

SUPPORTING STATEMENT

A. Justification:

1. **FCC Form 2100, Schedule 349** is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make major or minor changes in the existing facilities of such stations.

Form 2100, Schedule 349's Newspaper Notice (third party disclosure) requirement; 47 CFR § 73.3580. Form 2100, Schedule 349 also contains a third-party disclosure requirement, pursuant to Section 73.3580. This rule requires stations applying for a new broadcast station, or to make major changes to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public 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. In addition, a copy of this notice must be placed in the station's public inspection file along with the application, pursuant to Sections 73.3526 and 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060-0214, which covers Sections 73.3526 and 73.3527.

Revised Information Collection Requirements Which Require OMB Approval:

On May 9, 2019, the Commission adopted a Report and Order, *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, FCC 19-40, MB Docket No. 18-119,¹ adopting proposals to streamline the rules relating to interference caused by FM translators and to expedite the translator interference complaint resolution process. These measures are designed to limit or avoid protracted and contentious interference disputes, provide translator licensees additional investment certainty and flexibility to remediate interference, and provide affected stations earlier and expedited resolution of interference complaints.

In the *Report and Order*, the Commission adopted its proposal to offer additional flexibility to FM translator licensees, by allowing them to resolve interference issues using the effective and low-cost method of submitting a minor modification application to change frequency to any available same-band FM channel. This method will reduce the number of opposition pleadings filed and the obligation to defend an interference claim.

Specifically, the *FM Translator Interference Report and Order* pertains to this Information Collection as it modifies Section 74.1233(a)(1) of the rules to define an FM translator station's change to any available same-band frequency using a minor modification application, filed using FCC Form 2100, Schedule 349, upon a showing of interference to or from any other broadcast station. Prior to the *FM Translator Interference Report and Order*, if an existing FM translator caused actual interference, as prohibited by Section 74.1203(a), it was limited to remedial channel changes, filing FCC Form 2100, Schedule 349 as a minor change application, to only first, second, or third adjacent, or IF channels. A change to any other channel was considered a major change on FCC Form 2100, Schedule 349, which could only be submitted during a filing window. The *FM Translator Interference Report and Order* enables more translator stations to cure interference by simply changing channels within the same band by filing Form 2100, Schedule 349 as a minor change application, rather than other costlier and less efficient remedies.

¹ *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, MB Docket No. 18-119, Report and Order, FCC 19-40 (rel. May 9, 2019) (*FM Translator Interference Report and Order or Report and Order*).

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With this submission, the Commission is currently seeking to obtain OMB approval for the revision to Section 74.1233(a)(1) of the rules. This revision will modify the number of respondents, number of responses, annual burden hours, and annual costs for this collection.

History

On June 29, 2009, the Commission adopted a Report and Order, *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, MB Docket No. 07-172, FCC 09-59. In the 2009 Report and Order, the Commission adopted changes to the FM translator rules that allowed AM stations to use authorized FM translator stations² to rebroadcast the AM signal locally, retransmitting their AM programming as a “fill-in” service. The adopted cross-service translating rules limited FM translators to providing “fill-in” service only, specifically within the AM primary station’s authorized service area.³ AM radio stations use Form 349 to apply for authorizations to operate such fill-in FM translator stations. Consistent with actions taken by the Commission in the 2009 Report and Order, the following changes were made to Form 349: Sections II and III of Form 349 included new certifications concerning compliance with the AM station “fill-in” service requirements. Specifically, in the AM service, applicants certified that the coverage contour (1 mV/m) of the FM translator station is contained within the *lesser* of: (a) the 2 mV/m daytime contour of the AM primary station being rebroadcast, or (b) a 25-mile radius centered at the AM station’s transmitter site.

On October 21, 2015, the Commission adopted a First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, in *Revitalization of the AM Radio Service*, MB Docket No. 13-249, FCC 15-142 (*AM Revitalization FNPRM*). On, February 23, 2017, consistent with actions proposed by the Commission in the *AM Revitalization FNPRM*, the Commission adopted a Second Report and Order, in *Revitalization of the AM Radio Service*, MB Dkt. No. 13-249, FCC 17-14 (*AM Revitalization Second R&O*). In the *AM Revitalization Second R&O*, the Commission adopted as proposed the following rule (and Form) changes to this information collection (the Commission received OMB preapproval on March 21, 2016):⁴ modified Section 74.1201(g) of the rules to provide that the coverage contour (1 mV/m) of an FM translator station rebroadcasting an AM radio station as its primary station must be contained within the *greater* of either the 2 mV/m daytime contour of the AM station, or a 25-mile radius centered at the AM station’s transmitter site.⁵

The Commission in the *AM Revitalization Second R&O* also adopted as proposed the following changes to Form 349 (the Commission received OMB pre-approval on March 21, 2016): Sections II and III of

² FM translator stations are low power facilities licensed for the limited purpose of retransmitting the signals of either a full power radio station or another translator station. 47 CFR § 74.1201.

