

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License, FCC Form 316

SUPPORTING STATEMENT

A. Justification:

1. **Circumstances Necessitating Change to Information Collection:** This submission is being made as a revision to an existing information collection pursuant to 44 U.S.C. § 3507. This submission contains revised FCC Form 316 and its accompanying instructions and worksheets.

Filing of the FCC Form 316 is required when applying for consent for assignment of a broadcast station construction permit or license, or for consent to transfer control of an entity holding a broadcast station construction permit or license where there is little change in the relative interest or disposition of its interests; where transfer of an interest is not a controlling one; where there is no substantial change in the beneficial ownership of the corporation; where the assignment is less than a controlling interest in a partnership; where there is an appointment of an entity qualified to succeed to the interest of a deceased or legally incapacitated individual permittee, licensee or controlling stockholder; and, in the case of LPFM stations, where there is a voluntary transfer of a controlling interest in the licensee or permittee entity. In addition, the applicant must notify the Commission when an approved assignment or transfer of control of a broadcast station construction permit or license has been consummated.

Revised Information Collection Requirements:

On January 28, 2010, the Commission adopted a *First Report and Order and Further Notice of Proposed Rulemaking* (the “*Order*”) in MB Docket No. 09-52, FCC 10-24. The *Order* adopts rule changes designed to streamline and clarify certain procedures associated with the award of broadcast radio construction permits by competitive bidding. To prevent unjust enrichment by parties that acquire broadcast construction permits through the use of a bidding credit in an auction, Section 73.5007(c) of the Rules requires reimbursement to the Commission of all or part of the bidding credit upon a subsequent assignment or transfer of control, if the proposed assignee or transferee is not eligible for the same percentage of bidding credit.¹ The rule is routinely applied to “long form” assignment or transfer applications filed on FCC Forms 314 and 315. In the *Order*, the Commission also sought to clarify that the unjust enrichment payments to the government must be

made even when an assignment or transfer is *pro forma* in nature and therefore filed on FCC Form

¹ See 47 C.F.R. § 73.5007(a). A 35 percent bidding credit is given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, have no other attributable interests. A 25 percent bidding credit is given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, have an attributable interest in no more than three mass media facilities.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License, FCC Form 316

316.² This ensures that applicants do not use the summary *pro forma* assignment and transfer procedures to circumvent the unjust enrichment requirements.

Consistent with actions taken by the Commission in the *Order*, FCC Form 316 has been revised to add the broadcast auction-based questions presently included on FCC Forms 314 and 315, specifically asking the applicants to certify that the proposed assignment or transfer complies with the unjust enrichment provisions of the Commission's competitive bidding rules. The instructions for FCC Form 316 have been revised to assist applicants with completing the new questions. **(This revision to FCC Form 316 needs OMB approval).**

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) and 310(d) of the Communications Act of 1934, as amended.

2. Agency Use of Information: The data is used by FCC staff to determine if the applicant is qualified to become a Commission licensee or permittee of a commercial or noncommercial broadcast station and to carry out the statutory provisions of Section 310(d) of the Communications Act of 1934, as amended.

3. Consideration Given to Information Technology: The Commission requires applicants to file FCC Form 316 electronically.³

4. Effort to Identify Duplication and Use Similar Information: This agency does not impose a similar information collection on the respondents. There is 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. This collection minimizes the burden on all applicants by not requiring them to complete the more burdensome FCC 314/FCC 315 (3060-0031).

² Applications for assignments or transfers of control that are either involuntary or that do not involve a substantial change in ownership or control, are exempt from the mandatory 30-day statutory petition to deny procedures. Transactions qualifying for these exemptions may file *pro forma* applications on FCC Form 316. Section 73.3540(f) of the Rules provides examples of transactions not considered to involve substantial changes in ownership or control. Section 73.3541 of the Rules governs involuntary transactions.

³ On October 20, 2000, the Commission released Public Notice DA 00-2390 announcing the mandatory electronic filing of FCC Form 316. Mandatory electronic filing for this form began on November 20, 2000. Paper-filed copies of FCC Form 316 will be accepted only if accompanied by an appropriate request for waiver of the electronic filing requirement. Filers must plead with particularity the facts and circumstances warranting grant of a waiver. Waivers will not be routinely granted.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License, FCC Form 316

6. Less Frequent Data Collection: The frequency for this collection of information is determined by respondents, as necessary. If this collection were not conducted, the Commission could not carry out its statutory responsibilities under Section 310(d) of the Communications Act of 1934, as amended.

