

## 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.

FCC Form 2100, Schedule 340, Noncommercial Educational Station for Reserved Channel Construction Permit Application (Schedule 340), is used to apply for authority to construct a new full-service noncommercial educational (NCE<sup>1</sup>) FM or DTV broadcast station (including a DTS facility<sup>2</sup>), to make changes in an authorized NCE broadcast station, or to amend a pending Schedule 340 application. Schedule 340 is used only if the station will operate on a channel that is reserved exclusively for NCE use, or in the situation where applications for NCE stations on non-reserved channels<sup>3</sup> are mutually exclusive<sup>4</sup> only with one another. Also, Schedule 340 is used by Native American Tribes and Alaska Native Villages (Tribes), Tribal consortia, or entities owned or controlled by Tribes when qualifying for the “Tribal Priority” under 47 CFR §§ 73.7000, 73.7002.<sup>5</sup>

*Schedule 340’s Online Notice (third party disclosure) Requirement:* 47 CFR Section 73.3580, as amended in the Commission’s 2020 Public Notice Second Report and Order,<sup>6</sup> discussed below, requires local public notice of the filing of all applications to construct a new full-service NCE FM or DTV broadcast station.

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<sup>1</sup> These stations are licensed to nonprofit educational organizations for use in the advancement of educational programs.

<sup>2</sup> DTV stations may apply to use distributed transmission system (DTS) technology to serve their viewers. See 47 CFR § 73.626. DTS technology employs multiple synchronized transmitters spread around a station’s service area, rather than the current single-transmitter approach. Each transmitter would broadcast the station’s DTV signal on the same channel, similar to analog TV booster stations, but more efficiently. Due to the synchronization of the transmitted signals, DTV receivers should be able to treat the multiple signals as reflections or “ghosts” and use “adaptive equalizer” circuitry to cancel or combine them to produce a single signal.

<sup>3</sup> Non-reserved channels are channels that are not reserved exclusively for NCE use and for which commercial entities could be eligible to operate full-power stations. Non-reserved channels include FM channels 221 and above appearing without an asterisk in the FM Table of Allotments (47 CFR § 73.202), and DTV channels appearing without an asterisk in the DTV Table of Allotments (47 CFR § 73.622(i)).

<sup>4</sup> Mutually exclusive applications are those that either cause or receive prohibited contour overlap with other window-filed applications, thus preventing grant of more than one application.

<sup>5</sup> See 47 CFR § 73.7000, which defines the terms “Tribe,” Tribal Applicant,” “Tribal Coverage,” and “Tribal Lands,” and 47 CFR § 73.7002(b), which spells out the relevant Tribal Priority analysis.

<sup>6</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).

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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, either in the station’s Online Public Inspection File or in another Commission database.

**History:**

**I. 2019 NCE -LPFM Report and Order**

This submission was made to OMB for the approval of information collection requirements contained in the Commission’s *NCE LPFM Report and Order*<sup>7</sup> adopted December 10, 2019, and released on December 11, 2019, where the Commission revised its rules and procedures for considering competing applications for new and major modifications to noncommercial educational full-service FM and full-power television (NCE), and low power FM (LPFM) broadcast stations. The changes were designed to improve the comparative selection and licensing procedures, expedite the initiation of new service to the public, eliminate unnecessary applicant burdens, and reduce the number of appeals of NCE comparative licensing decisions.

First, to improve the NCE comparative process, the *NCE LPFM Report and Order*: (1) eliminated the governing document requirements for established local applicants and applicants claiming diversity points; (2) established a uniform divestiture pledge policy; (3) expanded the tie-breaker criteria and revised the procedures for allocating time in mandatory time-sharing situations; and (4) clarified and modified the “holding period” rule.

Second, the *NCE LPFM Report and Order* adopted the following changes to the LPFM comparative process: (1) prohibited amendments that attempt to cure past unauthorized station violations; (2) authorized time-sharing discussions prior to tentative selectee designations; and (3) established procedures for remaining tentative selectees following dismissal of point aggregation time-share agreements.

Third, the *NCE LPFM Report and Order* adopted the following general changes: (1) defined which applicant board changes are major changes; (2) clarified the reasonable site assurance requirements; (3) streamlined construction deadline tolling procedures and notification requirements; (4) lengthened the LPFM construction period; and (5) eliminated restrictions on the assignment and transfer of LPFM authorizations.

