

Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Fourth Report and Order and Third Order on Reconsideration (“*Fourth Report and Order*”), MM Docket 99-25, MB Docket No. 07-172, RM-11338; Implementation of Application Caps

SUPPORTING STATEMENT

A. Justification:

1. On July 12, 2011, the Commission released a *Third Further Notice of Proposed Rule Making* (“*Third Further Notice*”)¹ in this proceeding, seeking comment on the impact of the enactment of the Local Community Radio Act of 2010 (“LCRA”)² on the procedures previously adopted to process the approximately 6,500 applications that remain pending from the 2003 Auction No. 83 FM translator window. There, the Commission tentatively concluded that the previously adopted translator licensing procedures, which would limit each applicant to ten pending applications, would be inconsistent with the LCRA’s goals.³ It proposed to modify those procedures and instead adopt a market-specific translator application dismissal process, dismissing pending translator applications in identified spectrum-limited markets in order to preserve adequate low power FM (“LPFM”) licensing opportunities (the “Market-Based Standard”). It further proposed a national cap of 50 applications and a market-based cap of one application per applicant per market for the top markets to minimize the potential for speculative licensing conduct.

On March 19, 2012, the Commission adopted a *Fourth Report and Order and Third Order on Reconsideration* (“*Fourth Report and Order*”).⁴ In the *Fourth Report and Order*, the Commission (a) adopted the Market-Based Standard, (b) adopted the national and market-specific caps proposed in the *Third Further Notice*, and (c) required parties with more than 50 pending applications and/or more than one pending application in the markets identified in Appendix A of the *Fourth Report and Order* (the top 150 Arbitron markets plus markets with more than 4 pending translator applications) to request the dismissal of applications to comply with these limits. Applicants are to request such dismissal by filing a letter with the Commission (“Dismissal Letter”) identifying the applications they wish to be dismissed. In the event that an applicant does not timely comply with these dismissal procedures, the Commission staff will first apply the national cap, retaining on file the first 50 filed applications and dismissing those that were subsequently filed. The staff will then dismiss all but the first filed application in each of the markets identified in Appendix A.

The Office of Management and Budget (OMB) approved the information collection on July 24, 2012.⁵

¹ *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 9986 (2011).

² Pub. L. No. 111-371, 124 Stat. 4072 (2011).

³ The ten-application cap was adopted in *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912 (2007) (“*Third Report and Order*”).

⁴ *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364 (rel. Mar. 19, 2012).

⁵ See 77 Fed. Reg. 46760 (Aug. 6, 2012).

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On December 4, 2012, the Commission released a *Fifth Order On Reconsideration and Sixth Report and Order ("Fifth Order")*.⁶ The *Fifth Order* allows (but does not require) translator applicants to prosecute up to 70 applications nationally, instead of 50, provided that (a) no more than 50 are in Appendix A markets, and (b) those applications that are not in Appendix A markets (i) must protect at least one potential LPFM channel at the proposed transmitter site, and (ii) cannot overlap with the contour of any other pending translator application or authorization held by that applicant. The *Fifth Order* also allows (but does not require) translator applicants to prosecute up to three translator applications in Appendix A markets, rather than one application, provided they meet certain conditions. First, they must comply with the national cap of 70 applications described above. Second, the applications being prosecuted must comply with the Market-Based Standard adopted in the *Fourth Report and Order*. Third, there must not be contour overlap between any of the translator applications or between any such application and any existing translator authorization held by the applicant. There is no change in the information collection for any translator applicant that prosecutes only one translator application in an Appendix A market. A party that takes no action in response to this amended information collection will not be subject to any change in the processing of its application(s). The Commission expects fewer applications to be filed with the Commission and this submission reflects those numbers.

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 Section 154(i) of the Communications Act of 1934, as amended.

2. The Commission will dismiss the applications identified in the Dismissal Letters. The dismissal of these applications will facilitate the processing of the remaining applications from Auction No. 83. This is a new and one-time only collection.

3. The Commission will accept Dismissal Letters (and related showings for the amended information collection) by mail or email. Permitting applicants to use the method that best suits them will reduce the burdens of this collection. Applicants also have the choice of not submitting a Dismissal Letter. In such cases, the Commission will dismiss applications in accordance with the procedures described above.

4. This agency does not impose a similar information collection on the respondents. There is no similar data available.

5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents. Therefore, this revised information collection will not have a significant economic impact on a substantial number of small entities/businesses.

⁶ *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Fifth Order on Reconsideration and Sixth Report and Order*, FCC 12-144 (rel. December 4, 2012).

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6. The licensing outcomes of Auction No. 83 will be affected if the revised information collection is not conducted because translator applicants will not have the benefit of choosing which applications they wish to preserve or dismiss under the national and market caps. While the Commission could choose not to request Dismissal Letters, this would deny applicants the benefit of making dismissal selections based on their own needs and preferences. The revision to the information collection pursuant to the *Fifth Order* provides applicants with opportunities to prosecute additional applications.
7. This revised collection of information is consistent with the guidelines in 5 CFR 1320.5(d)(2).
8. The Commission published a Notice (77 FR 17476) in the *Federal Register* on March 26, 2012, seeking comments for the public on the information collection requirements in the *Fourth Report and Order*. No comments were received from the public.
9. No payment or gift was provided to the respondents.
10. There is no need for confidentiality with this revised collection of information.
11. This revised collection of information does not address any private matters of a sensitive nature.
12. We estimate that 195 respondents will file Dismissal Letters. The average burden on respondents for the preparation and filing of a Dismissal Letter is 2 hours and fifteen minutes.

Total number of respondents: 195 Translator Applicants

Total number of responses: 195 Dismissal Letters (responses)

Total annual hour burden: 195 Dismissal Letters (responses) x 2.25 hours/letter = 439 hours (rounded)

Annual “In-house cost”: We assume that the respondents will complete and file the Dismissal Letters themselves. The respondents have an average salary of \$100,000/year (\$48.08/hour).

195 Dismissal Letters x 2.25/hours/response x \$48.08/hour = \$ 21,095

Total “In-House” Cost = \$21,095

13. Annual Cost Burden:

(a) Total annualized capital/startup costs: None

OMB Control Number: 3060-1173

December 2012

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(b) Total annual costs (O&M): None

(c) Total annualized cost requested: None

14. **Cost to the Federal Government.** The Commission will use engineering staff at the GS-14 level, step 5 (\$57.14/hour) to process the Dismissal Letters. The average processing time for these documents is 0.33 hours (20 minutes) per document received.

0.33 hours engineer x 195 Dismissal Letters x \$57.14/hour = \$3,677

Total Cost to the Federal Government: \$ 3,677

15. This is non-substantial change request that is being submitted to OMB for review and approval. Once the change request is approved by OMB, there will be decreases to the number of respondents by 105, to the annual number of responses by 105 and to the annual burden hours by 161 hours. These decreases are due to the Commission now estimating that less responses (Dismissal Letters) will be filed with the Commission.

There are no program changes or adjustments.

16. The data will not be published.

17. OMB approval of the expiration date of the information collection will be displayed on the Public Notice requesting submission of the Dismissal Letters.

18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.