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

8. Consultations with Persons Outside the FCC: 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 75 FR 6663, on February 10, 2010. No comments were received from the public.

9. Payment or Gift: No payment or gift was provided to respondents.

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

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 that 750 applications will be filed and processed annually. The average burden for the respondent when reviewing FCC Form 316 once it is completed by the respondent's attorney is 1.5 hours per form review. We assume all but 35 respondents will have an attorney to complete and file FCC Form 316 for them (715 respondents/applicants). Therefore, the burden for the 35 respondents/applicants completing FCC Form 316 by themselves will be 4.5 hours per form. This estimate is based on FCC staff's knowledge and familiarity with the availability of the data required.

Total Number of Respondents: 715 AM/FM/TV applicants
+ 35 LPFM applicants
750 Applicants/Respondents

Total Number of Responses: 750 applicants x 1 FCC Form 316 filing/applicant/annum = **750**
responses

Annual Burden Hours:

715 applicants x 1.5 hours application review/applicant/annum =	1,073 hours
35 applications x 4.5 hours to complete FCC Form 316/applicant/annum =	<u>158 hours</u>
Total Annual Burden Hours:	1,231 hours

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License, FCC Form 316

Annual “In-House” Cost: We assume that 715 respondents will have their attorneys complete FCC Form 316 and that the respondents will review the work done by the attorney. We estimate this will take approximately 1.5 hours for the applicant to review each application.

We estimate that 35 LPFM applicants will prepare the application themselves and this will take approximately 4.5 hours to complete each application. We estimate that the respondent would have an average salary of \$100,000/year (\$48.08/ hour).

Annual “In-House” Cost:

715 applicants x 1.5 hour FCC Form 316 review/applicant x \$48.08/hr =	\$51,565.80
35 applicants x 4.5 hours to prepare and file FCC Form 316 x \$48.08/hr =	<u>\$ 7,572.60</u>
Total Annual “In-House” Cost:	\$59,138.40

13. **Annual Cost Burden:** We assume that 715 respondents will use an attorney to prepare and file the FCC Form 316. We estimate that the average cost for an attorney is \$300/hour and the attorney will require 3 hours to complete the work. In addition, a licensee must also submit a fee for each application by a commercial broadcast station for assignment or transfer at \$110/station. We estimate that 86% of non-LPFM applications will be for commercial stations (715 x 86% = 615).

715 applications x \$300/hour x 3 hours/application =	\$643,500
615 applications x \$110.00	= <u>\$ 67,650</u>
Total Annual Cost Burden =	\$711,150

14. **Cost to the Federal Government:** The Commission will use professional staff at the GS-14, step5 grade level (\$55.78/hour), paraprofessional staff at the GS-11 step 5 grade level (\$33.12/hour) and clerical staff at the GS-5 grade level (\$18.07/hour) to process these applications. The processing time the GS-14 staff member will spend on each application will be 0.25 hours, the processing time the GS-11 staff member will spend on each application will be 2 hours/application, and the processing time the GS-5 will spend of each application will be 0.25 hours/application.

750 applications x \$55.78/hour /hour x 0.25 hours =	\$10,458.75
750 applications x \$33.12/hour x 2.0 hours	= \$49,680.00
750 applications x \$18.07/hour x 0.25 hours	= <u>\$ 3,388.13</u>
Total Cost to the Federal Government:	\$63,526.88

15. **Reason for Changes in Burden or Cost:** January 28, 2010, the Commission adopted a *First Report and Order and Further Notice of Proposed Rulemaking* in MB Docket No. 09-52, FCC 10-24, in this proceeding. This *Order* will revise FCC Form 316 to add the broadcast auction-based questions presently included on FCC Forms 314 and 315, specifically asking the applicants to certify that the proposed assignment or transfer complies with the unjust enrichment provisions of the Commission’s competitive bidding rules. The annual burden hours

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License, FCC Form 316

have increased by +376 (program change) and the annual costs have increased by +\$286,000 (\$178,750 of this amount is an adjustment to this collection based on an increase in consulting fees and \$107,250 of the amount is a program change based on the information collection requirements adopted in FCC 10-24).

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

17. Display of OMB Approval Date: OMB approval of the expiration date of the information collection will be displayed at 47 C.F.R. Section 0.408.

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

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.