Specifically, pertaining to this Information Collection and NCE stations, the Commission revised the relevant rules, 47 CFR §§ 73.7002, 73.7003, and 73.7005, the form, and corresponding instructions, as follows:

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<sup>7</sup> *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Report and Order, FCC 19-127, 34 FCC Rcd 12519 (2019) (*NCE LPFM Report and Order*).

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- (1) Changed all former references from “holding period” to “maintenance of comparative qualifications.”<sup>8</sup> During the four-year “maintenance of comparative qualifications” period, an NCE station receiving a decisive preference for fair distribution of service, in accordance with the provisions of 47 CFR section 73.7002,<sup>9</sup> must certify that any technical modification to its authorized facilities satisfies the technical requirements of 47 CFR § 73.7005(b).<sup>10</sup>
- (2) Added an “Established Local Applicant Pledge,” requiring an applicant to pledge to maintain localism characteristics during the four-year maintenance of comparative qualifications period, if the applicant certifies that it qualifies for points as an “established local applicant” in the Point System Factors of 47 CFR § 73.7003.<sup>11</sup>
- (3) Added a “Diversity Pledge,” requiring an applicant to pledge to comply with all of the restrictions on station modifications and acquisitions (as defined in 47 CFR section 73.7005) during the four-year maintenance of comparative qualifications period, if the applicant certifies that it qualifies for “local diversity of ownership” points in the Point System Factors of 47 CFR § 73.7003.<sup>12</sup>
- (4) Modified the divestiture sub-question certification, to reflect the new divestiture policies, in the Diversity of Ownership question in the Point System Factors Section.<sup>13</sup>
- (5) Added a new question in the Tie Breakers section of the form, reflecting the new third tie-breaker criterion of 47 CFR § 73.7003(c)(3).<sup>14</sup>
- (6) Added a new question in the Tie Breakers Section of the form, requiring the applicant to provide its initial date of establishment.
- (7) Added a Reasonable Site Assurance Certification in the Technical Certifications Section of the form, requiring the applicant to certify that it has obtained reasonable assurance from the tower owner or authorized representative, that its specified site will be available.<sup>15</sup>

The revisions to the relevant rules, and the changes to the questions in Schedule 340 listed above affected the substance, burden hours, and costs of completing the Schedule 340. Therefore, this submission was

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<sup>8</sup> 47 CFR § 73.7005 is being renamed Maintenance of Comparative Qualifications.

<sup>9</sup> 47 CFR § 73.7002 Fair Distribution of Service on Reserved Band FM Channels.

<sup>10</sup> 47 CFR § 73.7005(b) *Technical*.

<sup>11</sup> 47 CFR § 73.7003(b)(1) *Established local applicant*.

<sup>12</sup> 47 CFR § 73.7003(b)(2) *Local diversity of ownership*.

<sup>13</sup> If an applicant’s certification is based on a pledge to divest an attributable interest in a station, the applicant must include an exhibit identifying the station in which it will divest.

<sup>14</sup> 47 CFR § 73.7003(c)(3) - Point System Selection Procedures.

<sup>15</sup> The certification will require the applicant to list the name and contact information of the tower owner or authorized representative.

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made to OMB for approval of revised Information Collection requirements.

**II. 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, must now post notice online, either on the station website or a website affiliated with the station, its licensee, or its parent entity, or else must post notice on a publicly accessible, locally targeted website, for 30 continuous days following acceptance of the application for filing. Stations that are required to make on-air announcements of the filing of certain applications, must continue to do so, but the announcements are shorter and direct viewers and listeners to the application as filed and displayed in either the station’s Online Public Inspection File or another Commission database. A total of six on-air announcements are required, at least one per week and no more than one per day or two per week, to be broadcast between 7:00 a.m. and 11:00 p.m. local time, Monday through Friday, beginning after the application is accepted for filing.

This 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 340, 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.

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:** The data collected by Schedule 340 is used by FCC staff to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be served by grant of the application. 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 these forms 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.

