

## SUPPORTING STATEMENT

### A. Justification:

1. The Commission is requesting an extension of this information collection in order to receive approval/clearance from the Office of Management and Budget (OMB) for three years.

Form 2100, Schedule 349, FM Translator or FM Booster Station Construction Permit Application, is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations.

*Schedule 349's Online Notice (third party disclosure) Requirement; 47 CFR § 73.3580.* Schedule 349 also contains a third-party disclosure requirement, pursuant to 47 CFR § 73.3580. Section 73.3580, as amended in the Commission's *2020 Public Notice Second Report and Order*,<sup>1</sup> discussed below, requires local public notice of the filing of all applications to construct a new broadcast station, including an FM translator or booster station. Notice is given by an applicant posting notice of the application filing on its station website, its licensee website, its parent entity website, or on a publicly accessible, locally targeted website, for 30 consecutive days beginning within five business days of acceptance of the application for filing. The online notice must link to a copy of the application as filed in the Commission's LMS licensing database.

### History

#### I. 2020 Public Notice Second Report and Order

On May 12, 2020, the Commission adopted *Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Applications; Modernization of Media Regulation Initiative; Revision of the Public Notice Requirements of Section 73.3580*, Second Report and Order, MB Docket Nos. 17-254, 17-105, & 05-6, FCC 20-65 (rel. May 13, 2020). The Commission adopted new, streamlined procedures for stations to provide public notice of the filing of certain applications. Stations, including stations filing for new construction permits or major modifications to facilities, that were previously required to post public notice in a local newspaper, are now required to post notice online, either on the station website or a website affiliated with the station, its licensee, or its parent entity, or alternatively are required to post notice on a publicly accessible, locally targeted website, for 30 continuous days following acceptance of the application for filing.

A submission was made to OMB for approval of the modified third-party disclosure requirements for this Information Collection, as adopted in the *2020 Public Notice Second Report and Order*. The changes pertaining to this Information Collection and to 47 CFR § 73.3580 adopted in the *2020 Public Notice Second Report and Order*, which are listed below, did not necessitate changes to the Schedule 349, nor did they affect the substance, burden hours, or costs of completing the forms. The rule changes did, however, reduce burdens and costs associated with filing the application, as set forth below.

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<sup>1</sup> *Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Applications; Modernization of Media Regulation Initiative; Revision of the Public Notice Requirements of Section 73.3580*, Second Report and Order, MB Docket Nos. 17-254, 17-105, & 05-6, FCC 20-65 (rel. May 13, 2020). (*2020 Public Notice Second Report and Order*).

## II. 2020 Improvement of Low Power FM Technical Rules Report and Order

In April 2020, the Commission adopted a Report and Order making certain changes to the LPFM technical rules, to improve reception and increase flexibility while maintaining interference protection and the core LPFM goals of diversity and localism. *Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules; Modernization of Media Regulation Initiative, Report and Order*, MB Docket Nos. 19-193, 17-105, FCC 20-53 (rel. Apr. 23, 2020) (*2020 Technical Report and Order*).

LPFM stations provide a secondary, noncommercial radio service with a community focus. The Commission originally designed LPFM engineering requirements to be simple so that non-profit organizations with limited engineering expertise and small budgets could readily apply for, construct, and operate community-oriented stations serving highly localized areas. LPFM organizations suggested that the service had matured and required additional engineering options to improve reception. Thus, the *2020 Technical Report and Order* adopted the following rules:

*Allow expanded LPFM use of directional antennas.* All LPFM stations may use directional facilities, with either off-the-shelf or composite antennas, upon a satisfactory engineering showing. Such antennas could improve service near international borders by allowing LPFM stations to serve more listeners in the United States while continuing to protect Mexican and Canadian stations.

*Redefine “Minor Changes” for LPFM stations.* An LPFM station may apply for approval to relocate its transmitter site without awaiting a filing window if the change is “minor,” redefined in the *2020 Technical Report and Order* as a move of 11.2 kilometers or less. The *2020 Technical Report and Order* also allowed proposals of greater distances to qualify as minor if the existing and proposed service contours overlap.

*Permit LPFM Use of FM Booster Stations.* FM booster stations amplify and retransmit a station’s signal. The *2020 Technical Report and Order* amended rules that had prohibited LPFM stations from operating booster stations, allowing LPFM stations to operate an FM booster in lieu of an FM translator when a booster would better address unique terrain challenges.

*Allow Shared Emergency Alert System (EAS) Equipment.* Co-owned, co-located radio stations can share EAS equipment, but this option was not available to LPFM stations because they cannot be co-owned. The *2020 Technical Report and Order* permitted co-located LPFM stations (particularly those in time-share arrangements) to share an EAS decoder pursuant to an agreement for common access as well as common responsibility for any EAS rule violations, thus potentially reducing costs.