³ As defined in 47 CFR § 74.1201(d), the “primary station” is the AM or FM radio broadcast station radiating the signal to be retransmitted by the FM translator station.

⁴ OMB NOA March 21, 2016, ICR Reference Number 201601-3060-011.

⁵ The Commission did not adopt, as proposed in the *AM Revitalization FNPRM*, the 40-mile limitation language “but the FM translator’s 1 mV/m contour may not extend beyond a 40-mile radius centered at the AM station’s transmitter site,” and therefore submitted a non-substantive change request in the interest of simplifying compliance for applicants. This was a non-substantive change to the language that was pre-approved by OMB. There was no change in the number of respondents, number of responses, annual burden hours, or annual cost for the pre-approved collection.

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Form 349 include new certifications concerning compliance with the new AM station “fill-in” service requirements. Specifically, applicants will certify that the 1 mV/m coverage contour of the FM translator station is contained within the greater of either: (a) the 2 mV/m daytime contour of the AM primary station being rebroadcast, or (b) a 25-mile radius centered at the AM station’s transmitter site. The instructions for Sections II and III were revised to assist applicants with completing the modified questions.

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

Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

2. **Agency Use of Information:** FCC staff use the data to ensure that the applicant meets basic statutory requirements and will not cause interference to other licensed broadcast services. In the case of mutually exclusive qualified applicants, the information will be used to determine which proposal would best serve the public interest.

3. **Consideration Given to Information Technology:** The Commission requires applicants to file this Form 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 to determine the community having the greater need and to deter possible process abuse. Therefore, the information collection does not have a significant economic impact on a substantial number of small entities/businesses.

6. **Less Frequent Data Collection:** The frequency for filing is determined by the respondents, as necessary.

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

8. **Comments Received from the Public:** The Commission published a notice in the *Federal Register* seeking public comment on the information collections contained in this supporting statement, *see* 83 FR 26229, published on June 6, 2018. The Commission has not received any comments from the public.

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

10. **Confidentiality of Information:** There is no need for confidentiality with this information collection.

11. **Justification for Sensitive Questions:** This information collection does not address any private matters

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of a sensitive nature.

12. **Estimate of Burden and Burden Hour Cost:** It is difficult to predict the increase in the number of FM translator stations filing FCC Form 2100, Schedule 349 as a minor change application to alleviate interference to another broadcast station, because licensees are encouraged to resolve interference complaints privately, and the recourse to use this particular remediation technique is purely voluntary. Nevertheless, for purposes of this submission, we estimate that 1,350 Form 2100, Schedule 349 applications will be filed annually (a station engineer and a station attorney working on the same application). Most of these filings will involve a minor change to the existing FM translator (or FM booster) station facility. Station engineers and attorneys with a salary of \$100,000/year (\$48.08/hour) will perform these functions.

Respondents are required by Section 73.3580 to fulfill the newspaper notice requirement for construction permit applications for New and Major Changes. We estimate one hour to fulfill this requirement. The respondent’s salary is \$100,000/year (\$48.08/hour).

Type	# of Respondents	# of Responses	Burden Hours of Respondents	Annual Burden Hours	Hourly Salary of Respondents	Annual In-House Cost
Form 2100, Schedule 349 (All FM Translator or Booster)						
Commercial (filed by Station engineer)	1,000 ⁶	1,000	1.5 hrs	1,500 hrs	\$48.08	\$72,120.00
Commercial (filed by Station attorney)	1,000	1,000	1.5 hrs	1,500 hrs	\$48.08	\$72,120.00
Noncommercial						
Noncommercial (filed by Station engineer)	350 ⁷	350	1 hr	350 hrs	\$48.08	\$16,828.00
Noncommercial (filed by Station attorney)	350	350	1 hr	350 hrs	\$48.08	\$16,828.00
Newspaper Notice (Third Party Disclosure) Requirement; 47 CFR § 73.3580						
Newspaper Notices - Commercial	50 ⁸	50	1 hr	50 hrs	\$48.08	\$2,404.00

⁶ This number represents a total of 1,000 commercial applicants.