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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 resolving competing applications, and to deter possible abuses of the processes. 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:** Opportunity for public comment on this information collection requirement contained in this supporting statement has been published in a notice in the Federal Register at 88 FR 41102 on June 23, 2023. No comments were received 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:** The following estimates are provided for public burden for this information collection. These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

We estimate that a total of 1,615 Form 340 construction permit applications will be filed by NCE full-power FM and DTV stations with the Commission annually.<sup>16</sup> We assume that each respondent station licensee/permittee will contract with a consulting engineer to complete the engineering section of the application and will also contract with an attorney to complete the legal section of the application, review and file the LMS Schedule 340. We estimate that the respondent will spend approximately 2-6 hours consulting and reviewing the application with the outside engineering and legal consultants, depending upon the application type (*e.g.*, New & Major, Tribal New & Major, Minor, DTS). We estimate that the respondent will have an average salary of \$100,000/year (\$48.08/hour).

**Online Notices (47 CFR § 73.3580):**

Section 73.3580 online notices are required upon submission of construction permit applications for New & Major Changes. We estimate that it will take the respondent approximately one-half hour to fulfill the online notice requirement. We estimate that the respondent will have an average salary of \$100,000/year (\$48.08/hour).

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<sup>16</sup> We note that this estimate includes the filing of amendments to these applications.

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Type	# of Respondents	# of Responses	Burden Hours of Respondents	Annual Burden Hours	Hourly Salary of Respondents <sup>17</sup>	Annual In-House Cost
<b>NCE Full-Power FM and DTV</b>						
FM NCE New & Major	1,000	1,000	4 hrs. consultation	4,000 hrs	\$48.08	\$192,320.00
FM NCE New & Major (Tribal Applicant)	175 <sup>18</sup>	175	6 hrs. consultation	1,050 hrs	\$48.08	\$50,484.00
FM NCE Minor	300	300	2 hrs. consultation	600 hrs	\$48.08	\$28,848.00
DTV NCE New & Major	30	30	4 hrs. consultation	120 hrs	\$48.08	\$5,769.60
DTV NCE Minor	100	100	2 hrs. consultation	200 hrs	\$48.08	\$9,616.00
DTS	10	10	3 hrs. consultation	30 hrs	\$48.08	\$1,442.40
<b>Subtotal</b>	<b>1,615</b>	<b>1,615</b>		<b>6,000 hrs</b>		<b>\$288,480.00</b>
<b>Online Notices (Third Party Disclosure) Requirement; 47 CFR § 73.3580</b>						
Online Notices with FM NCE New & Major applications (Schedule 340)	1,175	1,175	0.5 hr.	587.50 hrs	\$48.08	\$28,247.00
Online Notices with DTV NCE New applications (Schedule 340)	30	30	0.5 hr.	15 hrs	\$48.08	\$721.20
<b>Online Notices Subtotal</b>	<b>1,205</b>	<b>1,205</b>		<b>602.5 hrs</b>		<b>\$28,968.20</b>

<sup>17</sup> The Commission estimates that the average hourly salary for in-house personnel, which includes station manager, engineer and attorney, to be \$100,000/year or \$48.08/hour based on the fact that the Commission is unsure who exactly will complete and file the applications for the station.

<sup>18</sup> This number includes applicants seeking the Tribal Priority based on coverage of Tribal Lands, applicants seeking waiver of the Tribal Lands coverage provisions of the Tribal Priority, and amendments to such applications.

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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>TOTAL</b>	<b>2,820</b>	<b>2,820</b>		<b>6,603 hrs. (rounded)</b>		<b>\$317448.20</b>

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

- We assume that each respondent station will contract with a consulting engineer to complete the engineering section of the application and will also contract with an attorney to complete the legal section of the application, review the application, and file LMS Schedule 340. We estimate that the time spent by outside engineering and legal consultants to complete, review and file the form will vary, depending upon the application and service type. The consulting engineers’ and outside attorneys’ burden hour estimates have been adjusted to reflect the modifications to the technical and legal questions in the Schedule 340, as described above. We estimate that the consulting engineer will have a rate of \$250/hour and the outside attorney will charge approximately \$300/hour.
- Online Notice Posting Fee: An FM or DTV applicant must give local public notice of the filing of its Schedule 340 construction permit application for a new station or for a major change in facilities. 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 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: There is no filing fee for the Form 340, which is only filed by NCE stations.

