of information.* Disclosures regarding ownership, gross revenues information and associated calculations, and subscriber information and associated calculations are designed to ensure that applicants are qualified to bid on and hold Commission licenses/authorizations and, if applicable, to receive designated entity benefits. Disclosures regarding ownership and joint bidding agreements and other agreements and the associated certifications are designed to protect the fairness of the auction, licensing, and license/authorization assignment and transfer processes. Disclosure of information related to license/authorization assignments and transfers and partitioning or disaggregation is designed to deter unjust enrichment. In addition, record keeping regarding FCC-licensed service by designated entity applicants and licensees/authorization holders to confirm that their representations concerning claims of eligibility for designated entity status are, and remain, accurate is designed to prevent unjust enrichment and to facilitate enforcement efforts, if necessary.

3. *Technological collection techniques.* FCC Forms 175, 601, and 603, which provide for the routine collection of information pursuant to these rules under OMB Control Nos. 3060-0600, 3060-0798, and 3060-0800, must be submitted electronically. The Commission accepts electronic submission of information collected under these rules under OMB Control No. 3060-0767, either as supplements to these standard forms or as separate submissions, if the forms are not applicable or available for any reason.

4. *Efforts to identify duplication.* There will be no duplicative information collected. The Commission does not obtain the information collected under OMB Control No. 3060-0767 in any other collection. The Commission routinely collects information pursuant to the applicable rules in FCC Forms 175, 601, and 603. However, circumstances on occasion arise where the format of the standard forms does not enable the party to provide all relevant information, or the forms are not directly applicable to the party's circumstances. In these circumstances, the forms are not sufficient to collect all relevant information and the information is submitted/collected under this collection.

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 under this collection to that which is absolutely necessary for evaluating and processing the application, deter possible abuses of the processes, and confirm compliance by applicants and license/authorization holders with applicable regulatory and statutory spectrum auction, authorization licensing, and license/authorization assignments and transfer requirements.

Decisions regarding whether to submit an application to participate in a given auction, apply for a license/authorization, or assign or transfer a license/authorization rest exclusively with the respondents. Thus, the frequency of filing is determined by the respondent. Filing information to support an applicant's qualification as a designated entity and eligibility for a small business bidding credit or a rural service provider bidding credit, either generally or with respect to specific licenses, is also determined by the respondent/applicant. Small business ownership and gross revenues information/calculations and rural service provider ownership and subscriber information must be updated when changes occur, and the need to make filings to reflect such changes are generally determined by the respondent/applicant.

6. *Consequences if information is not collected.* The Commission's program of authorizing the use of the radio spectrum, which is central to its statutory purpose of regulating communications using the radio spectrum, depends upon the collection of necessary information from parties

seeking to bid on, apply for, or assign or transfer such licenses/authorizations, including the information collected pursuant to these rules.

7. *Special Circumstances.* This collection as currently approved does not have any of the characteristics that would require separate justification under 5 C.F.R. § 1320.5(d)(2), and the proposed revision does not change the characteristics such that a separate justification is now required.

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 which appeared in the Federal Register on January 26, 2017 (82 FR 8520). No comments were received as a result of this notice.

9. *Payments or gifts to respondents.* Respondents will not receive any payments or gifts.

10. *Assurances of confidentiality.* The Commission is not requesting that respondents submit confidential information to the Commission as part of this information collection. However, to the extent an applicant wishes to request confidential treatment of information submitted in response to this collection, it may do so in accordance with section 0.459 of the Commission's rules, 47 C.F.R. § 0.459.

11. *Questions of a sensitive nature.* The information collection requirements does not address any private matters of a sensitive nature.

12. *Estimate of the time burden of the collection on respondents.* The Commission estimates the annual hours burden of the collections of information pursuant to OMB Control No. 3060-0767, or, in other words, the collections of information pursuant to 47 C.F.R. §§ 1.2110, 1.2111, and 1.2112, in circumstances not covered by FCC Forms 175, 601, and 603, to be 470 hours.

All of the information collected will be generated and maintained in connection with the party's usual business practice. However, designated entities (small businesses and eligible rural service providers) must provide additional information, including information regarding related parties, e.g., parent corporations, controlling shareholders, etc.