⁷ This number represents a total of 350 noncommercial applicants.

⁸ Of the 1,000 commercial Form 2100, Schedule 349 submissions, we estimate 50 will be applications for New and Major changes, and therefore entail newspaper notice requirements.

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Type	# of Respondents	# of Responses	Burden Hours of Respondents	Annual Burden Hours	Hourly Salary of Respondents	Annual In-House Cost
Newspaper Notices - Noncommercial	25 ⁹	25	1 hr	25 hrs	\$48.08	\$1,202.00
TOTAL	1,350	2,775		3,775 hrs		\$181,502.00

13. Annual Cost Burden to Respondents: The annual cost burden to the respondents was calculated as follows:

- We assume that the average respondent would contract with consulting engineers (\$250/hour) and attorneys in a law firm (\$300/hour) to complete their applications.
- Newspaper Notice Publication Fee: An applicant must give local public notice of the filing of its new or major change application for construction permit. This notice must be published in a local newspaper of general circulation at least twice a week for two consecutive weeks in a three-week period, for a total of four (4) publications. The cost of each of the four publications is estimated to be \$113.25/per publication.
- Filing Fee: A respondent for a commercial station must submit an \$835.00 filing fee with its new or major change Form 2100, Schedule 349 application.¹⁰

Type	Number of Forms	Consultant’s Burden	Total Annual Burden Hours	Consultant’s Hourly Fee or Application Fee	Cost Burden
Commercial (filed by consulting engineer)	1,000	8 hours	8,000 hours	\$250.00	\$2,000,000.00
Commercial (filed by consulting attorney)	1,000	1 hour	1,000 hours	\$300.00	\$300,000.00
Filing Fee	50 ¹¹			\$835/fee	\$41,750.00
Noncommercial (filed by consulting engineer)	350	12 hours	4,200 hours	\$250.00	\$1,050,000.00
Noncommercial (filed)	350	5 hours	1,750 hours	\$300.00	\$525,000.00

⁹ Of the 350 noncommercial Form 2100, Schedule 349 submissions, we estimate 25 will be applications for New and Major changes, and therefore entail newspaper notice requirements.

¹⁰ See 47 CFR § 1.1104 (2018). Currently, there is no application filing fee for an FM Translator minor change application, which is also submitted on FCC Form 2100, Schedule 349. As noted in paragraph #12 above, of the 1,000 commercial Form 2100, Schedule 349 submissions estimated to be filed annually, the majority will be minor change applications.

¹¹ Of the 1,000 commercial Form 2100, Schedule 349 submissions projected to be filed annually, we estimate that 50 will be New or Major change FM Translator or FM Booster applications, which do require an application filing fee.

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by consulting attorney)					
Newspaper Notice Publication Fee	75	4 publications		\$113.25/fee	\$33,975.00
TOTAL					\$3,950,725.00

14. Cost to Federal Government: The Commission will use professionals at the GS-14, step 5 level (\$63.64/hour) and clerical personnel at the GS-5, step 5 level (\$20.61/hour) to process these applications.

Clerical (commercial)	1 hour x 20.61 x 1,000 =	\$ 20,610.00
Professional	4 hours x \$63.64 x 1,000 =	\$254,560.00
Clerical (noncommercial)	1 hour x \$20.61 x 350 =	\$ 7,213.50
Professional	6 hours x \$63.64 x 350 =	<u>\$133,644.00</u>
Total Cost to Federal Government:		\$416,027.50

15. Reason for Changes in Burden or Cost: There are information collection requirements changes to this collection contained in FCC 19-40. The following figures are program changes to this collection: +150 to the number of respondents, +375 to the number of responses, -725 to the annual burden hours and -\$723,875 to the annual cost.

There are no adjustments to this collection.

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

17. Display of OMB Approval Date: We request extension of the waiver not to publish the expiration date on the form. 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 § 0.408.

18. Exceptions to the Certification Statement: The Commission has the following exceptions to the Certification Statement: the annual number of responses is 2,775, the annual burden hours are 3,775 hours and the annual cost is \$3,950,725. 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.