*Facilitate Waivers of Requirement to Protect Television Stations Operating on Channel 6.* Stations on the part of the FM band reserved for NCE use must currently protect adjacent television stations on Channel 6 (TV6). The *2020 Technical Report and Order* deferred to a future proceeding consideration of a proposal to eliminate the protection of digital television stations operating on TV6. The *2020 Technical Report and Order* stated that until such a proceeding is resolved, the Commission will accept FM proposals that are short-spaced to TV6 if the FM applicant demonstrates no interference. Alternatively,

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the *2020 Technical Report and Order* added language to the rules allowing reserved band radio stations to provide an agreement indicating the concurrence of all potentially affected digital TV6 stations.

*Miscellaneous Changes.* The *2020 Technical Report and Order* added language to 47 CFR § 73.850 requiring LPFM stations to notify the Commission if they are silent for ten days and to seek authority for silent periods over 30 days, as required for all other broadcasters, thus codifying a longstanding policy that the Bureau already applies to the LPFM service that allows it to identify and assist LPFM stations at risk of losing their licenses automatically under section 312(g) of the Communications Act.

Specifically, pertaining to this Information Collection and FM Booster (and LPFM) stations, the Commission revised the form, the corresponding instructions, and the information collection as follows:

- (1) Permitting LPFM licensees to own and operate FM Booster stations.<sup>2</sup>

The *2020 Technical Report and Order* increased the number of applicants eligible to file LMS Schedule 349 by eliminating the absolute prohibition on the cross-ownership of FM Booster stations by LPFM licenses. The overall number of respondents may increase because these rule changes expanded the universe of applicants eligible to apply for an FM Booster station construction permit. Therefore, this submission was made to OMB for approval of revised Information Collection requirements.

### **III. CDBS to LMS transition**

On May 13, 2019, the Commission submitted a non-substantive change request to OMB for approval of minor non-substantive changes made to the CDBS-based FCC Form 349.<sup>3</sup> The Media Bureau is transitioning to a new on-line, electronic licensing database system called the “Licensing Management System” (LMS) in which all Media Bureau broadcast applications and reporting forms will eventually be filed. In effect, the database transition requires a corresponding design conversion of all existing CDBS forms. The Media Bureau is currently developing electronic, LMS-compatible versions of various broadcast station application and reporting forms, such as this Form 2100, Schedule 349 – FM Translator or FM Booster Station Construction Permit Application, as part of the database transition.

In general, the new LMS Schedule 349 will replicate the CDBS-based FCC Form 349. The form sections and substance of the individual questions essentially remain the same. As with the CDBS-based FCC Form 349, the LMS Schedule 349 requires applicants to certify compliance with statutory and regulatory requirements. The application is presented primarily in a “Yes/No” certification format and contains places for submitting explanatory exhibits where appropriate.

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

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<sup>2</sup> 47 CFR § 73.860 Cross-Ownership.

<sup>3</sup> Pursuant to this non-substantive change, CDBS-based FCC Form 349 was renamed “Form 2100, Schedule 349 – FM Translator or FM Booster Station Construction Permit Application” and encompassed within the new on-line licensing database system called the Licensing Modernization System. Accordingly, the title of this Information Collection was also changed.

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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 qualified mutually exclusive 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 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 last published a notice in the *Federal Register* seeking public comment on the information collections contained in this supporting statement, see 88 FR 34498, on May 30, 2023. The Commission did not receive 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 of a sensitive nature.
12. **Estimate of Burden and Burden Hour Cost:** We estimate 1,250 FM Translator or FM Booster Construction Permit applications will be filed annually. Most of the filings will consist of making technical changes to the 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 online notice requirement for construction permit applications for New and Major Changes. We estimate one-half hour to fulfill this requirement. The respondent's salary is \$100,000/year (\$48.08/hour).