Based on past experience, the Commission estimates that up to 310 parties annually may need to provide information required by the relevant rules but beyond what is collected pursuant to FCC Forms 175, and 601, and 603. The Commission estimates that up to 210 of the 310 will be designated entities with bidding credits.

Based on past experience, the Commission estimates that the average burden should be 0.5 hour for non-designated entity parties and 2 hours for designated entity parties (small businesses or eligible rural service providers) with bidding credits.

Total Number of Respondents: 310.

Total Number of Annual Responses: 310.

Annual Burden Hours:

100 non-designated entity respondents x 0.5 hour =	50 hours
210 designated entity respondents x 2 hours =	<u>420 hours</u>
TOTAL ANNUAL HOUR BURDEN =	470 HOURS.

In-house Cost: The Commission expects that all of the non-designated entity respondents, and 50 percent of the designated entity respondents, will use existing in-house staff (e.g., paralegal or other legal staff member) exclusively to prepare and submit the required information. While the Commission expects that the other 50 percent of the designated entity respondents will use existing in-house staff to prepare and submit the required information to the Commission, these respondents may also have outside counsel review the information prepared by in-house staff. Where in-house staff is used (exclusively or in part), assuming a rate equivalent to the hourly rate of a GS-13, Step 5 government staff member (\$51.48/hour), the Commission estimates the in-house cost will be:

100 non-designated entity respondents x 0.5 hours x \$51.48/hour = **\$2,574.00.**

210 designated entity respondents x 2 hours x \$51.48/hour = **\$21,621.60.**

Total In-House Cost: \$2,574.00 + \$21,621.60= \$24,195.60.

13. *Estimate of the cost burden of the collection on respondents:*

a. Total Capital and Start-up Costs: \$0

As noted above, all of the information collected will be generated and maintained in connection with the party's usual business practice. Accordingly, the Commission estimates total capital and start-up costs of \$0.

b. Total Operation and Maintenance and Purchase of Services:

As noted above, the Commission expects that many respondents will use in-house staff exclusively to prepare and submit the information collected under this collection. However, the Commission estimates that 50 percent of the designated entity respondents (105 respondents) may also have an attorney (at \$300/hour) review the information prepared by in-house staff. The Commission estimates that on average such respondents will purchase 1 hour of attorney time for review and submission. Assuming a **\$300/hour** rate for outside counsel, the Commission estimates that the cost to the 50 percent of the designated entity respondents that purchase 1 hour of attorney time for review and submission of the required information will be:

105 respondents x 1 hour x \$300/hour = **\$31,500.**

TOTAL ANNUAL CAPITAL AND START UP COSTS and OPERATION AND MAINTENANCE and PURCHASE OF SERVICES COSTS = \$31,500.

14. *Estimate of the cost burden of the collection on the Commission:*

The Commission estimates that on average staff review of the information collected pursuant to OMB Control No. 3060-0767, including time spent by staff attorneys, will take 20 minutes (0.33 hours) per application.

Total Estimated Annual Cost to the Federal Government: 310 submissions x 0.33 hours x \$60.83 (Attorney, GS-14, Step 5) = \$6,222.91.

TOTAL ANNUAL COST TO THE GOVERNMENT: \$6,222.91.

15. *Program changes or adjustments from the collection.* The Commission is reporting the following program changes/increases for this collection: 10 respondents, 10 responses, 20 total annual burden hours and \$1,500 in annual cost. These program changes are due to the inclusion of eligible rural service providers as new pool of respondents among the potential designated entity respondents from which the Commission may collect information under this collection.

16. *Collections of information whose results will be published.* Neither the currently approved information collection nor the revised collection will be published for statistical use. As discussed above, respondents are entitled to request confidentiality in accordance with section 0.459 of the Commission's rules.

17. *Display of expiration date for OMB approval of information collection.* The Commission has approval under the currently-approved information collection to not display the expiration date for the information collection. The Commission seeks continued approval to not display the expiration date for the revised collection. The Commission publishes a list of OMB-approved information collections in section 0.408 of the Commission's rules, 47 C.F.R. § 0.408, and will continue to publish the OMB control number and OMB expiration date for this collection in the list contained in section 0.408 of its rules.

18. *Exceptions to certification statement for Paperwork Reduction Act submissions.* There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods:

Statistical methods will not be employed with this collection of information.