Type	Number of Forms	Consultant’s Burden	Total Annual Burden Hours	Consultant’s Hourly Fee or Application Fee	Cost Burden
FM NCE New & Major Engineering Consultant	1,000	70 hrs	70,000 hrs	\$250.00	\$17,500,000.00
FM NCE New & Major Outside Attorney	1,000	6 hrs	6,000 hrs	\$300.00	\$1,800,000.00
FM NCE New & Major Engineering	175	70 hrs	12,250 hrs	\$250.00	\$3,062,500.00

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Consultant (Tribal Applicant)					
FM NCE New & Major Outside Attorney (Tribal Applicant)	175	7 hrs	1,225 hrs	\$250.00	\$306,250.00
Outside Online Notice Posting Fee	168	4 postings		\$113.25/fee	\$76,104.00
FM NCE Minor Engineering Consultant	300	70 hrs	21,000 hrs	\$250.00	\$5,250,000.00
FM NCE Minor Outside Attorney	300	6 hrs	1,800 hrs	\$300.00	\$540,000.00
DTV NCE New & Major Engineering Consultant	30	35 hrs	1,050 hrs	\$250.00	\$262,500.00
DTV NCE New & Major Outside Attorney	30	6 hrs	180 hrs	\$300.00	\$54,000.00
Outside Online Notice Posting Fee	5	4 publications		\$113.25/fee	\$2,265.00
DTV NCE Minor Engineering Consultant	100	35 hrs	3,500 hrs	\$250.00	\$875,000.00
DTV NCE Minor Outside Attorney	100	6 hrs	600 hrs	\$300.00	\$180,000.00
DTS NCE Engineering Consultant	10	45 hrs	450 hrs	\$250.00	\$112,500.00
DTS NCE Outside Attorney	10	6 hrs	60 hrs	\$300.00	\$18,000.00
<b>Annual Cost Burden Total</b>					<b>\$30,039,119.00</b>

14. **Cost to Federal Government:** The total cost to the Federal Government was calculated as follows:

***FM New and Major Applications:***

Clerical	1.5 hours x \$23.28/hour x 1,000 =	\$ 34,920
Paraprofessional	7.0 hours x \$42.68/hour x 1,000 =	\$ 298,760
Professional	36.9 hours x \$71.88/hour x 1,000 =	<u>\$2,652,372</u>
		\$2,986,052

***FM New and Major Applications (Tribal Applicants):***



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Clerical	1.6 hours x \$23.28/hour x 175 =	\$ 6,518
Paraprofessional	7.5 hours x \$42.68/hour x 175 =	\$ 56,018
Professional	37.5 hours x \$71.88/hour x 175 =	<u>\$471,713</u>
		\$534,249

**FM Minor Change:**

Clerical	2.0 hours x \$23.28/hour x 300 =	\$ 13,968
Paraprofessional	6 hours x \$42.68/hour x 300 =	\$ 76,824
Professional	25 hours x \$71.88/hour x 300 =	<u>\$539,100</u>
		\$629,892

**DTV Applications (New & Major and Minor Change):**

Clerical	2 hours x \$23.28/hour x 130 =	\$ 6,053
Paraprofessional	6 hours x \$42.68/hour x 130 =	\$ 33,290
Professional	16 hours x \$71.88/hour x 130 =	<u>\$149,510</u>
		\$188,853

**DTS Applications:**

Clerical	2 hours x \$23.28/hour x 10 =	\$ 466
Paraprofessional	6 hours x \$42.68/hour x 10 =	\$ 2,561
Professional	20 hours x \$71.88/hour x 10 =	<u>\$ 14,376</u>
		\$ 17,403

**TOTAL COST TO THE FEDERAL GOVERNMENT: \$4,356,449**

**The following data was used to calculate the total cost to the Federal Government:**

\*The Commission will use professional staff at the GS-14, step 5 level (\$71.88/hour), paraprofessional staff at the GS-11, step 5 level (\$42.68/hour) and clerical staff at the GS-5, step 5 level (\$23.28/hour) to process these applications.

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

16. **Plans for Publication:** The applications are electronically filed and made available to the public.

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

**OMB Control Number: 3060-0029**

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

This information collection does not employ any statistical methods.