

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
September 2022**

SUPPORTING STATEMENT

This collection is being submitted to the Office of Management and Budget (OMB) for approval as a revision to an existing collection. The collection has been revised to reflect additional requirements added in 2020 to section 63.04(a)(4) of the Commission's rules for carrier applicants seeking domestic section 214 authorization to transfer control. In addition, 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. § 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.

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 §§ 63.01, 63.03-0404.

a. Filing Procedures for Domestic Transfer of Control Applications - 47 CFR §§ 63.03-04:

According to the *Order* and 47 CFR §§ 63.03-04, 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 §§ 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 § 63.18. In the domestic attachment to the international application, the applicant must submit the information described in 47 CFR § 63.04(a)(6)-(a)(12). *See* 47 CFR §§ 63.03-04.

In FCC 20-133, adopted September 30, 2020, and released October 1, 2020, the Commission, in order to reduce the need for supplemental requests and to ensure expeditious processing of applications, added the requirements in § 63.04(a)(4) for carrier applicants seeking domestic section 214 authorization to transfer control to specify the voting interests of any person or entity owning 10 percent of the applicants, as well as provide an ownership diagram that illustrates an applicant's vertical ownership structure:

63.04(a)(4): The name, address, citizenship, and principal business of any person or entity that directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those entities (to the nearest one percent). Where no individual or entity directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect; and
(ii) An ownership diagram that illustrates the applicant's vertical ownership structure, including the direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to paragraph (a)(4)(i) of this section. Every individual or entity with ownership shall be depicted and all controlling interests must be identified. The ownership diagram shall include both the pre-transaction and post-transaction ownership of the authorization holder.

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 § 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 § 63.03(d)(2).

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. Applicants file international section 214 transfer applications on-line through the International Bureau Filing System, and file domestic section 214 applications on-line through the Commission's Electronic Comment Filing System. Applicants 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 § 63.52(a).

8. Pursuant to 5 CFR § 1320.8(d), the Commission published a 60-day notice in the Federal Register. See 87 FR 43518, dated July 21, 2022. 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 §§ 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:** 14 hours per application. 85 respondents x 14 hours per response = 1,190 hours. Total annual burden is **1,190 hours**.

4. **Total estimate of in-house cost to respondents:** \$ 165,410. \$1,946 per application (\$139 per hour x 14 hours per application) x 85 applications = \$165,410. The \$139 per hour rate is based on the respondent's in-house staff equivalent of one GS-15, step 5 attorney and one GS-13, step 5 analyst (rounded up).

5. **Explanation of calculation:** We estimate that preparation time will be approximately 14 hours per application, an increase of four hours over the previous estimate. This reflects the additional time needed to prepare the transaction information required under section 63.04(a)(4) of the rules. 14 (hours) x \$139 (per hour) x 85 applications = \$165,410.

b. Pro Forma Transactions (47 CFR § 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: \$1,460. \$195 per application (\$139 per hour x 1.5 hours per application) x 7 applications = \$1,460.

5. Explanation of calculation: We estimate that preparation time will be approximately 1.5 hours per application. 1.5 (hours) x \$139 (per hour) x 7 applications = \$1,460.

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

Total annual responses: $85 + 7 = 92$

Total annual burden: $1,190 + 11 = 1,201$ hours.

Total In-house costs to the respondent: $\$165,410 + \$1,460 = \$166,870$

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 \$1,230 per domestic transfer of control application. Thus, 85 applications x \$1,230 = **\$104,550**. There is no application fee for *Pro Forma* filings. Respondents are subject to a filing fee of \$675 for domestic transfer of control requests for special temporary authority (STA). Respondents file requests for STA as part of their application in the rare event that circumstances require the request. Five (5) respondents will file STA requests per year subject to a filing fee of \$675 per STA request. Thus, 5 requests x \$675 = **\$3,375**.

Total annual cost burden: $\$104,550 + \$3,375 = \$107,925$.

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: 3 (staff members to process an application) x \$68 (average grade and hourly salary of staff) x 33 (hours to process the applications) x 85 applications = \$572,220.

15. The Commission notes the following program change and adjustment to this information collection from the previous submission to OMB:

- a) The burden hours have increased to reflect the additional time needed to prepare the new information required under section 63.04(a)(4); this program change resulted in an increase of +340 (from 861 to 1,201). Respondents continue to file applications electronically at the Commission.
- b) The number of respondents/total annual responses remains the same at 92.
- c) There is an adjustment/increase in the application fee from \$1,195 to \$1,230 per application, due to the Commission's increase in its filing fees; this adjustment resulted in an increase of +\$2,975 (from \$101,575 to \$104,550). Also, the filing

fees for STA requests was inadvertently omitted from prior submissions; this adjustment resulted in an increase of +\$3,375 to the total annual cost burden.

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.