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| Type  | # of Respondents | # of Responses | Burden Hours of Respondents | Annual Burden Hours | Hourly Salary of Respondents | Annual In-House Cost |
|---|------------------|----------------|-----------------------------|---------------------|------------------------------|----------------------|
| <b>FM Translator or FM Booster Station Construction Permit Applications</b> |                  |                |                             |                     |                              |                      |
| Commercial (filed by Station engineer)                                      | 925 <sup>4</sup> | 925            | 1.5 hrs                     | 1,387.5 hrs         | \$48.08                      | \$66,711.00          |
| Commercial (filed by Station attorney)                                      | 925              | 925            | 1.5 hrs                     | 1,387.5 hrs         | \$48.08                      | \$66,711.00          |
| Noncommercial (filed by Station engineer)                                   | 325 <sup>5</sup> | 325            | 1 hr                        | 325 hrs             | \$48.08                      | \$15,626.00          |
| Noncommercial (filed by Station attorney)                                   | 325              | 325            | 1 hr                        | 325 hrs             | \$48.08                      | \$15,626.00          |
| <b>Online Notice (Third Party Disclosure) Requirement; 47 CFR § 73.3580</b> |                  |                |                             |                     |                              |                      |
| Online Notices - Commercial   | 925              | 925            | 0.5 hr                      | 462.5 hrs           | \$48.08                      | \$22,237.00          |
| Online Notices - Noncommercial  | 325              | 325            | 0.5 hr                      | 162.5 hrs           | \$48.08                      | \$7,813.00           |
| <b>TOTAL</b>  | <b>1,250</b>     | <b>3,750</b>   |                             | <b>4,050 hrs</b>    |                              | <b>\$194,724.00</b>  |

**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.
- **Online Notice Publication Fee:** An applicant must give online local public notice of the filing of its application for construction permit. This notice will generally be accomplished by posting the notice on an applicant-owned or affiliated website, or on a free-to-post locally targeted, publicly accessible website. We estimate that 85 percent of applicants will be able to post online notice on an applicant-affiliated website or other free-to-post local website. The remaining 15 percent will have to pay to post on a local website, which in most cases will be the website of a local newspaper that will charge the applicant for a printed notice, with the online posting included in the price. For an applicant forced to pay to post online notice, the notice must be posted on a locally targeted, publicly accessible website for at least a 24-hour period once a week for four consecutive weeks, beginning

<sup>4</sup> This number represents a total of 925 commercial applicants.

<sup>5</sup> This number represents a total of 325 noncommercial applicants.

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when the application is accepted for filing. The cost of this posting is estimated to be the same per posting as the cost of publishing for one day in a local newspaper, or \$113.25/publication.

- **Filing Fee:** A respondent for a commercial station must submit a \$835.00 filing fee with its FM Translator or FM Booster Construction Form.<sup>6</sup>

| Type                                      | Number of Forms  | Consultant’s Burden | Total Annual Burden Hours | Consultant’s Hourly Fee or Application Fee | Cost Burden           |
|---|------------------|---------------------|---------------------------|--|-----------------------|
| Commercial (filed by Station engineer)    | 925              | 8 hours             | 7,400 hours               | \$250.00                                   | \$1,850,000.00        |
| Commercial (filed by Station attorney)    | 925              | 1 hour              | 925 hours                 | \$300.00                                   | \$277,500.00          |
| Filing Fee                                | 925              |                     |                           | \$835/fee                                  | \$772,375.00          |
| Noncommercial (filed by Station engineer) | 325              | 12 hours            | 3,900 hours               | \$250.00                                   | \$975,000.00          |
| Noncommercial (filed by Station attorney) | 325              | 5 hours             | 1,625 hours               | \$300.00                                   | \$487,500.00          |
| Online Notice Posting Fee                 | 188 <sup>7</sup> | 4 publications      |                           | \$113.25/fee                               | \$85,164.00           |
| <b>TOTAL</b>                              |                  |                     |                           |  | <b>\$4,447,539.00</b> |

14. **Cost to Federal Government:** The Commission will use professionals at the GS-14, step 5 level (\$71.88/hour) and clerical personnel at the GS-5, step 5 level (\$23.28/hour) to process these applications.

|  |                           |                     |
|--|---------------------------|---------------------|
| Clerical (commercial)                    | 1 hour x \$23.28x 925 =   | \$ 21,534.00        |
| Professional                             | 4 hours x \$71.88 x 925 = | \$265,956.00        |
| Clerical (noncommercial)                 | 1 hour x \$23.28x 325 =   | \$ 7,566.00         |
| Professional                             | 6 hours x \$71.88 x 325 = | <u>\$140,166.00</u> |
| <b>Total Cost to Federal Government:</b> |                           | <b>\$435,222.00</b> |

15. **Reason for Changes in Burden or Cost:** There are no program changes or adjustments to this collection.

16. **Plans for Publication:** Applications are electronically filed and are publicly available.

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 on OMB’s website.

<sup>6</sup> See 47 CFR § 1.1104 (2018).

<sup>7</sup> 1,250 x 0.15 = 187.5 (rounded to 188).

**OMB Control Number: 3060-0405**

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**18. Exceptions to the Certification Statement:** There are no exceptions to the Certification Statement.

**B. Collections of Information Employing Statistical Methods**

This information collection does not employ any statistical methods.